

CHAPTER 33
RECEIPTS SUBJECT TO USE TAX DEPENDING ON
METHOD OF TRANSACTION
[Prior to 12/17/86, Revenue Department[730]]

701—33.1(423) Gifts and prizes. Rescinded IAB 9/4/91, effective 10/9/91.

701—33.2(423) Federal manufacturer's or retailer's excise tax. See rule 701—15.12(422,423) for the principles used to determine when federal excise tax is included in or excluded from the “purchase price” upon which Iowa use tax is based. The rule also contains a list of federal excise taxes which are currently includable in or excludable from the purchase price.

701—33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail shall be exempt from use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used shall be subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect use tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property which is to be used for processing and shall, therefore, be exempt. The certificate shall also show the cost of the property which is not to be used in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due. See 701—17.3(422).

701—33.4(423) Repair of tangible personal property outside the state of Iowa. A person who owns tangible personal property in the state of Iowa and sends such property or causes such property to be sent outside the state for the purpose of having it repaired and brings such property back into Iowa, shall be liable for the payment of use tax on the full charge if the service is enumerated.

When the repair is not an enumerated service subject to tax and is invoiced as a separate item from the materials furnished and used in the repair, tax shall be computed only on the charge made for the tangible personal property furnished by the repairer.

701—33.5(423) Taxation of American Indians.

33.5(1) Definitions.

“*American Indians*” means all persons of Indian descent who are members of any recognized tribe.

“*Settlement*” means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa, and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

33.5(2) Use tax. Out-of-state purchases made by Indians which are purchased for use on a recognized settlement or reservation where delivery occurs on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation are exempt from tax. Out-of-state purchases made by Indians where delivery occurs off a recognized settlement or reservation are subject to tax even though purchased for use on a recognized settlement or reservation.

33.5(3) Use tax—vehicles subject to registration. Vehicles subject to registration with county treasurers are exempt from use tax if delivery of the vehicle is made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation. Vehicles subject to registration with county treasurers are subject to use tax if delivery of the vehicle is made off a recognized settlement or reservation.

See rule 701—18.31(422,423) for the taxation of tangible personal property and services where the state sales tax may be applicable.

This rule is intended to implement Iowa Code sections 423.1, 423.2, and 423.7.

701—33.6(422,423) Exemption for property used in Iowa only in interstate commerce. In determining whether property used in interstate commerce is exempt from Iowa use tax, the following four circumstances will be considered. Any person claiming that use of property in Iowa is exempt from tax by virtue of its use in interstate commerce must prove that:

1. The use does not have a substantial nexus with Iowa; or
2. Iowa use tax is not fairly apportioned; or
3. Imposition of Iowa use tax results in discrimination against interstate commerce; or
4. The use tax imposed is not fairly related to services provided by Iowa and which aid the retailer or user.

See *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 51 L.Ed.2d 326, 97 S.Ct. 1076 (1977) and *D. H. Holmes Company, Ltd. v. McNamara*, 100 L.Ed.2d 21, 108 S.Ct. 1619 (1988). The second prong, fair apportionment, will be satisfied where the tax credit, authorized by Iowa Code section 423.25, is granted. *D. H. Holmes*, 100 L.Ed.2d at 28.

701—33.7(423) Property used to manufacture certain vehicles to be leased. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles defined in Iowa Code section 321.1, subsections 4, 6, 8, 9, and 10, is exempt from use tax provided the vehicle is manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Such vehicles are commonly known as motor trucks, truck tractors, road tractors, trailers, and semitrailers.

The exemption provided in this rule shall not be applicable to any vehicle designed primarily for the purpose of carrying persons.

Should a vehicle, which has been manufactured for lease and actually leased to a lessee for use outside the state of Iowa, have a “taxable moment” (as set forth in rule 33.6(422,423)) subsequent to the lease, tax would be owing and computed at the rate of 3 percent of the cost of the materials used in the manufacture of the vehicle.

The tax shall be paid on or before the last day of the month following the close of the quarter in which a taxable moment took place.

Sales of tangible personal property used as described in this rule and otherwise subject to Iowa retail sales tax imposed pursuant to Iowa Code section 422.43 are not exempt from the sales tax under the provisions of this rule.

The exemption provided in this rule shall be retroactive to January 1, 1973.

701—33.8(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. If a vehicle is rented outside this state (such rental occurs when possession of the vehicle is transferred to a customer pursuant to a rental contract) and used within Iowa under the rental contract, rental payments are subject to Iowa use tax if those rental payments are made in Iowa at the termination of the rental agreement. See rule 701—30.7(423) regarding credit for taxes previously paid to another state.

EXAMPLE 1. Customer W signs a rental contract and takes possession of a rental car in Los Angeles. W drives the car to Des Moines and then pays a total charge for the rental of \$300. This \$300 payment is subject to Iowa use tax assuming that no tax was previously paid to another state.

