

**701—202.12(423) Immediate successor liability for unpaid tax.** To ensure all sales or use tax due is paid, Iowa Code section 423.33(2) applies to a retailer selling the retailer's business or stock of goods or ceasing the retailer's business and the immediate successor. For the purpose of this rule, "retailer" includes all persons liable for tax under Iowa Code sections 421.26 and 423.33.

**202.12(1) Immediate successors having a duty to withhold.**

*a.* An immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price to pay the delinquent tax, penalty, or interest, if necessary. "Immediate successor" includes but is not limited to the following examples:

(1) An entity resulting from the action of a sole proprietor who organizes a business in which the sole proprietor is the only or the controlling stakeholder.

(2) A sole proprietorship established from an entity of which the sole proprietor was the exclusive, majority, or controlling stakeholder.

*b.* Reserved.

**202.12(2) More than one immediate successor.** If a retailer sells a business or stock of goods to two or more persons, the following requirements apply:

*a. Sale to two or more persons.* If a retailer sells a substantial portion of the business or the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person or persons are immediate successors that are jointly and severally liable.

*b. Purchase of differing places of business.* If one retailer owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

**202.12(3) Sale of a retailer's business.** Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an immediate successor and liable for tax.

**EXAMPLE:** A is a furniture dealer. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

**202.12(4) Good faith.** An immediate successor to a licensee's, retailer's, or seller's business or stock of goods has purchased the licensee's, retailer's, or seller's business or stock of goods in good faith that no delinquent tax, interest, or penalty was due and unpaid if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists.

*a.* The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid. Immediate successors shall not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor may request a certified statement from the department on forms provided by the department.

(1) Prior to issuing a certified statement, the department may contact both the immediate successor and the licensee, retailer, or seller regarding the request for a certified statement from the department.

(2) A certified statement provided by the department will be recognized by the department as valid as of the issuance of the statement.

(3) A certified statement provided by the department is the preferred evidence that a purchase of a business or stock of goods was made in good faith and that no delinquent tax, interest, or penalty was due and paid.

*b.* The immediate successor has taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase.

(1) A “certified statement” from a licensee, retailer, or seller is a statement the truth of which is attested to before a notary public. A certified statement from a licensee, retailer, or seller will not be recognized by the department as valid unless it includes all of the following:

1. The name of the business being purchased or a description of the stock of goods being purchased.
2. The names of the licensee, retailer, or seller and the prospective purchaser(s).
3. The tax identification numbers of both the licensee, retailer, or seller and prospective purchaser(s).

Entities shall include a federal employer identification number (FEIN). Individuals shall include a social security number (SSN) or individual tax identification number (ITIN).

4. An attestation signed by the licensee, retailer, or seller attesting that no delinquent tax, interest, or penalty of the retailer is unpaid as of the date of the closing of the sale.

(2) A certified statement has been taken from a licensee, retailer, or seller “in good faith” if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer’s statement was false or no reason to question the truth of the retailer’s statement.

This rule is intended to implement Iowa Code sections 421.28 and 423.33.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]