CHAPTER 16
TAXABLE SALES
[Prior to 12/17/86, Revenue Department[730]]

701—16.1(422) Tax imposed. The Iowa retail sales tax is imposed for periods prior to July 1, 1992, at the rate of 4 percent and for periods on or after July 1, 1992, at the rate of 5 percent of the gross receipts from the sale at retail of tangible personal property and certain enumerated services. However, see rule 701—14.3(422,423) for transition provisions to determine whether the 4 or 5 percent rate applies.

The remaining rules under this chapter deal with certain specific attributes of the Iowa retail sales tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement Iowa Code section 422.43.

701—16.2(422) Used or secondhand tangible personal property. The sale of used or secondhand tangible personal property in the form of goods, wares, or merchandise shall be taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.3(422,423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If building materials, supplies, or equipment are used by a manufacturer in the performance of a construction contract, a "sale" occurs only if the materials, supplies, or equipment are used in the performance of a construction contract in Iowa. For purposes of this rule, the term "fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site. *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963). Also see rule 701—19.4(422,423) relating to contractors and rule 701—19.5(422) relating to materials, supplies, and equipment used in construction contracts within and outside of Iowa.

This rule is intended to implement Iowa Code section 422.42(10).

701—16.4(422,423) Patterns, dies, jigs, tools, and manufacturing or printing aids.

16.4(1) *Retail sales.* Prior to July 1, 1997, a person engaged in the business of making and selling patterns, dies, jigs, tools and manufacturing or printing aids to be used by other persons in the manufacture of tangible personal property shall be deemed as selling such patterns, dies, jigs, tools and manufacturing or printing aids at retail. If such items are sold by a vendor in Iowa, the gross receipts from these sales shall be subject to sales tax; and, if such items are purchased from a vendor outside Iowa, the purchaser shall be subject to use tax. See 701—18.58 (422,423) for exemption for this type of equipment on and after July 1, 1997.

Design charges that are not physically incorporated into a finished product are exempt from tax if separately contracted. If no written contract exists, the design charge must be separately itemized on the invoice to be exempt from tax.

When a manufacturer purchases or fabricates from raw materials purchased, dies, patterns, jigs, tools, and manufacturing or printing aids for the account of customers who acquire title to the property upon delivery thereof or upon the completion of the fabrication thereof by the manufacturer, the manufacturer shall be regarded as purchasing the property either as an agent for, or resale to, customers. Tax shall apply to either the manufacturer as an agent of the customer or to the sale by the manufacturer to the customer.

In determining whether the manufacturer purchases the property on behalf of, or for resale to, a customer, the terms of the contract with the customer, the custom of usage of the trade and any other pertinent factors shall be considered. For example, if the customer issues a purchase order for patterns, dies, jigs, tools, and manufacturing or printing aids, or on the purchase order for the goods, itemizes or otherwise specifies the particular patterns, dies, jigs, tools, and manufacturing or printing aids, which will be required by the manufacturer to manufacture the goods desired by the customer and the manufacturer obtains the item pursuant to the customer's specific order, billing, itemizing or otherwise identifying it to the customer separately from the billing for the article manufactured therefrom, and either delivers it to the customer or holds it as bailee for the customer, it will be presumed that the manufacturer acquired the property on behalf of the customer or for immediate resale to the customer.

16.4(2) *Revisions and repairs.* When a person takes existing patterns, dies, jigs, tools and manufacturing or printing aids and revises them by changing or modifying such items in such a way as to create a new pattern, die, jig, tool, and manufacturing or printing aid, such person shall not be considered as making a retail sale since title never passes from the owner of the existing patterns, dies, jigs, tools and manufacturing or printing aids, and such person shall be considered to be performing a service. This service and any repair of any pattern, die, jig, tool and manufacturing or printing aid are not services enumerated in Iowa Code section 422.43. Any additional materials used and transferred to the owner in addition to the existing patterns, dies, jigs, tools and manufacturing or printing aids, in the revision or repair thereof would be taxable. *Chicago, B. & Q. R. Co. v. Iowa State Tax Commission,* 295 Iowa 178, 142 N.W.2d 407 (1966).

