

701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable. A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See *AVCO Manufacturing Corporation v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958) and *Akron Home Medical Services, Inc. v. Lindley*, 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. 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.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 701—34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

18.5(3) The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department of elder affairs pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal 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 which 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. See 701—Chapter 19. See also *NLO, Inc. v. Limbach*, 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services*, 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).