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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages of IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

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UPDATING INSTRUCTIONS
January 26, 2000, Biweekly Supplement

[Previous Supplement dated 1/12/00]

IOWA ADMINISTRATIVE CODE

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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50.108(9) For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

50.108(10) For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

50.108(11) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

50.108(12) Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

191—50.109(502) Examination requirements.

50.109(1) A person applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the administrator with proof that the person has obtained a passing score on one of the following examinations:

a. The Uniform Investment Adviser Law Examination (Series 65 examination); or

b. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

50.109(2) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on or after January 19, 2000, shall not be required to satisfy the examination requirements for continued registration, except that the administrator may require additional examinations for any individual found to have violated the uniform securities Act.

An individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

50.109(3) The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

a. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

b. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

c. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

d. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

e. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

f. Such other professional designation as the administrator may by order recognize.

This rule is intended to implement Iowa Code sections 502.302 and 502.305.

191—50.110(502) Waivers. The administrator may grant a waiver of a rule pertaining to examination requirements for investment advisers or investment adviser representatives.

50.110(1) No waiver shall be granted from a requirement imposed by statute. Any waiver must be consistent with statutory requirements.

50.110(2) A waiver under this subrule may be granted only upon a showing of all the following:

a. Because of special circumstances, applying the rule would impose an undue burden or extreme hardship on the requester;

b. Granting the waiver would not adversely affect the public interest and the protection of investors; and

c. Granting the waiver would provide substantially equal protection of public health and safety as would compliance with the rule.

50.110(3) A request for waiver shall be made at any time within 60 days of the initial application and shall include the following information:

a. The name, address and telephone number of the person requesting the waiver;

b. The specific rule from which a waiver is requested;

c. The nature of the waiver requested;

d. An explanation of all facts relevant to the waiver request, including all material facts necessary for the administrator to evaluate the criteria for granting a waiver as provided by subrule 50.110(2); and

e. A description of any prior communication between the administrator and the requester regarding the proposed waiver.

50.110(4) The administrator shall rule upon all waiver requests and transmit the ruling to the requester. The ruling shall include the reason for granting or denying the request. The administrator's ruling shall constitute final agency action for the purposes of Iowa Code chapter 17A.

50.110(5) The administrator may impose reasonable conditions when granting a waiver to achieve the objectives of the particular rule being waived.

50.110(6) If at any time the administrator finds the facts as stated in the waiver request are not true, that material facts have been withheld, or that the requester has failed to comply with conditions set forth in the waiver, the administrator may cancel the waiver and seek additional sanctions against the issuer and agent as provided by this chapter and Iowa Code chapter 502.

50.110(7) Any request for an appeal from a decision granting, denying, or canceling a waiver shall comply with the procedures provided in Iowa Code chapter 17A. An appeal shall be made within 30 days after the administrator's ruling in response to the waiver requested.

50.110(8) All final rulings in response to waiver requests shall be indexed and available to members of the public at the administrator's office.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

191—50.111 to **50.119** Reserved.

VIATICAL SETTLEMENT CONTRACTS

191—50.120(502) Advertising of viatical settlement contracts.

50.120(1) Under this rule, the term "advertisement" includes any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published in connection with the offer or sale of a viatical settlement contract.

50.120(2) The issuer and agent shall file all viatical settlement contract advertisements with the administrator not less than ten business days prior to the date of use or a shorter period as the administrator may permit. The administrator shall mark the advertisements with allowance for use or expressly disapprove them during this time frame. The advertisement shall not be used in Iowa until a copy thereof, marked with allowance for use, has been received from the administrator.

50.120(3) Viatical settlement contract advertisements should contain no more than the following:

a. The name of the issuer;

b. The address and telephone number of the issuer;

c. A brief description of the security, including minimum purchase requirements and liquidity aspects;

d. If rate of return is advertised, it must be stated as the annual average rate of return, with a disclaimer that this is an annual average rate of return, that individual investor rates of return will vary based upon the viator's projected and actual date of death, and that an annual rate of return on a viatical settlement contract cannot be guaranteed;

e. The name, address and telephone number of the agent of the issuer authorized to sell the viatical settlement contracts;

f. A statement that the advertisement is neither an offer to sell nor a solicitation of an offer to purchase and that any offer or solicitation may only be made by providing a disclosure document; and

g. How a copy of the disclosure document may be obtained.

50.120(4) Notwithstanding the provisions of rule 191—50.25(502), certain viatical settlement advertisements may be deemed false and misleading on their face by the administrator and are prohibited under Iowa Code sections 502.401 and 502.602. False and misleading viatical settlement advertisements include, but are not limited to, the following representations:

a. "Fully secured," "100% secured," "fully insured," "secure," "safe," "backed by rated insurance company(ies)," "backed by federal law," "backed by state law," or similar representations;

b. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

c. "Qualified or approved for IRA, Roth IRA, 401K, SEP, 403B, Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;

d. "Guaranteed fixed return," "guaranteed annual return," "guaranteed principal," "guaranteed earnings," "guaranteed profits," "guaranteed investment," or similar representations;

e. "No sales charges or fees," or similar representations;

f. "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

g. "Perfect investment," "proven investment," or similar representations;

h. Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

191—50.121(502) Application by viatical settlement contract issuers and registration of agents to sell viatical settlement contracts.