However, any service enumerated in Iowa Code section 422.43, which is performed in connection with this revision or repair would be subject to tax; such as when a die owner hires a welding firm to weld a broken die part on a die. The charges for the labor and materials used in connection with this service would be subject to the tax.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—16.5(422,423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the gross receipts from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax. *Linwood Stone Products Company v. State Department of Revenue,* Iowa, 175 N.W.2d 393 (1970).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.6(422,423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts. Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. (See rule 701—18.33(422,423) for sales to printers.) The mentioned articles do not become an integral or component part of merchandise intended to be sold ultimately at retail. *Long v. Roberts & Son,* 234 Ala. 570 176 So. 213 (1937); *People ex. rel. Walker Engraving Corporation v. Groves,* 268 N.Y. 648, 193 N.E. 539 (1935).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), and 423.2.

701—16.7 Rescinded, effective 7/1/78.

701—16.8(422,423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by the purchaser or in the purchaser's business and not for resale are considered retail sales and subject to tax, even though sold at wholesale prices or in wholesale quantities.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), 423.1(10), and 423.2.

701—16.9(422,423) Materials and supplies sold to retail stores. Receipts from the sale of materials and supplies to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items as fuel, cash registers, adding machines, typewriters,

stationery, display fixtures and numerous other commodities which are not sold by the store to its customers.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1(1), and 423.2.

701—16.10(422,423) Sales to certain corporations organized under federal statutes. The sale of tangible personal property or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

1. Federal savings and loan associations.
2. Federal savings and trust companies.
3. National banks.
4. Other organizations of like character.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.11(422,423) Paper plates, paper cups, paper dishes, paper napkins, paper, wooden or plastic spoons and forks and straws. When paper, wooden or plastic cups, plates, dishes, napkins, spoons and forks are sold with tangible personal property and expended by such use, the sale of such properties to retailers shall be considered sales for resale. The gross receipts from the sale of such items by retailers to consumers or users shall be subject to tax.

When these articles are sold in connection with service or for free distribution by retailers apart from a retail sale, the transaction shall be deemed to be a retail sale to the retailer and shall be taxable.

Sales of reusable placemats to retailers who sell meals shall be subject to tax.

EXAMPLE 1. A retailer purchases napkins, disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2. A retailer purchases napkins, disposable knives and forks for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), and 423.2.

701—16.12(422) Tangible personal property purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property who takes merchandise from stock for personal use, consumption, or gifts shall report these items on the sales tax return and remit tax on the purchase cost of the items.

This rule does not authorize purchase for resale of items intended to be used by the retailer.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, and 422.51.

701—16.13(422) Property furnished without charge by employers to employees. When an employer furnishes tangible personal property (including meals) to employees without charge or uses merchandise for gifts or consumption, the cost to the employer of the tangible personal property or merchandise shall be subject to tax and included on the employer's return if the employer has not previously paid tax to a retailer. However, the food purchased by the employer for meals prepared for employees is not subject to tax. See In the Matter of the Petition of Cedar Rapids Country Club for Declaratory Ruling, (Rev. Dkt. No. 91-30-6-0541, 12-23-91).

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.51.

701—16.14(422) Sales in interstate commerce—goods delivered into this state. When parties contract for the sale of tangible personal property in interstate commerce and the property is delivered to users or consumers in Iowa and the seller is engaged in the business of selling tangible personal property in Iowa, the transaction shall be subject to sales tax. The tax shall apply, even though the purchaser's order may specify that the goods are to be manufactured or procured outside Iowa and shipped directly from the point of origin to the purchaser. The seller shall be required to collect and remit sales tax on all such transactions.

If the above conditions are met, and the property is delivered to the purchaser in Iowa, it shall be immaterial if the contract of sale is closed by acceptance outside Iowa, if the contract is made before the property is brought into Iowa or if any other aspect of the sale occurs outside this state. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985).

