CHAPTER 208
MULTILEVEL MARKETER AGREEMENTS

[Prior to 9/7/22, see Revenue Department[701] Ch 4]

701—208.1(421) Multilevel marketers—in general. Multilevel marketer companies may enter into a written contract with the department to collect and remit state and local option sales taxes on sales of tangible personal property and specified digital products to independent distributors for resale and remit the taxes directly to the department. To be eligible for the multilevel marketer program, the company must meet certain eligibility requirements and agree to certain terms in the multilevel marketer agreement as set forth in 701—subrules 208.1(3) and 208.1(4). All written contacts with the department should be sent to Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456.

208.1(1) *Definitions.* The following definitions of terms are applicable to this chapter:

"Independent distributor" means a seller who purchases products for resale to an Iowa consumer based on a price suggested by a multilevel marketer.

"Multilevel marketer" means a wholesaler that sells tangible personal property or specified digital products for resale via a network of independent distributors who then sell the property to the ultimate consumers located in Iowa at a retail price suggested by the multilevel marketer.

"Sales tax" or *"sales taxes"* for the purpose of this rule means Iowa state sales tax, including local option sales and service taxes, and state use tax. To determine whether local option sales and service taxes are due, see rules 701—270.2(423B) and 701—270.3(423B).

208.1(2) *Collection of tax.* Iowa state sales tax is to be collected on the wholesale or retail selling price if delivery of the multilevel marketer's tangible personal property or specified digital product occurs in Iowa or the property is used in Iowa (more information is contained in subparagraph 208.1(4)*"a"*(1)). In addition, local option sales tax is due on the sale if delivery of the tangible personal property or specified digital product to the consumer occurs within a local option tax jurisdiction. More information and examples illustrating delivery and taxation can be found in rules 701—270.2(423B) and 701—270.3(423B).

208.1(3) *Eligibility requirements.* For a multilevel marketer to be eligible for a multilevel marketer agreement, the following criteria must be met:

a. Tangible personal property or specified digital products are sold by the multilevel marketer to an independent distributor for resale to an Iowa end user or for a distributor's personal use.

b. Unless authorized by the department, the multilevel marketer must not have been previously required to be registered to remit sales tax.

c. The multilevel marketer must have contacted the department with a request to collect and remit sales taxes directly to the department on sales made by an independent distributor.

d. The multilevel marketer must not be under audit or examination by the department on the effective date of the agreement.

The department has full discretion to determine if a multilevel marketer meets the eligibility requirements for a multilevel marketer agreement. The department has full discretion to decide whether to enter a multilevel marketer agreement. The department can request any and all information and documentation necessary to determine whether eligibility requirements are met. Failure to timely submit information and documents requested by the department will result in the department's refusal to enter into an agreement with the multilevel marketer.

208.1(4) *Terms of the multilevel marketer agreement.* The multilevel marketer agreement will become effective on the date an authorized representative of the multilevel marketer executes the agreement. Unless terminated in accordance with subrule 208.1(5), the multilevel marketer agreement remains in effect as long as the multilevel marketer has an independent distributor making sales in Iowa. Terms of agreements are based on results of negotiations between the multilevel marketer and the department. However, the following general terms must be in each multilevel marketer agreement:

a. The multilevel marketer agrees to the following terms:

(1) The multilevel marketer agrees to collect tax on the following three types of sales, excluding sales properly exempt from tax and evidenced by a valid exemption certificate:

1. The multilevel marketer agrees to collect sales tax from the independent distributors based on the suggested retail price of its product;

2. If the multilevel marketer allows independent distributors to purchase its product at a wholesale price for the distributor's personal use, then the multilevel marketer agrees to collect sales tax on sales that are based on the wholesale price to the independent Iowa distributor, unless the department waives this requirement; and

3. The multilevel marketer agrees to collect sales tax on all retail sales by the multilevel marketer to consumers that are subject to sales tax;

(2) The multilevel marketer will timely remit sales tax on transactions described in subparagraph 208.1(4)*"a"*(1);

(3) The multilevel marketer will maintain records to establish the accuracy of the sales and use tax returns within the applicable statutes of limitation;

(4) The multilevel marketer agrees that the sales tax shall be added to the retail price charged to the consumer, as required by Iowa Code section 423.14(2)*"e"*;

(5) The multilevel marketer agrees to be subject to audit and to pay any tax, penalty, and interest that are ultimately found to be legally due and that were required to be collected by the multilevel marketer under Iowa law, these rules, and the multilevel marketer agreement;

(6) The multilevel marketer agrees to abide by the rules in 701—Chapter 208; and

(7) The multilevel marketer agrees to register for an Iowa sales and use tax permit.

b. The department agrees to the following terms:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement, unless the multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement. If a multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement, the department may audit, assess, refund, or demand payment of tax, penalty, and interest from the multilevel marketer for any of those previous tax periods within the applicable statute of limitation.

