

CHAPTER 19
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES
[Prior to 12/17/86, Revenue Department[730]]

701—19.1(422,423) General information. Iowa Code section 422.43 imposes a tax upon the gross receipts from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installation; equipment and other tangible personal property rental; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services. It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are therefore exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling. (Codified in section 422.43 of the 1979 Code.) See rule 701—26.2(422). For the purposes of this exemption, a structure is defined as that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include: buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds. See rule 19.11(422,423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the gross receipts from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, once chosen, should not be changed, unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be. For instance, if a business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive, and after two years' operation half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

Iowa Code section 423.2 imposes a tax that is assessed upon tangible personal property purchased for use in this state and on taxable services which are rendered, furnished or performed in Iowa or where the product or result of such service is used in Iowa. "Use" of tangible personal property in Iowa is defined to mean and include the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

See 701—Chapters 12 and 30 of the rules regarding the filing of returns, penalty and interest.

701—19.2(422,423) Contractors are consumers of building materials, supplies, and equipment by statute. Iowa Code subsection 422.42(15) provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes

material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 19.3(1), 19.3(2) and 19.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 19.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rule 19.3(422,423) and rule 19.4(422,423).

A contractor (general, special or subcontractor) when bidding on a contract should anticipate that sales or use taxes will increase the cost of materials by the tax. This is true even if the contract is with an entity (e.g., federal, state, or county government, or a private, nonprofit educational institution) whose purchases are exempt from sales tax. See rule 19.12(422,423). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

Effective July 1, 1992, the sales and use tax rate increased from 4 percent to 5 percent. The right of construction contractors previously to make application to the department for a refund of the additional 1 percent sales or use tax paid on goods, wares or merchandise incorporated into an improvement to real estate in the fulfillment of a written contract fully executed prior to July 1, 1992, has been rescinded effective July 1, 2001.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 as amended by 2001 Iowa Acts, House File 715, and 423.2.

701—19.3(422,423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners. Suppliers or dealers who sell materials and supplies to contractors, subcontractors, builders or owners are required to collect Iowa sales tax from those persons based upon the receipts from such sales. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 19.2(422,423) and 19.4(422,423). Purchase discounts are not part of the sales price and are not part of the base for computing sales and use tax provided the retailer has not collected the tax on the full selling price. See rule 701—15.6(422,423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter the materials are delivered into the state. Tax is imposed on the contractor, subcontractor or builder even though the contract is with a governmental unit or a nonprofit educational institution. See Iowa Code section 422.45(7) and rule 19.12(422,423).

19.3(1) Building materials. The term “building materials” as used in this rule means materials used in construction work, and is not limited to materials used in constructing a building with sides and covering. The term may also include any type of materials used for improvement of the premises or anything essential to the completion of a building or structure for the use intended. *State v. James A. Head & Company, Inc.*, 306 So. 2d 5 (Ala. 1974).

19.3(2) Building supplies. The term “building supplies” as used in this rule means anything that is furnished for, and used directly in the carrying on of the work of an owner, contractor, subcontractor or builder and which is entirely consumed by said contractor. Such items do not have to enter into and become a physical part of the structure like materials, but they do become as much a part of the structure as the labor which is performed on it. *United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co.*, 85 p.2d 1085, 197 Wash. 569.

19.3(3) Typical items. While not intended to be inclusive, the following is a list of typical items regarded as building materials and supplies:

Asphalt	Lubricants	Sheet metal
Bricks	Lumber	Steel
Builders' hardware	Macadam	Stone

Caulking material	Millwork	Stucco
Cement	Modular and mobile homes	Tile
Central air conditioning	Mortar	Wallboard
Cleaning compounds	Oil	Wall coping
Conduit	Paint	Water conditioners
Doors	Paper	Weather stripping
Ducts	Piping, valves, and pipe fittings	Windows
Electric wiring, connections, and switching devices	Plaster	Window screens
Fencing materials	Plates and rods used to anchor masonry foundations	Wire netting and screen
Flooring*	Plumbing supplies	Wood preserver
Glass	Polyethylene covers	
Gravel	Power poles, towers, and lines	
Insulation	Putty	
Lath	Reinforcing mesh	
Lead	Rock salt	
Lighting fixtures	Roofing	
Lime	Rope	
Linoleum*	Sand	

*Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks or tack strips or by some other method making a permanent attachment are considered to be building materials. See rule 701—16.48(422,423) for an exception concerning carpeting. Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter. Rugs, mats and linoleum types of floor coverings which are not attached but which are simply laid on finished floors are not considered to be building materials either.

