701—221.1(423) Corporate mergers which 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 corporation 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 (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: *Nachazel v. Mira Co Mfg.*, 466 N.W.2d 248 (Iowa 1991); *D. Canale & Co v. Celauro*, 765 S.W.2d 736 (Tenn 1989); and *Commissioner of Revenue v. SCA Disposal Services*, 421 N.E.2d 766 (Mass 1981).

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. Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The sales price of the transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C. Corporation F receives all of Corporation G's outstanding shares from G's sole stockholder. In return, G's sole stockholder receives stock from F. After the transaction, Corporation G continues to exist as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a "sale" as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D. 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, reference 701—subrule 285.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

This rule is intended to implement Iowa Code section 423.1(46).

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