

701—14.3(422,423) Taxation of transactions due to rate change. The following provisions shall apply in determining whether or not a transaction is subject to an existing rate of sales or use tax or to a new rate of sales or use tax. In the examples contained in the rest of this rule, assume that a bill has been enacted into law which increases the sales and use tax rate from 4 to 5 percent and that the effective date of this bill is July 1.

14.3(1) General principles. A change in the sales tax rate applies to a sale of tangible personal property if delivery of the property under a contract of sale occurs on or after the effective date of the legislation which changes the rate of taxation. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). See also *Crown Iron Works v. Commissioner of Taxation*, 214 N.W.2d 462 (Minn. 1974). The intent of the parties to the contract for sale determines when delivery occurs. However, in the event the intent is not readily established from the contract, the rules set out in the Uniform Commercial Code (Iowa Code chapter 554) shall apply in order to determine the place of delivery.

In the examples below, so long as delivery under a contract for sale occurs on or after July 1, the 5 percent sales tax rate applies. It is not necessary that any other aspects of the sale, such as payment for the delivered property, occur on or after that date.

In the three examples immediately below, “delivery” is physical transfer of possession of the tangible personal property directly from the seller to the purchaser. However, see subrule 14.3(2) for examples of delivery which do not involve transfer of possession directly from the buyer to the seller, and subrule 14.3(3) which explains a type of delivery which does not involve any physical transfer of possession of property.

EXAMPLE A: A enters into a sales contract to purchase a riding lawn mower from B. This contract (offer and acceptance) is entered into on June 20. B delivers the lawn mower to A on June 28, and A pays B for the lawn mower on July 3. Since delivery, under the contract for sale, occurred prior to July 1, the sales tax in this example is computed at the rate of 4 percent.

EXAMPLE B: A wants to purchase a home computer from B. On June 28, A orders the computer from B and the parties agree that the contract of sale is made if and when B makes delivery of the home computer to A. B delivers the computer on July 10. In this example, the sales tax is at the rate of 5 percent because delivery was not made until July 10. It is the delivery after July 1, rather than the lack of the valid contract of sale prior to that date, which determines that the rate of tax shall be 5 rather than 4 percent.

EXAMPLE C: On May 1, A enters into a conditional sales contract with B to purchase a television set. The contract requires A to make monthly installment payments for 36 months, beginning June 1. The contract also requires B to deliver the television to A on or before July 15. B retains title to the television set solely for the purpose of securing payment from A. A makes the first monthly payment to B on June 1. B delivers the television to A on the last day allowable, July 15. The 5 percent rate will apply. See subrule 14.3(4) for more material regarding conditional sales.

14.3(2) Shipment by carrier. The following principles shall be used to determine the conditions under which delivery is made pursuant to a contract for sale when the retailer utilizes a carrier to ship tangible personal property to a purchaser. If the contract for sale makes no reference of an F.O.B. (free on board) or F.A.S. (free along side) point or of any other point at which title and risk of loss with regard to the tangible personal property are transferred from the retailer to the purchaser and contains no other indication of a delivery point, it shall be presumed that delivery of the property occurs when the seller transfers possession of the property to the carrier. If property is sold under a C.I.F. (cost, insurance and freight) or a C. & F. (cost and freight) contract it shall also be presumed that delivery occurs when the retailer transfers possession of the property to the carrier. If a contract for sale makes mention of an F.O.B. or F.A.S. point, it shall be presumed that the parties intended delivery of the property at the time the property reaches that point.

14.3(3) Constructive delivery. “Constructive delivery” has occurred if the retailer and the purchaser agree that title, risk of loss, and right of possession to tangible personal property have passed from the retailer to the purchaser; that is, the parties agree that a sale has occurred, but actual physical possession of the property remains with the retailer or someone other than the buyer after the sale. If parties to

a contract of sale have agreed upon constructive delivery, the sale occurs at the time of constructive delivery and not at the time of transfer of physical possession of the property from buyer to seller or at an F.O.B., F.A.S., or similar type of point.