(2) Unless required for transactions outside the multilevel marketer agreement, the department will not require the multilevel marketer to retroactively register for an Iowa sales and use tax permit or file Iowa sales and use tax returns for periods ending on or before the effective date of this agreement.

(3) The department agrees to allow a deduction from taxable sales reported by the multilevel marketer for merchandise returned by an independent distributor for which tax has already been paid to the department and for which the multilevel marketer, via the distributor, has allowed a credit or refund of the tax to the consumer.

c. Other general agreement terms:

(1) The multilevel marketer agreement is binding upon all parties, including their successors and assignees; and

(2) The terms, provisions, interpretations and enforcement of the multilevel marketer agreement are to be governed by the laws of the state of Iowa.

d. Refunds. Refunds for any overpayment of taxes paid by a consumer as a result of a multilevel marketer agreement should be claimed on the proper Iowa refund claim form as designated by the director. Under this agreement, if the retail sale is made by an Iowa retailer to an out-of-state consumer, the multilevel marketer agrees to forego any claim for refund of tax that was paid on such sale.

208.1(5) *Termination of a multilevel marketer agreement.* If any of the following events occur, an executed multilevel marketer agreement may be declared null and void:

a. Termination of a multilevel marketer agreement at the department's discretion.

(1) The multilevel marketer has misrepresented any material fact regarding its activities, operations, tax liabilities, or eligibility under the agreement.

(2) It is determined by the department that the multilevel marketer had been notified that it was to be or was under audit by the department prior to the time the multilevel marketer executed the multilevel marketer agreement.

b. Termination of a multilevel marketer agreement by mutual agreement of the parties.

(1) Change occurs in law that impacts the tax liability subject to the multilevel marketer agreement.

(2) Collection and remittance of sales tax as required under the agreement are more feasible by other means.

Written notice of termination will be promptly given by the department in the event of termination under paragraph 208.1(5)*"a."* To accommodate the time necessary to effectuate changes by the multilevel marketer and the department, the effective date of the termination of the multilevel marketer agreement shall be 60 days from the date of the notice of the written termination, unless a request for additional time is made by the multilevel marketer and the request is granted by the department.

208.1(6) *Liability of independent distributors.* After execution of a multilevel marketer agreement, an independent distributor must collect, report, and remit to the department, unless remitted to the multilevel marketer, any and all sales taxes that the independent distributor is required to collect, report, and remit that exceed the amount of tax that the independent distributor has previously remitted to the multilevel marketer company. If such excess tax is remitted to the multilevel marketer, the multilevel marketer shall report and remit the tax to the department.

EXAMPLE 1: An independent distributor purchased products from the multilevel marketer at the wholesale price because the distributor thought that the product would be for the personal use of the distributor. The distributor paid Iowa tax based on the wholesale price to the multilevel marketer and the multilevel marketer remitted the tax to the state of Iowa. Subsequently, the distributor resold the product to an Iowa customer at a retail price, which is greater than the wholesale price. The distributor is required to charge Iowa tax on the retail price. The distributor is also required to report and remit directly to the department or the multilevel marketer the difference between the tax previously paid on the wholesale price and the tax collected on the retail price from the Iowa customer.

EXAMPLE 2: An independent distributor purchased products from a multilevel marketer for resale at the retail price suggested by the multilevel marketer. Tax was collected by the multilevel marketer from the independent distributor on the suggested retail price of the products and remitted to the department by the multilevel marketer. The independent distributor subsequently sold the product to an Iowa customer for a price greater than the suggested retail price. The independent distributor is required to charge Iowa tax on the full sale price. The independent distributor is also required to report and remit directly to the department or to the multilevel marketer the difference between the tax previously paid on the suggested retail price and the tax collected on the price charged the Iowa customer.

If an independent distributor makes sales that are exempt from sales taxes, then the independent distributor must obtain a valid exemption certificate from the purchaser to evidence the transaction and provide a copy of the completed exemption certificate to the multilevel marketer that has the multilevel marketer agreement with the department.

208.1(7) *Legislative changes.* All multilevel marketer agreements are subject to all applicable legislative enactments that are made subsequent to the agreement and that impact the agreement.

[**ARC 8154C**, IAB 7/24/24, effective 8/28/24]

701—208.2(421) Other sources of tax collection requirements. Notwithstanding any provision in this chapter or any multilevel marketer agreement and notwithstanding whether a multilevel marketer agreement is entered between a person and the department, multilevel marketers and independent distributors may have an obligation to collect Iowa sales tax and any applicable local option sales tax if they meet the definition of "retailer" under Iowa Code section 423.1(47).

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These rules are intended to implement Iowa Code sections 421.5 and 421.17.

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