

701—26.71 (422,423) Solid waste collection and disposal services.**26.71(1) Definitions.**

a. “Solid waste” is garbage, refuse, or sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954. On or after July 1, 1994, the term also excludes auto hulks, street sweepings, ash, construction debris, mining waste, trees, tires, lead acid batteries and used oil.

b. Rescinded IAB 10/12/94, effective 11/16/94.

c. “Agricultural operations.” An agricultural operation is any enterprise engaged in the raising of crops or livestock for market on an acreage. Included within the meaning of the term are feed lots; operations growing and raising hybrid seed corn or other seed for sale to farmers; nurseries; ranches; orchards and dairies. Excluded from the meaning of the term are commercial greenhouses; logging; beekeeping; catfish raising operations; those engaged in the production of Christmas trees; and those raising nondomesticated animals, such as mink, or nondomesticated fowl. The above list of inclusions and exclusions from the term “agricultural operation” is not exhaustive.

d. “Industrial operation.” A business is an “industrial operation” if its purchases or rentals of machinery or equipment are eligible for the Iowa sales and use tax exemption for industrial machinery and equipment. See Iowa Code subsection 422.45(27).

e. “Mining operation.” A mining operation is one engaged in either underground mining, strip mining, or quarrying.

f. “Nonresidential commercial operation.” Any operation which is an industrial, commercial, agricultural, or mining operation whether for profit or not. Included within the meaning of the term “nonresidential commercial operation” are hotels and motels. Excluded from the meaning of the term are apartment complexes, mobile home parks, or a single-family or multifamily dwelling. The word “commercial” is not to be understood in a narrow sense as referring only to a “for profit” operation, but in the broader sense of that word to refer to all organizations (for instance, churches, charities, and fraternal organizations) that are involved in the buying and selling of goods and services in the marketplace generally.

Examples of “nonresidential commercial operations” include the following: professional firms (doctors, lawyers, accountants, or dentists); restaurants; repair persons; persons selling and renting all sorts of tangible personal property; persons selling insurance of all kinds; appraisers; the skilled trades (e.g., plumbers, carpenters, and electricians); construction contractors; banks and savings and loans; barbers and beauticians; day care centers; counseling services; employment agencies; janitorial services; landscapers; painters; pest control; photography; printing; realtors; storage services; the United Way; the American Cancer Society; the Elks and Masons; churches, synagogues, and mosques; and not-for-profit hospitals which are not licensed under Iowa Code chapter 135B. This term does not include not-for-profit hospitals which meet the criteria of Iowa Code section 422.45(54). These examples are not exclusive.

26.71(2) Tax imposed. On and after April 1, 1992, gross receipts from the sale, furnishing, or service of solid waste collection and disposal are taxable.

Date of billing controls imposition of tax. Gross receipts from the sale, furnishing, or service of solid waste collection and disposal are subject to the Iowa sales tax if the date for the retailer’s billing of a customer falls on or after April 1, 1992. If a bill itself contains no billing date, the date of billing

is the billing date set out in the retailer's books and records. If a retailer's books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing it.

26.71(3) Retailers obligated to collect the tax. Counties and municipalities which provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the provision of those services. A city or county providing the service of solid waste disposal is a "retailer" obligated to collect tax from these operations.

Any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect tax upon the gross receipts from that service performed for the city or county on behalf of nonresident commercial operations located within the city or county.

EXAMPLE: City D contracts with ABC Disposal Service for ABC to provide solid waste removal to persons within the boundaries of City D. In return for this service, City D pays ABC Disposal Service \$2 million per year. Some of the persons for whom ABC collects and disposes of solid waste are retail sales businesses, another is a manufacturing plant, another an apartment building, others are a quarry and turkey raising operation located within the city limits; finally, a number of persons whose garbage is collected by ABC are residents who own or rent their homes. ABC must collect tax from City D upon that portion of its business which is attributable to the service of solid waste collection and disposal which ABC provides to the city on behalf of the nonresident commercial operations located within City D. See subrule 26.71(4) for suggestions concerning formulas which ABC might use to compute the amount of tax which it is obligated to collect from City D.

