

701—18.20(422,423) Communication services. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

18.20(1) Definitions.

a. Communication service shall mean the act of providing, for a consideration, any medium or method for, or the act of transmission and receipt of, information between two or more points. Each point must be capable of both transmitting and receiving information if “communication” is to occur. The term “communication service” includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and materials printed by teletype), other images perceived visually and data encoded in computer languages. Any separate charge for the service of transmitting and receiving information between automatic data processing equipment and remote facilities shall be subject to tax, see paragraph 18.34(3) “c.”

b. Communication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Communication service between any other points is “interstate” in nature and not subject to tax.

c. “Gross receipts” from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as “access charges for interstate or foreign access services” to an “end user” shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

As of April 4, 1990, the amount of a surcharge for enhanced 911 emergency telephone service shall not be subject to sales tax if the amount is no more than \$1 per month per telephone access line and the surcharge is separately identified and separately billed. An enhanced 911 emergency telephone service surcharge is one which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point.

d. Paging services. A one-way paging service is not a taxable enumerated service in Iowa because one-way paging only receives information and is not capable of transmitting information. As a result, this type of pager service is not a two-way transmission.

18.20(2) This subrule is applicable to various specific circumstances involving the sale of communication services.

a. Companies which bill their subscribers for communication services on a quarterly, semiannual, annual or any other periodic basis shall include the amount of such billings in their gross receipts. The date of the billing shall determine the period for which sales tax shall be remitted. Thus, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the sales tax return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a sales tax deposit to the department.

b. The gross receipts from the service of transmitting messages, night letters, day letters and all other messages of similar nature between two or more points within this state are subject to sales tax.

c. Receipts from communication services performed for all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government, and private, nonprofit educational institutions in this state for educational purposes are exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax.

18.20(3) This subrule is specifically applicable to companies and other persons providing telephone service in this state. Any reasoning contained in this subrule may also be applied to companies or other persons providing other communication services.

a. All companies must have a permit for each business office which provides communication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of such offices.

b. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax shall be computed on the minimum amount guaranteed or the actual taxable gross receipts collected whichever is the greater.

c. In computing tax due, the federal taxes identified as such, separately billed and payable by the customer shall be excluded from gross receipts. If the taxes are not separately billed, they shall be subject to Iowa sales tax.

d. Telegrams and like charges made to the accounts of subscribers and billed by companies providing telephone service which appear on the subscribers' toll bills are subject to tax.

e. Charges for directory assistance service rendered in this state shall be subject to tax. Charges for directory assistance service, separately stated and billed, shall not be subject to tax if the service is interstate in nature.

f. The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from "inside wire maintenance charges" for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of "electrical repair" or are incurred under an "optional service or warranty contract" for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

g. The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of "rental of tangible personal property." The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

h. The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

i. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

j. If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

k. The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

l. The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

m. On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

18.20(4) When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

18.20(5) Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the “Internet” or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph “a” of subrule 18.20(1). If a user’s billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An “on-line computer service” is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax through May 14, 2000.

On and after May 15, 2000, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

18.20(6) The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a “fax” from one point to another within this state are subject to sales tax. See 18.20(1)“a.” Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a “fax” machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1)“a” and “b.”

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via its machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communications on Klear Kopy’s dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, “bill to John Smith for August, 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30.”

The \$30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via E-mail. After the operation, the TUV Hospital sent patient W a bill for \$10,000 of nontaxable hospital services. Listed as an expense is “E-mail—\$200.” The E-mail services are performed incidentally to the nontaxable hospital services; therefore, the \$200 is not taxable gross receipts.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E’s problem through the on-line service, D performs complex surgery on patient E. D’s bill to patient E reads as follows: “dental reconstruction—\$2,750; on-line consultation portion—\$240.” The \$240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

This rule is intended to implement Iowa Code sections 34A.7(1)“c”(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 and 422.51(1) and Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1189, section 29.