

TITLE XIX
STREAMLINED SALES AND USE TAX RULESCHAPTER 211
DEFINITIONS

This chapter includes cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—211.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

“*Agent*” means a person appointed by a seller to represent the seller before the member states.

“*Agreement*” means the streamlined sales and use tax agreement authorized by 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV, to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

“*Agricultural production*” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term “agricultural production” refers to the raising of crops or livestock for market on an acreage. See *Bezdek’s Inc. v. Iowa Department of Revenue* (Linn County District Court, May 14, 1984). Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. “Agricultural production” includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. “Agricultural production” also includes any kind of aquaculture; commercial greenhouses; and raising catfish. Logging, production of Christmas trees, beekeeping, and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term “agricultural production.” The above list of exclusions and inclusions within the term “agricultural production” is not exhaustive. “Agricultural products” includes flowering, ornamental, or vegetable plants and those products of aquaculture.

“*Business*” means any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

“*Certificate of title*” means a certificate of title issued for a vehicle or for manufactured housing under Iowa Code chapter 321.

“*Certified automated system*” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

“*Certified service provider*” means an agent certified under the agreement to perform all of a seller’s sales or use tax functions, other than the seller’s obligation to remit tax on its own purchases.

“*Chemical*” means a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

“*Computer*” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

“*Computer software*” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

“*Delivered electronically*” means delivered to the purchaser by means other than tangible storage media.

“Delivery charges” means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing charges.

“Department” means the department of revenue.

“Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

“Director” means the director of revenue.

“Domesticated fowl” means any domesticated bird raised as a source of food, either eggs or meat. “Domesticated fowl” includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus which are raised for meat rather than for racing or as pets. Excluded from the meaning of “domesticated fowl” are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

“Educational institution” means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution, and the curriculum must include basic courses which are offered every year. “Educational institution” includes an institution primarily functioning as a library.

“Electronic” means related to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Farm deer” means the same as defined in Iowa Code section 170.1.

“Farm machinery and equipment” means machinery and equipment used in agricultural production.

“First use of a service” means when a service is rendered, furnished, or performed in Iowa or, if rendered, furnished, or performed outside of Iowa, when the product or result of the service is used in Iowa.

“Goods, wares, or merchandise” means the same as “tangible personal property.”

“Governing board” means the group comprised of representatives of the member states of the agreement, which is created by the agreement to be responsible for the agreement’s administration and operation.

“Implement of husbandry” means any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which the work could not be done. *Reaves v. State*, 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

“Installed purchase price” means the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. “Installed purchase price” includes, but is not limited to, amounts charged for the building contractor’s installing a foundation and electrical and plumbing hookups. “Installed purchase price” excludes any amount charged for landscaping in connection with the conversion.

“Lease or rental.”

1. “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “lease or rental” may include future options to purchase or extend.

2. “Lease or rental” includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1).

3. “Lease or rental” does not include any of the following:

- A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

- A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of \$100 or 1 percent of the total required payments.

- Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this paragraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

4. This definition of “lease or rental” shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

“*Livestock*” means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.*, 126 A.2d 865 (Md. 1956) and *In the Matter of Simonsen Mill Inc.*, Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. “Livestock” includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. “Farm deer” is defined as set forth in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, “farm deer” does not include unmarked free-ranging elk. Fish and any other animals which are products of aquaculture are considered to be “livestock” as well.

Excluded from the term “livestock” are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term “livestock” are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from “livestock” is any animal raised for racing.

“*Manufactured housing*” means “manufactured home” as defined in Iowa Code section 321.1.

“*Manufacturer*” means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, or combining of different materials or by packing of meats with an intent to sell at a gain or profit.

“*Member state*” means any state which has signed the agreement.

“*Mobile home*” means “manufactured or mobile home” as defined in Iowa Code section 321.1.

“*Model 1 seller*” means a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

“*Model 2 seller*” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

“*Model 3 seller*” means a seller that has sales in at least five member states, has total annual sales revenue of at least \$500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a “seller” includes an affiliated group of sellers using the same proprietary system.

“*Nonresidential commercial operations*” means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes or mobile home parks.