26.71(4) Retailers who provide both taxable and nontaxable solid waste collection and disposal service. A retailer who is paid in one lump sum by a customer for providing both taxable and nontaxable solid waste collection and disposal service may, depending upon circumstances, collect tax upon all, none, or some of the proceeds collected from the customer. A retailer must collect tax upon all proceeds from a customer if nontaxable services rendered are only incidental to the retailer's taxable services. If taxable services rendered are incidental to nontaxable services rendered, then a retailer need not collect tax upon any of its receipts from a customer. If a substantial portion of the service which a retailer performs is taxable and a substantial portion of the service which it performs is nontaxable, then the retailer must collect tax upon that portion of its proceeds which reflects its taxable service and exclude from tax that portion of its proceeds derived from its nontaxable service.

A retailer may, after filing a petition with and securing the approval of the department, use a formula to determine the amount of taxable and nontaxable services which it performs for any one customer. This formula can then be utilized to calculate the retailer's taxable gross receipts.

EXAMPLE: ABC Disposal Service is providing solid waste disposal service to Company D. Company D owns 100 residential apartment units and a building containing 20 office suites. Under the contract between ABC and Company D, in return for collecting Company D's garbage, ABC bills Company D \$750 per month. Part of this billing is, of course, for the nontaxable service of garbage collection from the residential apartment units and part for the taxable service of collecting garbage from the office building. In this instance, the ideal method of separating taxable gross receipts from nontaxable proceeds would be by a formula. A possible formula would be by weight. Assume that 1000 pounds of garbage per month is collected from the apartment building and 500 pounds from the office building. In this case, taxable gross receipts would be computed as follows:

$$\frac{500}{1000 + 500} = 1/3 = \text{Percentage of garbage collected from the taxable office building.}$$

$$750 \times 1/3 = 250 = \text{Taxable gross receipts from the } \$750 \text{ proceeds.}$$

Other possible bases for a formula include number of units of taxable and exempt operations or number of square feet of taxable and exempt operations if these reasonably reflect the amount of taxable and exempt service performed for any one customer. The department will approve any formula which realistically reflects the amount of taxable and nontaxable work performed for a single customer and paid in one lump sum. Any petition for use of a formula must contain an adequate description of the petitioner's operation, the formula which will be applied to it and why this formula accurately reflects the taxable and nontaxable work performed by the petitioner.

26.71(5) *Tax imposed upon disposal charges or tipping fees.* Persons who transport solid waste generated by the transporter or who transport, without compensation, solid waste generated by another person shall pay the tax set out in this rule at the collection or disposal facility to which the waste is transported. The gross receipts shall be based upon the disposal charge or tipping fee imposed by the facility. Also, the amount of any disposal charge or tipping fee imposed as a part of the service of collecting and managing recyclable materials separated from solid waste by the waste generator is excluded from the gross receipts of the tax set out in this subrule.

EXAMPLE: John's Quick Lube hauls its own solid waste to the local landfill. There, once a week, John's Quick Lube pays \$50 to dump all the solid waste which it generates into the landfill, except for the used motor oil which it collects from its customers. John's Quick Lube pays the landfill operator another \$50 per week to collect this used oil and send it on to a different location for recycling into new products. In this case, John's Quick Lube is obligated to pay sales tax upon the \$50 disposal fee charged for the solid waste which enters the landfill. However, exempted from tax is the \$50 paid to the landfill operator to store and pass on the used motor oil. In addition to used motor oil, "recyclable materials" means materials such as paper, glass, metals (e.g., copper, aluminum and iron), and batteries, so long as these materials are separated from other solid waste for the purpose of recycling.

26.71(6) *Exemption for a "recycling facility."* The gross receipts from the service of solid waste collection and disposal provided to a recycling facility which separates or processes recyclable materials and, as a result of that separation or processing, reduces the volume of the waste collected by at least 85 percent are exempt from tax if the waste is collected and disposed of separately from other solid waste. "Recycling facilities" are those facilities where recyclable materials are separated or processed for the purpose of reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of the recyclable materials in a manner that precludes further use. Because of this, facilities that separate or process recyclable materials for use as fuel are not eligible for this exemption. An example of a qualifying recycling facility is a facility which produces insulation from used glass.

This rule is intended to implement Iowa Code section 422.43.