

**701—210.21(423) Mergers that do not involve taxable sales of tangible personal property or services.**

If title to or possession of tangible personal property or ownership of services is transferred from one business to another pursuant to a statutory merger, the transfer is not a “sale” in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute; (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging business to a surviving business and not for any consideration; and (3) the merging business is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement, which results in the transfer of A’s assets to C and the dissolution of A. In return, A’s stockholders receive stock in C. The sales price of A’s transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, 701—subrule 18.28(2) contains more information concerning a casual sale exemption applicable to the liquidation of a business.

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