16.14(1) *Delivery in state.* Delivery is held to have taken place in Iowa when physical possession of the tangible personal property is actually transferred to the consumer or user or their agents, other than a carrier, within the state. *Dodgen Industries v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968). For examples of delivery which do not involve physical transfer of possession to the user or consumer, see 701—subrules 14.3(2) and 14.3(3).

16.14(2) Rescinded IAB 4/15/92, effective 5/20/92.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—16.15(422) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

16.15(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas, or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas, or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the gross receipts from the sale of such service. When the building owners or operators purchase all of the electric current, gas, or other services for resale and consume a portion in the operation of the building, they shall be liable for tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

16.15(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

16.15(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

16.15(4) When a building manager makes sales of tangible personal property or taxable services at retail, the manager shall be required to procure a permit and collect and remit tax.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.16(422,423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, the total receipts from the sale of such fabricated articles shall be included in the taxable receipts. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed. Hellerstein, *The Scope of the Taxable Sale Under Sales and Use Tax Acts: Sales as Distinguished From Services,* 11 Tax L. Rev. 262, 269 (1956).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.17(422,423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished articles from raw materials and sells such articles at retail, tax shall apply on the total charge which includes the fabrication labor.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.18(422,423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The gross receipts from the sales shall be taxable, even when the purchase price of the sign includes a charge for maintenance or repair service, in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.19(422,423) Products sold by cooperatives to members or patrons. Sales by cooperatives to members or patrons shall be subject to tax. The gross receipts from the sale of tangible personal property to stockholders or members of cooperative creameries or creamery associations shall be included in the receipts on which tax is computed. See 1942 O.A.G. 101.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.20(422,423) Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations. Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations shall be required to collect and remit tax from the sale of electric energy to consumers. Such municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations may execute resale exemption certificates to the companies from whom they purchase electric energy and may obtain resale exemption certificates from consumers to whom they sell electric energy for processing or resale.

Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations shall be required to collect and remit tax on all sales of tangible personal property to users and consumers and pay tax on the purchase of all tangible personal property which they do not resell, except as provided herein. They need not pay tax on electricity which they generate and subsequently use and consume in the operation of their facilities. *Iowa Public Service Company v. Iowa State Department of Revenue,* D.Ct. of Woodbury Cty., Iowa, No. 90018C Law (1984). Tax shall not apply to electricity consumed in processing tangible personal property intended to be sold ultimately at retail.

Electricity loss through line loss or electricity provided to municipalities or other governmental units which derive disbursable funds from appropriations or allotments of funds raised by the levying and collection of taxes and used for public purpose shall not be subject to tax.

This rule is intended to implement Iowa Code sections 422.42(5), 422.43, and 423.1.

701—16.21(422,423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the gross receipts from the sale of such pets.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.22(422,423) Sales on layaway. The gross receipts from sales on layaway are subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option the item is placed aside "on layaway" and is not available for sale to the general public. This option to purchase is exercised by the customer's making one or more "layaway payments." The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. See *Holland v. Brown,* 15 Utah 2d 422, 394 P.2d 77 (1964) and *Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a "conditional sale." The differences are these: (1) in a conditional sale physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; (2) in a conditional sale physical possession of and title to the property pass to the buyer at different times. First physical possession passes; then after all periodic payments are made title (ownership) passes to the buyer. In a layaway sale both possession and title pass at the same time after all payments are made; (3) the conditional sale is a much more common commercial arrangement than the sale on layaway.

This rule is intended to implement Iowa Code section 422.42(2).

701—16.23(422) Meal tickets, coupon books, and merchandise cards. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.24(422,423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.25(422,423) Foreign truckers selling at retail in Iowa. Foreign truckers or persons engaged in the sale of tangible personal property at retail in Iowa by means of hauling said property into the state shall be required to collect and remit tax on a nonpermit basis. To ensure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

This rule is intended to implement Iowa Code sections 422.43, 422.52, 422.53(7), 423.2, and 423.9.

701—16.26(422) Admissions to amusements, athletic events, commercial amusement enterprises, fairs, and games.

16.26(1) *Taxable admissions.* The gross receipts from amusements of every kind and character and from games of every kind and character shall be taxable, unless exempt under rule 16.26(422), 16.39(422) or 701—17.1(422).

a. Taxable amusement shall include but not be limited to the following:

(1) Fortune telling, fortune tellers, and psychics.

