

**701—30.1(423) Liability for use tax and denial and revocation of permit.**

**30.1(1)** Collection responsibility is placed upon all interstate sellers who sell tangible personal property or taxable services for use in Iowa, provided the seller maintains directly or by a subsidiary, an office, distribution house, sale house, warehouse, or other place of business or any representative operating within the state either permanently or temporarily. The term “representative” includes, but is not limited to, agent, employee, and an independent contractor. The seller is required to apply for and hold a certificate of registration and file a retailer’s use tax return. The registered seller shall bill the Iowa customer, show tax as a separate item on the invoice, and indicate thereon the seller’s registration number.

Generally, the following nonexclusive factual situations would constitute sufficient nexus for the state of Iowa to require an out-of-state vendor to collect Iowa use tax:

- a. Out-of-state retailer owns or maintains within Iowa, either directly or by subsidiary, an office, distribution house, warehouse or other place of business.
- b. Out-of-state retailer has a representative located in Iowa permanently or temporarily.
  1. A representative solicits sales in Iowa as an employee of the retailer.
  2. A representative solicits sales in Iowa as an independent broker, or jobber who is under contract with the vendor.
  3. A representative acts as a consultant on behalf of a vendor and, while not taking orders, provides regular and significant services to a customer or customers in Iowa.
- c. Out-of-state retailer installs in Iowa property it sells.
- d. Out-of-state retailer is a construction contractor performing a contract, in whole or in part, in Iowa.
- e. Out-of-state retailer performs service work in Iowa.
- f. Out-of-state retailer regularly engages in delivery of its products by its own trucks in the state of Iowa.

*Nelson v. Sears, Roebuck & Company*, 312 U.S. 359 (1941); *General Trading Company v. State Tax Commission of the State of Iowa*, 322 U.S. 335 (1944); *Scripto v. Carson*, 362 U.S. 207 (1960); *National Geographic Society v. California Board of Equalization*, 430 U.S. 551 (1977); *In Re: Webber Furniture*, 290 N.W.2d 865 (S.D. 1980); *Standard Pressed Steel Company v. State of Washington Department of Revenue*, 419 U.S. 560 (1975).

**30.1(2)** The purchaser for use in this state shall pay tax to the seller, if the seller is registered with the department to collect use tax for the state. If the seller is not registered with the department to collect use tax for the state, the purchaser shall remit the tax directly to the department. A purchaser who possesses a valid direct pay permit issued by the department does not remit tax to the seller. Instead, the purchaser remits tax directly to the department. For further details regarding direct pay permits see rule 701—12.3(422).

**30.1(3)** The department may deny a permit to collect use tax to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, the department may deny the applicant a permit if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for characterizations of the terms “tax administered by the department” and “substantially delinquent” in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will deny a permit to any applicant who is an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

**30.1(4)** The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any corporate officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the permit-holding corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax. A permit may not be revoked if the permit holder is a partnership and a partner is substantially delinquent in paying tax, penalty, or interest which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See the preceding subrule. Also, see rule 701—13.16(422) for characterizations of the terms “tax administered by the department” and “substantially delinquent” in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will revoke the permit of an individual permit holder if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 422.53 as amended by 1997 Iowa Acts, House File 266, and Iowa Code sections 423.6, 423.9, 423.10, and 423.14.