EXAMPLE: A owns an art gallery in Des Moines. Art collector B from Cedar Rapids visits the gallery. Collector B wishes to purchase a painting that is very large. However, collector B cannot immediately transport the painting back to Cedar Rapids. On June 1, A and B sign a contract for the sale of the painting. Title to the painting, risk of loss, and the right to take possession of the painting immediately pass to B. However, the parties also agree that B can store the painting with A in return for a small monthly charge. B inquires of various parties whether or not they would be willing to transport the painting from Des Moines to Cedar Rapids. B finds no one satisfactory to do this and eventually signs a separate contract for transport with A in which A agrees to do the transporting. The transport of the painting is accomplished on September 1. The painting was delivered from A to B in Des Moines on June 1. Thus, its sale occurred on that date rather than September 1. Delivery was accomplished with the “constructive” delivery which occurred on June 1 rather than by the physical transfer of possession from A to B which occurred on September 1. Because of this, the rate of tax is 4 and not 5 percent.

14.3(4) Conditional sales. A “conditional sale” is no different from an absolute sale, except in the matter of payment. *Hansen v. Kuhn*, 284 N.W. 249, 226 Iowa 794 (1939). A conditional sale has not occurred until delivery under a contract of conditional sale has occurred. *Greenlease-Lied Motors v. Sadler*, 249 N.W. 383, 216 Iowa 302 (1933); *Universal Credit Co. v. Mammaing*, 243 N.W. 513, 214 Iowa 1135 (1932); and *Firestone Tire & Rubber Co. v. Anderson*, 180 N.W. 273, 190 Iowa 439 (1920). See Example C in subrule 14.3(1) for an example of a conditional sales contract in which delivery of the property under the contract occurred long after the making of the contract and after the buyer had made several payments under the contract. As soon as delivery has occurred, tax on all gross receipts of the sale is due to the department. See rules 701—15.1(422) and 701—16.47(422) for additional material on conditional sales.

14.3(5) Use tax—changed rate of taxation on the use of tangible personal property. A changed use tax rate applies to the use of tangible personal property in Iowa when the first taxable use occurs on or after the effective date of the legislation which changes the rate of tax. In the following example, assume that the change in the use tax rate is from 4 to 5 percent and that the legislation which enacts this change is effective as of July 1.

EXAMPLE: On May 24, A and B enter into a contract for A’s purchase of a machine from B. Under the contract, delivery of the machine to A is to occur outside the state of Iowa, F.O.B., Minneapolis, Minnesota. On June 27, A takes delivery of the machine in Minneapolis. A then transports the machine into Iowa on July 2. A’s transport of the machine into Iowa constitutes a use of the machine by A in Iowa for the first time. Under these circumstances, the machine is subject to the 5 percent rate since the tax rate in effect at the time of first use, July 2, governs if property is purchased outside of Iowa. *City of Ames v. State Tax Commission*, 246 Iowa 1016, 71 N.W.2d 15 (1955).

14.3(6) Changed rate for the sales tax on enumerated services. A changed sales tax rate on enumerated services applies if services are rendered, furnished, or performed in Iowa on or after the effective date of the legislation which changes the rate. The date upon which the parties enter into a service contract is not of importance in determining whether the old rate or new rate is applicable. Nor, for the purpose of computing the sales tax, is it important to know when the product or result of the service is used by the ultimate user. This situation must be distinguished from the application of use tax to services. For use tax purposes, the date when the product or result of the service is used may be important. See subrule 14.3(7). For the purposes of this subrule and subrules 14.3(7), 14.3(8), 14.3(9) and 14.3(10), assume that the rate of tax is being raised from 4 to 5 percent and that the effective date of the legislation which increases the rate is July 1.

EXAMPLE A: On June 1, A and B enter into a service contract in which B agrees to provide testing laboratory services to A. B performs these services in Iowa on June 26. The results of these services are forwarded to A on July 8, and A observes those results and makes use of them on that latter day. Under these circumstances, the testing laboratory services were subject to service tax at the rate of 4 percent because B rendered, furnished, or performed the services on June 26, which is prior to July 1.

EXAMPLE B: On June 1, B offers to perform testing laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on July 5 and the results forwarded to A on July 8. Under these circumstances, the testing laboratory services are subject to tax at the 5 percent rate. The services are subject to that rate because the services were rendered on July 5, and not because the parties entered into the contract for services on July 5. As in Example A above, if a contract had been entered into before July 1, and the services performed after that date, service tax at the 5 percent rate would still have been applicable.