19.3(4) Building equipment. The term “building equipment” as used in this rule means any vehicle, machine, tool, implement or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. “Building equipment” includes, but is not limited to, such items as:

Compressors	Replacement parts for equipment
Drill presses	Scaffolds
Electric generators	Tools
Forms	Vehicles including grading, lifting and excavating vehicles
Hand tools	
Lathes	

Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. However, equipment which is rented for use on or in connection with an Iowa construction contract can be rented without an obligation for Iowa sales or use taxes. Rented equipment is subject to tax on the purchase price at the time of purchase because it is not subject to the service tax of equipment rental. See rules 18.36(422,423) and 26.18(422,423) relating to equipment rental and the leasing of tangible personal property.

701—19.4(422,423) Contractors, subcontractors or builders who are retailers. In some instances, contractors, subcontractors and builders are in a dual business which includes reselling to the general public on a recurring “over-the-counter” basis, the same type of building materials and supplies which are used by them in their own construction work. A person operating in such a manner is referred

to in this rule as a contractor-retailer. Any person who is engaged in the performance of construction contracts and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer (see below). A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract performed in Iowa. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the price charged for materials used in the repair and on the price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced. See rules 701—18.31(422,423) and 19.13(422,423).

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 701—19.7(422,423)). In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

2. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

3. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule. See rules 701—15.3(422,423) and 19.19(422,423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which will not be placed in its inventory purchases that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

5. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See Iowa Code section 422.42(15).

The business records of a contractor-retailer must clearly reflect the use made of items purchased and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1. ABC Company operates a retail outlet that sells lumber and other building materials and supplies. ABC Company is also a contractor which builds residential and commercial structures. ABC Company would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over-the-counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter selling price.

EXAMPLE 2. EFG Company is a mechanical contractor and has no retail outlets. EFG Company rarely sells any of its inventory to other persons or to other contractors. EFG Company would not be considered a contractor-retailer under this rule. However, EFG Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and

equipment. However, on those rare occasions, when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale, therefore, EFG Company should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3. Home Town Construction Company is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet but they frequently make sales of building materials which are in their inventory to local residents. Home Town Construction Company would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the selling price of the items.

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on the item sold to the local resident.

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations, makes electrical, plumbing and other connections, and otherwise prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—17.22(422,423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

701—19.5(422,423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

19.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production. See rule 701—16.3(422,423) for a characterization of the term manufacturer's "fabricated cost."

19.5(2) Prior to July 1, 1987, a contractor-retailer's withdrawal of material from inventory kept in this state for use in construction contracts performed outside Iowa is subject to tax. On and after July 1, 1987, a withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

19.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

19.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within

Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 701—16.3(422,423) for a characterization of the term “fabricated cost.” The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer’s or the manufacturer’s subcontractor’s performance of a construction contract outside Iowa is not subject to tax.

19.5(5) See rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

This rule is intended to implement Iowa Code sections 422.42(12) and 422.42(13).

701—19.6(422,423) Prefabricated structures.

19.6(1) *Basic concepts and general rules.* A “prefabricated structure” is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term “prefabricated structure” includes a “modular home” as defined in rule 701—17.22(422,423), a mobile home whether or not sold subject to the issuance of a certificate of title, “manufactured housing” as defined in rule 701—33.10(423), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see 19.6(2) below regarding the “60 percent rule” and rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials: Tax is due when those structures are sold to or used by owners, contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation*, 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

19.6(2) *Exceptions to the general rules.* There are a number of exceptions to the general rules stated above in 19.6(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows.

a. Modular homes. Only 60 percent of the gross receipts from the sale of a modular home are subject to Iowa tax. See rule 701—17.22(422,423). This rule is applicable only to a “modular home” as that phrase is defined in rule 701—17.22(422,423) and not to other types of prefabricated structures which do not meet the definition of the term such as sectionalized housing or panelized construction. Also, the rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. Mobile homes and manufactured housing. Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 19.6(2) “a” above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. See rule 701—32.3(423). All mobile homes and manufactured housing sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see Iowa Code chapters 423 and 435.