(2) Concessions at a fair, carnival, or like place when the charge is made or a voluntary contribution taken by the person operating the concession.

(3) Games of skill, games of chance, raffles, and bingo.

(4) Activities operated by private entities.

(5) Admissions to a fair not operated by a county or city.

(6) Athletic events occurring in Iowa sponsored by educational institutions except when sponsored by elementary and secondary educational institutions.

b. Tax shall apply to both legal and illegal amusements. The collection of tax or the issuance of a permit shall not be construed to condone or legalize any games of skill or chance or slot-operated device prohibited by law.

c. Gross receipts shall include all money taken in by the operator of any amusement, game, or device in the state of Iowa.

16.26(2) *Nontaxable amusements.* The following is a nonexclusive list of amusements, the gross receipts of which are exempt from sales tax:

a. Amusements, fairs, and athletic events of elementary and secondary educational institutions.

b. Certain fees paid to a city or county for participating in an athletic sport. See rule 701—18.39(422,423).

c. Admissions to a fair operated by a county or a city.

d. For periods beginning on or after July 1, 1996, the gross receipts from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district, or fair society organized under Iowa Code chapter 174. This exemption does not apply to individuals, entities, or others that sell tangible personal property or provide taxable enumerated services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

EXAMPLE 1. The state fair organization sells posters in honor of the state of Iowa's sesquicentennial during the Iowa state fair and other events. The gross receipts from the sales of these posters are exempt from tax as a sale by a fair organized under Iowa Code chapter 173.

EXAMPLE 2. XYZ vendor sells children's toys and other items of tangible personal property at a booth on the fairgrounds during the Iowa state fair. The gross receipts from sales by XYZ vendor are

not exempt from Iowa sales tax under this rule. XYZ vendor is a private entity and not a state, county, district, city, or fair society organized under Iowa Code chapters 173 and 174.

EXAMPLE 3. The Black Hawk county fair society rents tables and chairs to XYZ organization for an event to be held by XYZ. The gross receipts from the rental of the tables and chairs are exempt from sales tax since the county fair is organized pursuant to Iowa Code chapter 174.

16.26(3) *Fees for participation in games or other amusements.*

Beginning July 1, 1993, an entry fee at a place of amusement, fair, or athletic event is not subject to tax when the sales of tickets or admission charges for observing the activity are taxable. If there is no admission but only an entry fee, the entry fee is subject to sales tax whether or not the entry fee is used for prizes. A fee shall mean and include, but not be limited to, entry fees, registration fees, or other charges made by the operator or sponsor of a game or other form of amusement for the right to participate in such game or amusement. Game or other form of amusement shall mean and include, but not be limited to, such events as golf tournaments, bowling tournaments, car races, motorcycle races, bridge tournaments, rodeos, animal shows, fishing contests, balloon races, and trap shoots.

Prior to July 1, 1993, fees which are specifically designated as prize money, whether or not paid to the operator or sponsor of the game or other form of amusement, and which are in fact returned to the participants in the form of cash for merchandise prizes, are not subject to tax if the amount or percentage designated as prize money is separately stated to the participant at the time the participation fee is established and if sales or use tax is paid on the merchandise prizes to be distributed to the participants. If the amount designated as prize money is not separately stated to the participant, the tax shall apply to the total fee, even though some of the fee may be used for prizes. The tax applies whether the fee is to cover a single event or numerous events.

Educational, religious, and charitable organizations may be exempt from the tax on the receipts from the fees charged for participation in any game or other form of amusement if exempt pursuant to Iowa Code section 422.45(3) and rule 701—17.1(422).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(3) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1124.

701—16.27(422) Amusements. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.28(422) Fees for participation in games or other amusements. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.29(422) Rental of personal property in connection with the operation of amusements. Gross receipts from equipment rental of personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately. See 701—26.18(422).

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee. Sales by commercial amusement enterprises occurring on or after May 31, 1984, shall not be subject to tax.

This rule is intended to implement Iowa Code section 422.43.