EXAMPLE 2. Customer X rents and takes possession of a truck in Phoenix, Arizona. There customer X pays a \$500 deposit to the rental agency. Rental of the truck is on a mileage and per-day basis. Customer X then drives the truck to Des Moines. The mileage and per-day charges add up to \$600. Customer X pays the rental agency an additional \$100. This \$100 is subject to Iowa use tax.

701—33.9(423) Sales of mobile homes, manufactured housing, and related property and services.

33.9(1) *Sales of mobile homes, manufactured housing, and related property and services for one package price.* The following rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and

described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by 701—Chapter 19 which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—33.10(423).

When a customer purchases a mobile home or manufactured housing from a dealer, it is usually the customer's wish that the dealer prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing "ready to move into" a dealer will sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

1. Connect the electricity.
2. Connect the water.
3. Connect sewer system lines.
4. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
5. Build and install steps for a door.
6. Build a deck.
7. Do minor repair.
8. Install and sell a foundation upon which to place the mobile home or manufactured housing.
9. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a "ready-to-move-into" basis usually sells that home or housing and the services and additional property necessary to render them livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses which are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the "purchase price" of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 40 percent as explained in rule 701—32.3(423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

33.9(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 33.9(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the "purchase price" of a home or house, that price will not be reduced by 40 percent, as required under rule 701—32.3(423), in computing

the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the gross receipts from the following services sold are subject to Iowa sales tax under Iowa Code subsection 422.43(11):

- a. Electrical hookup and air conditioning installation (electrical installation).
- b. Water and sewer system hookup (plumbing).
- c. Skirting installation and building and installation of steps and decks (carpentry).
- d. Nearly all “minor repairs” would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the gross receipts of which are subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves “new construction” and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab.

33.9(3) *Dealer purchases of tangible personal property and services for resale.* Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer’s or other retailer’s purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase “for resale” and thus exempt from Iowa sales or use tax.

701—33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. As of July 1, 1999, tax is imposed on the use of “manufactured housing” in Iowa. On and after that date the term “manufactured housing” or “manufactured home” is intended, generally, to replace the term “mobile home” when referring to prefabricated housing which is subject only to use tax and not to sales tax even though there are some differences in the law’s treatment of mobile homes and manufactured housing.

33.10(1) Definition. “Manufactured housing” is basically housing which is factory built to specifications required by federal law (42 U.S.C. § 5403) and which is required by federal law to display a seal from the United States Department of Housing and Urban Development. It may be further characterized as (1) a structure built on a permanent chassis, (2) transportable in one or more sections, and (3) designed to be used as a dwelling with or without a permanent foundation. See the definition of “manufactured home” found in 24 Code of Federal Regulations § 3280.2 for additional characteristics of what is and is not “manufactured housing” for the purposes of Iowa use tax law.

33.10(2) Tax treatment of manufactured housing which is similar to the tax treatment of mobile homes:

- a. Manufactured housing is subject only to Iowa use tax and not Iowa sales tax. The sale of manufactured housing in Iowa is defined by the applicable statute as a use of the housing in this state.
- b. The use tax on manufactured housing is paid by the owner of the housing directly to the appropriate county treasurer. The law does not require any dealer or retailer in manufactured housing to collect use tax from a purchaser and remit the tax to any governmental body, although the law does not prevent a dealer from doing this as a courtesy to buyers.
- c. Only 60 percent of the purchase price of either a mobile home or manufactured housing is subject to use tax. See rule 701—32.3(423). The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

d. The taxation of manufactured housing which is sold in the form of tangible personal property is similar to the taxation of mobile homes which are sold in the form of tangible personal property. See rule 701—33.9(423).

33.10(3) Taxable use of manufactured housing in the form of real estate. Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under

certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. On and after July 1, 1999, if a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE. Alpha and Omega Development Corp. buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Alpha and Omega then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Alpha and Omega then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Alpha and Omega then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. The "installed purchase price" is the amount charged by a building contractor to a homebuyer to convert manufactured housing from tangible personal property into real estate. Use tax is due on 60 percent of the amount of the installed purchase price. See rule 701—32.3(423).

b. Included within the meaning of the term "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" (see subrule 33.9(1)); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items which become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

c. Excluded from the meaning of the term "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances which remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances which remain tangible personal property is subject to Iowa sales or use tax, including consumers' use tax.

d. The exemption in favor of taxable services performed on or in connection with new construction (see rule 701—19.13(422,423)) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code sections 423.1, 423.2, 423.4, 423.6, and 423.7 as amended by 1999 Iowa Acts, chapter 188.

These rules are intended to implement Iowa Code sections 422.45(2), 422.45(18), 423.1(3), 423.2, 423.4(4) and Iowa Code section 423.4(12) as amended by 1999 Iowa Acts, chapter 188.

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