19.6(3) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) who is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor who is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor’s sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 19.4(422,423).

c. A dealer who is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 19.4(422,423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the gross receipts from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 19.6(4) below in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than gross receipts from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract (see rule 19.7(422,423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

19.6(4) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. See rule 701—16.3(422,423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 19.6(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

19.6(5) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner, or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in its factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to another state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on its own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the selling price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa who will resell the home to the final customer. The manufacturer may deliver the home or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer sells a home to a customer F.O.B. plant site. The manufacturer, under a separate invoice, agrees to transport the home to the job site and also do the setup of the home.

The manufacturer should collect tax on 60 percent of the selling price of the home irrespective of where final delivery occurs, as legal delivery occurs in Iowa. The transportation and setup charge are not taxable when separately contracted for and separately invoiced. If these charges are not separately stated and the sale contract is for a lump sum, the tax is computed on 60 percent of the lump sum selling price.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this example, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 422.42(12) exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 7. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the selling price of the home. The customer also wanted a garage. The manufacturer agreed to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail and the manufacturer should collect tax on the entire selling price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire selling price of the appliances.

EXAMPLE 8. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer who is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, who transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer who is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

701—19.7(422,423) Types of construction contracts. The term “construction contract” is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of construction contracts would include: lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design built contracts; and turnkey contracts.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual. See rules 19.10(422,423) and 19.11(422,423) for details.

Ash removal equipment (installed as distinguished from portable units).

Automatic sprinkler systems (fire protection).

Awnings and venetian blinds which become attached to real property.

Boilers (installed as distinguished from portable units).

Brick work.

Builder's hardware.

Burglar alarm and fire alarm fixtures.

Caulking materials work.

Cement work.

Central air conditioner installation.

Coal handling equipment (installed as distinguished from portable units).

Concrete work.
Conveying systems (installed as distinguished from portable units).
Drapery installation.
Electric conduit work and items relating thereto.
Electric distribution lines.
Electric transmission lines.
Floor covering which is permanently installed. See rule 701—16.48(422,423) for an exception to this regarding carpeting.
Flooring work.
Furnaces, heating boilers and heating units.
Furniture, prefabricated cabinets, counters and lockers (installed as distinguished from portable units).
Glass and glazing work.
Gravel work (excluding landscaping).
Installation of modular homes on foundations.
Lathing work.
Lead work.
Lighting fixtures.
Lime work.
Lumber and carpenter works.
Macadam work.
Millwork installation.
Mortar work.
Oil work.
Paint booths and spray booths (installed as distinguished from portable units).
Painting work.
Paneling work.
Papering work.
Passenger and freight elevators.
Piping valves and pipe fitting work.
Plastering work.
Plumbing work.
Putty work.
Refrigeration units (central plants installation as distinguished from portable units).
Reinforcing mesh work.
Road construction (concrete, bituminous, gravel, etc.).
Roofing work.
Sheet metal work.
Sign installation (other than portable sign installation).
Steel work.
Stone work.
Stucco work.
Tile work, ceiling, floor and walls.
Underground gas mains.
Underground sewage disposal.
Underground water mains.
Vault doors and equipment.
Wallboard work.
Wall coping work.
Wallpaper work.
Water heater and softener installation.
Weather stripping work.

Wire net screen work.
Wood preserving work.

701—19.8(422,423) Machinery and equipment sales contracts with installation. Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. (This rule should not be confused with subrule 19.3(3) regarding building equipment.) The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that “sales tax is included in the contract price.”

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

In a “mixed contract” (a construction contract mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 19.9(422,423).

Certain services which are enumerated in Iowa Code section 422.43 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure. See rule 701—15.14(422,423) relating to installation charges. Examples of these services are: electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE: Company B contracts with Company A to furnish and install a portable conveyor unit in Company A’s new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total gross receipts subject to tax unless they are separately contracted, or if no written contract exists, separately itemized on the billing from Company B to Company A.