701—16.31(422) Admissions to state, county, district and local fairs. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.32(422) River steamboats. River steamboats carrying passengers for pleasure rides on any river within the state or which forms a boundary line between Iowa and another state shall be an amusement enterprise. Gross receipts from the sale of such tickets sold in Iowa shall be taxable. For

an exception to this rule and an exemption applicable to tickets for admission to excursion gambling boats, see rule 701—17.25 (422,423).

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.33(422) Pawnbrokers. Pawnbrokers are primarily engaged in the business of lending money for and accepting as security tangible personal property from the owner or pledger.

In case the pledger does not redeem the property pledged or pawned, such property is forfeited to the pawnbroker, to whom the title passes.

When pawnbrokers thereafter sell such articles at retail, they are making sales and shall collect and remit tax.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.34(422,423) Druggists and pharmacists. Persons licensed to practice pharmacy in Iowa and registered prescription druggists in Iowa engaged in the business of selling drugs and medicines shall not be liable for tax on the applicable exemptions prescribed under 701—Chapter 20.

Unless otherwise exempt from tax, the purchase of tangible personal property for individual use or consumption by licensed pharmacists and registered prescription druggists shall be subject to tax. Furthermore, such persons shall hold a retail sales tax permit and collect and report all tax due from consumers and users in all transactions involving taxable retail sales.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(13), 423.1, 423.2, and 423.4(4).

701—16.35(422,423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the gross receipts from which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total gross receipts from such sale shall be taxable.

Any designs, lettering or engraving performed on a memorial stone or monument is also subject to the tax. See rule 701—26.17(422,423) and In Re, *Des Moines-Winterset Monuments, Inc.,* Docket No. 79-228-6A-DR, March 13, 1980.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.36(422) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication service from telephone companies and furnish said services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charges which the hotel makes to its guests for such communication service, regardless of whether the guest's calls are local or long-distance within the state.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.37(422) Private clubs. Private clubs, such as country clubs, athletic clubs, fraternal and other similar social organizations, are retailers of tangible personal property sold by them, even though the sales are made only to members. These organizations shall procure a permit and report and pay tax on the gross receipts of all sales by such clubs.

When clubs operate amusements or amusement devices or coin-operated machines, the gross receipts therefrom shall be included with the gross receipts from other taxable sales on which tax is computed.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.38(422,423) Aircraft sales. Rescinded IAB 10/13/93, effective 11/17/93.

701—16.39(422) Athletic events. The sale of tickets or admissions to athletic events occurring in the state of Iowa sponsored by educational institutions without regard to the use of the proceeds from such

sales shall be subject to tax, except when sponsored by elementary and secondary educational institutions as set forth in Iowa Code section 422.43.

This rule is intended to implement Iowa Code section 422.43.

701—16.40(422,423) Iowa dental laboratories. Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property which (1) form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or (2) would be exempt if purchased directly by the dentist's patient.

Iowa dental laboratories are deemed to be the final user or consumer of all tangible personal property, including tools, office supplies, equipment and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and authorized to collect use tax for the state, in which case the use tax shall be paid to the registered supplier.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(15), 423.1, and 423.2.

701—16.41(422,423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property which (1) will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or (2) would be exempt if sold directly to an individual.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(15), 423.1, and 423.2.

701—16.42(422) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors who are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The gross receipts from such sales shall be subject to sales tax.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.43(422,423) Magazine subscriptions by independent dealers. The gross receipts from the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa who secure such subscriptions as independent dealers or distributors shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.44(422,423) Sales by finance companies. A finance company who repossesses or acquires tangible personal property in connection with its finance business and sells tangible personal property at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the gross receipts from such sales at retail in Iowa. *S & M Finance Company Fort Dodge v. Iowa State Tax Commission,* 162 N.W.2d 505 (Iowa 1968).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.45(422,423) Sale of baling wire and baling twine. Prior to July 1, 1996, the sale of baling wire and baling twine to farmers may be taxable or exempt from tax, depending upon the use which the farmer will make of the baling wire or twine. If a farmer purchases baling wire or twine for use in baling hay or straw which will be used or consumed in that farmer's own farming operation, the purchase of the baling wire or twine is taxable. If a farmer purchases baling wire or twine for use in baling hay or straw for sale to other persons, the farmer's purchase of the wire or twine is exempt from tax. Purchase

of wire or twine by commercial or custom balers employed to bale hay or straw owned by other persons is taxable. For sales on or after July 1, 1996, see 701—subrule 18.48(4).

