

701—212.12(423) Sales to federal, state, municipal, and tribal governments and instrumentalities.

212.12(1) Exempt sales. Sales are exempt from tax under Iowa Code section 423.3(31) if the tangible personal property, taxable services, and specified digital products are:

- a. Sold directly to an exempt government entity described in Iowa Code section 423.3(31);
- b. Used for a public purpose; and
- c. Not one of the types of the products listed in Iowa Code section 423.3(31)“a”(1) through 423.3(31)“a”(3) that remain taxable even when sold to certain government entities.

212.12(2) Direct, legal incidence of the tax.

a. *Sale to exempt government entities.* A sale to an exempt government entity occurs only if the government entity, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. Rule 701—219.23(423) contains additional information on construction contracts with designated exempt entities.

b. *Government contractors.* Iowa Code section 423.3(31) does not apply to independent contractors who contract with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services that a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

c. *Examples.*

EXAMPLE 1: Patient A purchases a hospital bed. A percentage of patient A’s bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale. Patient A is the direct purchaser of the bed. The exemption in Iowa Code section 423.3(31) does not apply.

EXAMPLE 2: A is a federal government employee. A travels in Iowa while on government business and purchases prepared meals from restaurants in Iowa. A pays for the meals. The federal government later reimburses A the entire cost of the meals, including the sales tax A paid on the prepared meals. A has purchased meals, and Iowa sales tax should be charged accordingly. The federal government is not the direct purchaser of the prepared meals so the exemption under Iowa Code section 423.3(31) does not apply and neither A nor the federal government qualifies for a tax refund.

212.12(3) Government instrumentalities.

a. *Express statute.* An entity can be an instrumentality of government under Iowa Code section 423.3(31) if a state or federal statute expressly designates the entity as a government instrumentality that is exempt from paying sales tax on its direct purchases.

EXAMPLE 1: Iowa Code section 231.32(5) provides that after the commission on aging designates an area agency on aging, the area agency “shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state.” Thus, a designated area agency on aging is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

EXAMPLE 2: Iowa Code section 12E.3(1) provides the tobacco settlement authority is “a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential government functions.” Thus, the tobacco settlement authority is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

b. *Lack of express statute defining an entity as a government instrumentality.* If there is no statute that expressly defines an entity as a government instrumentality exempt from tax, the entity may qualify as a government instrumentality if it satisfies all of the following requirements:

- (1) Government controls the detailed physical performance of the entity;
- (2) The entity’s day-to-day operations are supervised by government; and
- (3) The entity is created for the purpose of, and is primarily engaged in, the performance of essential government functions.

212.12(4) *Certain corporations organized under federal statutes.* The sale of tangible personal property, specified digital products, or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

- a.* Federal savings and loan associations.
- b.* Federal savings and trust companies.
- c.* National banks.
- d.* Other organizations of like character.

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