701—19.9(422,423) Construction contracts with equipment sales (mixed contracts). Construction contracts with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment. As a consumer by statute of construction building materials, supplies, and building equipment, the contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier. See 701—Chapter 30 of the rules regarding use taxes. Machinery and equipment must be purchased for resale by the contractor if it does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the selling price from a sponsor and remitting it to the department.

EXAMPLE: Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total gross receipts subject

to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A.

When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales tax or a retailer's use tax permit.

701—19.10(422,423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

19.10(1) The following is a list of property which, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

- a.* Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.
- b.* Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment and other related easily movable property attached to the structure.
- c.* Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items.
- d.* Office, bank and savings and loan association furniture and equipment, including office machines.
- e.* Radio, television and cable television station equipment, but not broadcasting towers.
- f.* Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

19.10(2) The following is a list of property which, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

- a.* Boilers and furnaces for space heating.
- b.* Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.
- c.* Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.
- d.* Fixed (year-round) wharves and docks.
- e.* Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. See rule 701—18.35(422,423) relating to drainage tile.
- f.* Mobile and modular homes installed on foundations.
- g.* Planted nursery stock.
- h.* Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).
- i.* Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).

- j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- k. Silos and grain storage bins.
- l. Storage tanks constructed on the site.
- m. Swimming pools (wholly or partially underground (except portable pools)).
- n. Truck platform scale foundations.
- o. Walk-in cold storage units becoming a component part of a building.

701—19.11(422,423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. The following is a listing of criteria which courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.
2. The overall scope of the business and the contractual obligations of the person designing and building the structure.
3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
4. The size and weight of the structure.
5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
6. The cost of building, moving or dismantling the structure.

EXAMPLE: A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high, 20 feet around, weighs 30 tons, and it is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, it is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore*, 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material:

Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc., 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue*, 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization*, 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.*, 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization*, 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J.M. Dickinson*, 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant*, Order of the Director of Revenue, June 16, 1975.

701—19.12(422,423) Construction contracts with tax exempt entities. This rule applies to exempt sales of building materials, supplies, and equipment to certain persons performing construction contracts for sponsors which are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

19.12(1) Definitions.

“Construction contract” has the same meaning as the definition of that phrase set out in rule 701—19.7(422,423).

“Designated exempt entity” includes only the following: a private nonprofit educational institution in this state, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state

department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder.

“Exemption certificate” means a certificate which is complete and correct according to the requirements of this rule. A certificate which is complete and correct according to the requirements of this rule must contain, at a minimum, the following information: the name and address of the designated exempt entity; the federal identification number of the exempt entity; the name of the construction project or the project number for which exemption is requested; and a general description of that project. The certificate shall also contain the contractor’s, subcontractor’s, builder’s, or manufacturer’s name and address. The certificate must be completed, signed, dated, and issued by an authorized official of the designated exempt entity. The certificate is valid only for the stated construction project.

“Purchasing agent authorization letter” means a letter from a designated exempt entity to a contractor, subcontractor, builder or manufacturer authorizing the contractor, subcontractor, builder, or manufacturer to purchase tangible personal property consisting of building materials, supplies, or equipment free from tax for a construction project of which the designated exempt entity is the sponsor. The letter shall set out the contract date or the contract letting date and give a general description of the construction contract to which it applies. The letter shall state that it is the responsibility of the contractor, subcontractor, builder, or manufacturer to keep records identifying the property purchased exempt from tax and verifying that the property purchased was used in the contract with the exempt entity. The letter shall also state that property purchased tax-free and not used in the contract with the exempt entity is subject to tax which must be paid directly to the Iowa department of revenue.

19.12(2) *Exempt purchases, withdrawals from inventory, and manufacturers’ fabrication costs.* This subrule and the exemptions it describes are applicable to construction contracts entered into on or after January 1, 2003.

a. Contractors, subcontractors, and builders who purchase building materials, supplies, or equipment intending to use that property in the performance of a construction contract with a designated exempt entity shall purchase the property from a retailer exempt from tax if the property is subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents a purchasing agent authorization letter and an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the entity.

c. The “fabricated cost” (see rule 701—16.3(422,423)) of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if a purchasing agent authorization letter and an exemption certificate are received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer’s consumption of building materials, supplies, or equipment used in the performance of a construction contract for purposes other than incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for this subrule’s exemption.