This rule is intended to implement Iowa Code section 422.45(19) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—16.46(422,423) Snowmobiles and motorboats. Snowmobiles and motorboats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapters 422 and 423.

701—16.47(422) Conditional sales contracts. Iowa Code section 422.42(2) defines sales to include "conditional sales." A conditional sale is a sale in which the vendee receives the right to the use of the goods which are the subject matter of the sale, but the transfer of title to the vendee is conditional on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor's business, intent of the parties, and the facts supporting the control over the tangible personal property by the vendee. A conditional sales contract would exist where: the vendee/lessee has total control over the property, is responsible for all losses or damages; the transfer of the property is complete except to title which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" arguments, except in cases of default; and, the vendor has no intent of retaining control over the property except for purposes of selling or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, sales tax is due on the full contract price at the time delivery of the property which is the subject of the contract is made. No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the selling price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. *State ex rel Turner v. Younker Bros., Inc* 210 N.W.2d 550, 562 (Iowa 1973). See rule 701—15.1(422).

This rule is intended to implement Iowa Code sections 422.42(2), 422.42(3), and 422.43.

701—16.48(422,423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property and is subject to sales or use tax, unless purchased for resale or otherwise exempt from tax.

Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials which are used or consumed in the performance of a construction contract. See rule 701—19.2(422,423) and 701—subrule 19.3(3) for tax treatment. On and after July 1, 1992, the sale of carpeting is not to be treated as the sale of a "building material." Prior to July 1, 1992, carpeting was treated the same as floor coverings. The sale of other types of floor covering continues to be the sale of a building material. See the following paragraph for sales and use tax treatment of carpeting on and after July 1, 1992. The gross receipts for the sale of rugs, mats, linoleum, and other types of floor coverings which are not attached but which are simply laid on finished floors, are not considered building materials and are subject to tax, unless purchased for resale or otherwise exempt from tax.

On and after July 1, 1992, the sale of "carpeting" to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. "Carpeting" is any floor covering made of fabric, usually wool or synthetic fibers. For purposes of this rule, "carpeting" also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. On and after July 1, 1992, sellers of carpeting should continue to charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

On and after July 1, 1992, sales of carpeting, with installation, are taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the gross receipts from the sale of the carpeting are subject to tax.

2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 18.31(1) for more information.

In the following examples assume that contractor A purchases carpeting from supplier B for installation in customer C's home. Whether or not A will purchase the carpeting from B for A's own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A, the contractor, and C, the customer.

EXAMPLE A: A contracts with C to install carpeting in C's home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the transaction between A and B; tax is due upon A's resale of the carpet to C, but not upon A's charges for carpet installation, a nontaxable service.

EXAMPLE B: A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the gross receipts from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C: A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separate from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B. See 701—subrule 18.31(1) for more information.

This rule is intended to implement Iowa Code sections 422.42(9) and 423.1.

701—16.49(422,423) Bowling. The rental of automatic pinsetters by bowling alley operators is subject to the imposition of sales or use tax as they are not resold to patrons. Therefore, the operator of the alley is considered the consumer of the pinsetter rental.

The rental of bowling shoes is subject to the imposition of sales or use tax as equipment rental.

The sales of bowling score sheets to operators of bowling establishments are subject to the imposition of sales or use tax as the operators are the consumers of such score sheets.

This rule is intended to implement Iowa Code sections 422.42 and 423.1.

701—16.50(422,423) Various special problems relating to public utilities. The amount of any charge, commonly called a "late payment charge," imposed by a public utility on its customers, shall not be subject to tax if the charge is in addition to any charge for the utility's sale of its commodity or service and is imposed solely for the privilege of deferring payment of the purchase price of the commodity or service and furthermore is separately stated and reasonable in amount.