EXAMPLE C: On June 7, A enters into a service contract with B for the repair of A's automobile. The contract provides that A shall make installment payments for 12 months. The automotive repairs are extensive. B begins repair of the automobile on June 9 and completes repair on June 27. Since sales tax is due when the service is rendered, furnished, or performed, the tax is 4 percent of the contract price. Installment payments made on and after July 1 do not accrue any greater rate of tax. This situation is different from a service contract entered into prior to July 1, which requires periodic payments for continuous services, as set forth under subrule 14.3(8).

EXAMPLE D: A, a civic center, contracts with B, an orchestra, to perform on July 10. The contract is made on May 26. A sells tickets of admission for B's July 10 concert. The tickets are sold in the month of June and from July 1 to and including July 9. All ticket sales in June are subject to tax at the 4 percent rate and all ticket sales in July are subject to tax at the 5 percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable events are the sales of admission tickets between A and the purchasers of the tickets. The date when a ticket is delivered to a purchaser controls whether the tax rate is 4 or 5 percent.

14.3(7) *Changed rate of use tax on services.* If the product or result of a taxable service rendered, furnished, or performed outside of this state is first used in this state on or after July 1, the 5 percent use tax rate applies.

EXAMPLE: On June 14, A and B enter into a contract for repair of A's machine, the repair to be done outside of Iowa. On June 28, the machine is delivered to B who performs the taxable service of machine repair and returns the machine to A in Iowa on July 1. Under these circumstances, the product or result of the taxable machine repair service is first used by A on July 1; therefore, the 5 percent tax rate applies.

14.3(8) *Service contracts requiring periodic payments.* If parties enter into a service contract prior to July 1, and the contract requires periodic payments, payments made on or after July 1 under the contract are subject to the 5 percent sales or use tax rate.

EXAMPLE A: A and B enter into an agreement for the lease of equipment on April 1. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after July 1, the tax rate is 5 percent.

EXAMPLE B: On May 1, A joined a private club and paid membership fees for the privilege of participating in athletic sports provided to club members. A must make periodic payments every three months. These payments are made in January, April, July, and October. Under these circumstances, A's July payment and payments made subsequently are subject to tax at the rate of 5 percent.

14.3(9) *Gas, electricity, water, heat, solid waste collection, sewer, pay television, and communication services.* Gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the 5 percent rate when the date of billing the customer falls on or after July 1. The gross receipts from the services of solid waste collection and disposal, sewer, and pay television are also treated in this manner.

EXAMPLE A: A is the customer of the B water utility. A receives a bill from B on July 5. The billing date is July 1, and the bill is for water provided during the month of June. Under these circumstances, sales tax should be billed at the rate of 5 percent, because the date of billing is July 1.

EXAMPLE B: A is the customer of the B electric utility company. A receives a bill from the B company on July 2. There is no billing date set forth on the bill. The bill was mailed by the B company to A on June 28. Under these circumstances, the billing date is June 28, and the sales tax should be billed at the rate of 4 percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., June 26, this latter date (June 26) would be considered the billing date.

EXAMPLE C: A is the customer of the B rural electric cooperative (REC). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Interstate Commerce Commission (ICC), has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on July 1 and the first date of each month thereafter, the sales tax should be paid at the rate of 5 percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to June 30 would require payment of sales tax at the 4 percent rate.

EXAMPLE D: A is the customer of B telephone company. A receives a bill from B company on July 3, covering intrastate long distance telephone calls in June and local service in July. The billing date on the face of the bill is June 28. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of 4 percent.

If, in this example, the billing date on the bill had been July 1, the sales tax should be billed at the rate of 5 percent for all telephone services, local and intrastate long distance.

14.3(10) Vehicles subject to registration. The 5 percent use tax rate applies to motor vehicles subject to registration when the purchaser of the vehicle registers the vehicle on or after July 1.

EXAMPLE A: A purchases a motor vehicle from B and takes possession of the vehicle in Iowa on June 28. On July 1, A drives to the office of the county treasurer, applies for registration of the vehicle, and tenders the amount of Iowa use tax. Under these circumstances, because A registered the vehicle in Iowa on July 1, the use tax rate is 5 percent.

EXAMPLE B: A and B enter into a binding contract for A to purchase from B a motor vehicle on June 26. The vehicle cannot be delivered to A until July 3, and A applies to the county treasurer for registration of the vehicle on July 5. Under these circumstances, A first registered the vehicle on July 5 and Iowa use tax is imposed at the 5 percent rate.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.