19.12(3) *Notification to the department.* A designated exempt entity shall notify the department when any purchasing agent authorization letter and exemption certificate have been issued for a construction contract project. The notification shall, so far as practicable, describe the project and identify the contractors, subcontractors, builders, and manufacturers which will be using the letters and certificates.

19.12(4) *Exemption certificates taken in good faith.* A retailer who accepts an exemption certificate described in this rule has all the rights and obligations of a retailer described in 701—subrules 15.3(1) and 15.3(2).

19.12(5) *Contracts with designated exempt entities, businesses in economic development areas, and rural water districts organized under Iowa Code chapter 504A—eligibility for refund in the absence of eligibility for exemption.* Contractors, subcontractors, and builders who enter into written construction contracts with designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A can still be required to remit sales tax on building materials, supplies, and equipment to their suppliers or to pay a corresponding use tax. Reasons for this will vary; these reasons are not intended to be all-inclusive. In the case of a contractor, subcontractor, or builder entering into a written construction contract with a designated exempt entity, the requirement to remit or pay tax can result from failure to secure an exemption certificate or purchasing agent authorization letter. In the case of a contractor, subcontractor, or builder entering into a written construction contract with businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A, the requirement to remit or pay tax can result from the fact that businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A are not designated exempt entities and thus not eligible to claim their exemption.

Even if no right to claim the designated exempt entity exemption exists, under the provisions of Iowa Code section 422.45(7) or 15.331A(1), a contractor is still required to provide a designated exempt entity which has not properly claimed its exemption, business or supporting business in an economic development area, or a rural water district organized under Iowa Code chapter 504A with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of the contract, and the amount of sales and use taxes paid on these items. The department provides Form 35-002 for this purpose. If final settlement occurred before May 20, 1999, the governmental unit, private nonprofit educational institution, nonprofit private museum, business or supporting business, or rural water district organized under Iowa Code chapter 504A has six months after the final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. If final settlement occurs on or after May 20, 1999, a period of one year after the date of final settlement is allowed for filing a claim for refund. The failure of a contractor to remit taxes on materials, supplies, and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See *Dealers Warehouse Co. Inc. v. Department of Revenue*, Jasper County District Court, 90-3910936, December 6, 1978.

If a construction contract is a contract which includes machinery or equipment with installation (see rule 701—19.8(422,423)) or a mixed contract (see rule 701—19.9(422,423)), the machinery and equipment must be purchased tax-free because the machinery and equipment will be resold to the contract sponsor. There will be no sales tax charged on resales of machinery and equipment to sponsors which are designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A since these sales are exempt under Iowa Code sections 422.45(5) and 422.45(8). See also 261—subrule 58.4(7) for an explanation of the exemption for sales of machinery and equipment to businesses or supporting businesses in an economic development area.

This rule is intended to implement Iowa Code sections 357A.15, 422.42, 422.45 and 422.47.

701—19.13(422,423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 422.43 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, they are exempt from tax. The repair of machinery on the job site is not exempt from tax under this rule.

The distinction between a repair (see subrule 19.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 19.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. An area of particular difficulty is the distinction between repair and remodeling. “Remodeling” a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See *Board of Commissioners of Guadalupe*

County v. State, 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing*, 19 N.D. 98, 123 N.W. 393 (1909).

19.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure which has been lost or destroyed. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

Iowa Code section 422.42(13) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of Iowa Code section 422.42(15). In addition, such persons are not considered to be owners, subcontractors or builders. So repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors or builders who may make repairs are subject to Iowa Code section 422.42(15) and must pay tax at the time building materials, supplies and equipment are purchased from their vendors even though they hold a valid sales tax permit. See rules 19.2(422,423) and 19.3(422,423). In determining who is a contractor and who is a retailer of repair services, the department looks to the “total business” of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they should separately itemize labor and materials charges and collect sales tax on labor charges only. A contractor’s markup on a materials charge is not part of any taxable labor charge unless that markup is a disguised labor charge done with the intent to evade collecting Iowa sales tax.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 422.43, then those persons shall collect and remit tax on all gross receipts. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. See rule 701—18.31(422,423) for an explanation of when persons performing services sell the property they use in performing those services to their customers. Nonexclusive examples of repair situations follow:

1. Repair of broken or defective glass.
2. Replacement of broken, defective or rotten windows.
3. Replacing individual or damaged roof shingles.
4. Replacing or repairing a portion of worn-out or broken kitchen cabinets.
5. Replacement of garage doors or garage door openers.
6. Replacing or repairing a portion of a broken or worn tub, shower, or faucets.
7. Replacing or repairing a portion of a broken water heater, furnace or central air conditioning compressor.
8. Restoration of original wiring in a house or building.