The date of the billing of charges for a public utility's sales shall be used to determine the period in which the utility shall remit tax upon the amount charged. The utility shall remit tax upon the gross receipts of any bill during the period which includes the billing date. Thus, if the date of a billing is March 31 and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a deposit.

In general, the amount of any "franchise fee" which a public utility pays to a city for the privilege of operating and which is directly or indirectly passed on to the utility's customers shall be included in gross receipts subject to tax. This will be true even if the amount of the franchise fee is computed as a percentage of other gross receipts subject to tax and is separately stated and separately charged to the immediate consumer of the commodity or service. However, if, in the future, it becomes lawful for a city

to impose a sales or use tax and such tax is imposed upon the customers of public utilities in the guise of a franchise fee, the amount of this city excise tax shall not be subject to Iowa tax if the tax imposed by the city is separately stated and separately billed. See *Chartair, Inc. v. State Tax Commission,* 411 N.Y.2d 41, 44 (N.Y. App. Div. 1978), *Ferrara v. Director, Division of Taxation,* 317 A.2d 80, 84-85 (N.J. Super. Ct. App. Div. 1974) and 730—subrule 15.12(2).

This rule is intended to implement Iowa Code sections 422.42(6), 422.43, 422.45, 423.1(3), and 423.2.

701—16.51(422,423) Sales of services treated as sales of tangible personal property.

16.51(1) Effective July 1, 1984, the sale of engraving, photography, retouching, printing and binding services is no longer the sale of enumerated services but the sale of tangible personal property. For the purposes of this subrule these services will be referred to as "property."

a. Definitions and characterizations.

(1) *"Binding."* Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of property, the gross receipts of which are subject to tax.

(2) *"Engraving"* includes the business of engraving on wood, metal, stone, or any other material.

(3) *"Photography"* is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy.

(4) *"Printing"* includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of property which are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

(5) *"Retouching"* includes the renovation or retouching of an existing likeness or design.

b. Reserved.

16.51(2) Effective May 18, 1984, the sale of vulcanizing, recapping and retreading services is no longer the sale of enumerated services, but is the sale of tangible personal property. For the purposes of this subrule these services will also be referred to as "property."

a. "Vulcanizing" means the act or process of treating crude rubber, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity.

b. The effective date of the statute mandating change in the treatment of vulcanizing, recapping and retreading is May 18, 1984. However, the change in the treatment of this property is retroactive to January 1, 1979. The statute provides that no tax may be assessed for a retailer's treatment of the sale of this property as the sale of tangible personal property between the dates January 1, 1979, and May 17, 1984, inclusive. However, no refund may be claimed on any tax collected prior to May 18, 1984, if the basis for the refund claim is the argument that the sale of vulcanizing, recapping and retreading services is the sale of tangible personal property.

16.51(3) Effective July 1, 1997, sales of prepaid telephone calling cards and prepaid authorization numbers which furnish the holder with communication service are taxable as sales of tangible personal property. See rule 16.52(422,423) below for an explanation of the sales tax treatment of other types of prepaid merchandise cards.

This rule is intended to implement Iowa Code sections 422.43 and 423.1.

701—16.52(422,423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards, see 16.51(3) above) are not sales of tangible personal property and are not sales which are subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the gross receipts at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of $200.00. A purchases a sweater for $50.00 from ABC Clothing. ABC Clothing Company will debit A's card $52.50 ($50.00 × 1.05) or $53.00 ($50.00 × 1.06) if local option tax is applicable.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed effective date change 10/20/77—published 11/2/77, effective 10/20/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 3/28/80, Notice 2/20/80—published 4/16/80, effective 5/21/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 3/13/81, Notice 2/4/81—published 4/1/81, effective 5/6/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 1/10/85, Notice 10/10/84—published 1/30/85, effective 3/6/85]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 12/11/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/22/93, Notice 9/15/93—published 11/10/93, effective 12/15/93]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]
[Filed 10/26/01, Notice 9/19/01—published 11/14/01, effective 12/19/01]