“*Not registered under the agreement*” means lack of registration by a seller with the member states under the central registration system referenced in 2005 Iowa Code section 423.11, subsection 4.

“*Person*” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“*Place of business*” means any warehouse, store, place, office, building, or structure where goods, wares, or merchandise is offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, pay television, or electric services are offered for sale at retail. When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer’s place of business.

“*Plants*” means fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term “plants” are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term “plants” are fir trees raised for Christmas trees and any trees raised to be harvested for wood.

“*Prewritten computer software*” means software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. “Prewritten computer software” also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, still is classified as prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

“*Property purchased for resale in connection with the performance of a service*” means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

1. The provider and user of the service intend that a sale of the property will occur.
2. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.
3. The sale is evidenced by a separate charge for the identifiable piece of property.

“*Purchase*” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

“*Purchase price*” means the same as “sales price” as defined in this rule.

“*Purchaser*” means a person to whom a sale of personal property is made or to whom a service is furnished.

“*Reagent*” means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances, in preparing materials, in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

“*Receive*” and “*receipt*” mean any of the following:

1. Taking possession of tangible personal property.
2. Making first use of a service.
3. Taking possession or making first use of digital goods, whichever comes first.

“Receive” and “receipt” do not include possession by a shipping company on behalf of a purchaser.

“*Registered under the agreement*” means registration by a seller under the central registration system referenced in 2005 Iowa Code section 423.11, subsection 4.

“*Relief agency*” means the state or any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

“*Retailer*” means and includes every person engaged in the business of selling tangible personal property or taxable services at retail or the furnishing of gas, electricity, water, pay television, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of these rules to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom the salespersons, representatives, truckers, peddlers, or canvassers operate or from whom they obtain tangible personal property sold by

them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of these rules. "Retailer" includes a seller obligated to collect sales or use tax.

"Retailer maintaining a place of business in this state" or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to Iowa Code chapter 490.

"Retailer's price" means the total amount of consideration, including cash, credit, property, and services, valued in money, which a retailer states must be paid before the personal property or services offered by the retailer are sold or furnished, without deduction for one or more of the items mentioned in paragraph "b" of the definition of "sales price."

"Retailers who are not model sellers" means all retailers other than model 1, model 2, or model 3 sellers.

"Retail sale" or *"sale at retail"* means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

"Sales" or *"sale"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

"Sales price" means the measure subject to sales tax.

a. "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

1. The seller's cost of the property sold.
2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller.
3. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.
4. Delivery charges.
5. Installation charges.
6. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.
7. Credit for any trade-in authorized by 2005 Iowa Code section 423.3, subsection 58.

b. "Sales price" does not include:

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.
3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.
4. The amounts received for charges included in paragraph "a," paragraphs "3" through "7," if they are separately contracted for and separately stated on the invoice, billing, or similar document given to the purchaser and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

5. Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition

of the manufacturer's, distributor's, or wholesaler's product. This paragraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

c. For the purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

"Sales tax" means the tax levied under 2005 Iowa Code sections 423.2 to 423.4.

"Seller" means any person making sales, leases, or rentals of personal property or services.

"Services" means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in 2005 Iowa Code section 423.2. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user of the service.

"Services used in the processing of tangible personal property" means the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

"Solvent" means a substance in which another substance can be dissolved and which is primarily used for that purpose.

"Sorbent" means a solid material, often in a powder or granular form, which acts to retain another substance, usually on the sorbent's surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

"State" means any state of the United States and the District of Columbia.

"System" means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

"Tax" means the tax upon retail sales or use of tangible personal property or taxable services.

"Taxpayer" means any person who is subject to Iowa sales and use tax, whether acting on the person's own behalf or as a fiduciary.

"Trailer" means every trailer, as is now or may be hereafter so defined by Iowa Code chapter 321, which is required to be registered or is subject only to the issuance of a certificate of title under Iowa Code chapter 321.

"Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. A retailer's or building contractor's sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property.

"User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

"Use tax" means the tax levied under 2005 Iowa Code chapter 423, subchapter III, for which the retailer collects and remits tax to the department.

"Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or under these rules.

"Vehicles subject to registration" means any vehicle subject to registration pursuant to Iowa Code section 321.18.

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