19.13(2) The following are examples of new construction, reconstruction, alteration, expansion and remodeling activities:

- a. The building of a garage or adding a garage to an existing building would be considered new construction.
- b. Adding a redwood deck to an existing structure would be considered new construction.
- c. Replacing a complete roof on an existing structure would be considered new construction or alteration.
- d. Adding a new room to an existing building would be considered new construction.
- e. Adding a new room by building interior walls would be considered alteration.
- f. Replacing kitchen cabinets with some modification would be considered an improvement.
- g. Paneling existing walls would be considered an improvement.
- h. Laying a new floor over an existing floor would be considered an improvement.
- i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.

- j.* Building a new wing to an existing building would be considered an expansion.
- k.* Rearranging the interior structure of a building would be considered remodeling.
- l.* Installing manufactured housing or a modular or mobile home on a foundation. However, see rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.
- m.* Replacing an entire water heater, water softener, furnace or central air conditioning unit.
- n.* Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

19.13(3) The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the production machinery and equipment; see rule 701—18.45(422,423).) However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. See also 701—subrule 18.45(7) for the exemption, effective July 1, 1985, regarding the installation of new industrial machinery and equipment.

Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction, for example. For instance, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 19.13(2) “*d*” above). The existing home is in need of a number of the repairs described in 19.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

The department would like to emphasize that facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes

on enumerated services are applicable to repair work that is not a construction activity. Please refer to subrule 19.13(1) relating to persons who make repairs for more information.

19.13(4) Excavating includes the digging, hollowing out, scooping out, or making a hole in the earth. It also includes removal of materials or substance found beneath the surface. Grading includes a change in the earth's structure by scraping and filling to a common level or a fixed line known as a grade. The enumerated services excavating and grading are not subject to tax if performed on or connected with new construction. Removal of overburden which is directly related to road building, building of dikes, building of farm ponds, and creating drainage ditches would not be taxable as such activities would be considered on or connected with the creation of a structure. See *Maasdam v. Kirkpatrick*, 214 Iowa 1388 (1932). However the mere removal of overburden, without more, would be taxable as the enumerated service of excavating or grading under Iowa Code section 422.43.

19.13(5) Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

This rule is intended to implement Acts of the Sixty-third General Assembly, First Session, 1969, chapter 248, section 9 (this enactment is not part of the Iowa Code).

701—19.14(422,423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. See rule 701—15.13(422,423).

701—19.15(422,423) Start-up charges. Start-up charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

701—19.16(422,423) Liability of subcontractors. A subcontractor who is providing materials and labor on the actual construction of the building or structure has the same status and tax responsibilities as a general contractor under the Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a general contractor or another subcontractor, the individual or firm is considered a material supplier rather than a subcontractor. This is true, even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by material suppliers to contractors shall be sold for resale and the contractor must provide the material supplier with a valid resale certificate.

701—19.17(422,423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies and equipment by a general contractor or subcontractor in the completion of a construction contract. Likewise, a general contractor cannot be held responsible for the tax liability incurred on building materials, supplies and equipment by a subcontractor in the completion of a construction contract. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

701—19.18(422,423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012 which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.

2. Form 35-013 which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.

3. Form 35-001 which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

701—19.19(422,423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract, by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 19.8(422,423). Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract. See rule 19.4 (422, 423) and subrule 19.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue. See rule 701—15.3(422,423) for detailed information on resale certificates.

701—19.20(423) Reporting for use tax. An Iowa contractor can report use tax either on a consumers use tax return or as consumed goods on a sales tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a consumers use tax return. Consumer use tax returns for nonresident contractors must be obtained directly from the department of revenue unless the contractor is registered with the department.

This chapter is intended to implement Iowa Code sections 422.42(3), 422.42(12), 422.42(13), 422.43, 422.45(5), 422.45(7), 422.45(8), 422.47, 422.48, and 423.2.

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