50.121(1) Under this rule, the term "viatical settlement contract issuer" includes, but is not limited to, any individual, company, corporation or other entity that offers or sells, directly or indirectly, viatical settlement contracts to investors.

50.121(2) A viatical settlement contract issuer employing agents in Iowa must make prior application to the administrator for this authority. The application shall be made by letter and shall include:

a. A statement of the issuer's intent to employ agents for the sale of its viatical settlement contracts; and

b. Name, address, social security number and proof of satisfaction of subrule 50.121(3) for each agent.

50.121(3) An applicant for registration as an Iowa-licensed agent of an issuer of viatical settlement contracts shall file with the administrator:

a. Proof of obtaining a passing grade on the NASD Series 7 examination;

b. Proof of obtaining a passing grade on the NASD Series 63 examination;

c. An accurate, complete and signed Form U-4; and

d. A $30 filing fee.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

191—50.122(502) Risk disclosure. Viatical settlement contract issuers and registered agents of issuers must provide specific, written disclosures of risk to Iowa investors at the time of the initial offer to sell a viatical settlement contract. These disclosures must be preceded by the following caption, which must be in bold, 16-point typeface:

IMPORTANT RISK DISCLOSURE INFORMATION—READ BEFORE SIGNING ANY VIATICAL SETTLEMENT CONTRACT

Certain items must be disclosed including, but not limited to, the following:

1. That the actual annual rate of return on any viatical settlement contract is dependent upon (a) an accurate projection of the viator's life expectancy, and (b) the actual date of the viator's death. An annual "guaranteed" rate of return is not possible;

2. Whether, after purchasing the viatical settlement contract, the investor will be responsible for payment of premiums on the contract if the viator lives longer than projected. If the investor will be responsible for such premiums, the amount of the premium payment and its negative effect on the investor's return must be disclosed to the investor;

3. Whether any premium payments on the contract have been escrowed. The investor must be provided the date upon which the escrowed funds will be depleted, informed whether the investor will be responsible for payment of premiums thereafter, and informed of the amount of such premiums;

4. Whether any premium payments on the contract have been waived. The investor must be informed whether the investor will be responsible for payment of the premiums if the insurer who wrote the policy terminates the waiver after purchase, and informed of the amount of such premiums;

5. Whether the investor is responsible for payment of premiums on the contract if the viator returns to health, and the amount of such premiums;

6. Whether the investor is entitled to all or part of the investor's investment under the contract if the viator's underlying policy is later determined to be null and void;

7. Whether the insurance policy is a group policy and, if so, the special risks associated with group policies including, but not limited to, whether the investor is responsible for payment of additional premiums if the policies are sold or converted;

8. Whether the insurance policy is term insurance and, if so, the special risks associated with term insurance including, but not limited to, whether the investor is responsible for additional premium costs if the viator continues the term policy at the end of the current term;

9. Whether the investor will be the beneficiary or owner of the insurance policy and, if the investor is the beneficiary, the special risks associated with beneficiary status;

10. Whether the insurance policy is contestable and, if so, the special risks associated with contestability including, but not limited to, the risk that the investor will have no claim or only a partial claim to death benefits should the insurer cancel the policy within the contestability period;

11. Who is making the projection of the viator's life expectancy, the information this projection is based upon, and the relationship of the projection maker to the issuer;

12. Who is monitoring the viator's condition, how often the monitoring is done, how the date of death is determined, and how and when this information will be transmitted to the investor;

13. Whether the insurer who wrote the viator's underlying policy has any additional rights which could negatively affect or extinguish the investor's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated;

14. That a viatical settlement contract is not a liquid investment and that there is no established secondary market for resale of these products by the investor;

15. That the investor will receive no returns (i.e., dividends and interest) until the viator dies; and

16. That the investor may lose all benefits or receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

191—50.123(502) Duty to disclose. Issuers and agents equally share an affirmative duty to disclose all relevant and material information to prospective investors in viatical settlement contracts. The required disclosure is the registration statement required by Iowa Code section 502.207 which has been reviewed and made effective by the administrator.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

191—50.124(502) Waivers. The administrator may grant a waiver of a rule pertaining to issuer and agent applications for viatical licensure.

50.124(1) No waiver shall be granted from a requirement imposed by statute. Any waiver must be consistent with statutory requirements.

50.124(2) A waiver under this rule may be granted only upon a showing of all the following:

a. Because of special circumstances, applying the rule would impose an undue burden or extreme hardship on the requester;

b. Granting the waiver would not adversely affect the public interest and the protection of investors; and

c. Granting the waiver would provide substantially equal protection of public health and safety as would compliance with the rule.

50.124(3) A request for waiver shall be made at any time within 60 days of the initial application and shall include the following information:

a. The name, address, and telephone number of the person requesting the waiver;

b. The specific rule from which a waiver is requested;

c. The nature of the waiver requested;

d. An explanation of all facts relevant to the waiver request, including all material facts necessary for the administrator to evaluate the criteria for granting a waiver as defined in subrule 50.124(2); and

e. A description of any prior communication between the administrator and the requester regarding the proposed waiver.

50.124(4) The administrator shall rule upon all waiver requests and transmit the ruling to the requester. The ruling shall include the reason for granting or denying the request. The administrator's ruling shall constitute final agency action for the purposes of Iowa Code chapter 17A.

50.124(5) The administrator may impose reasonable conditions when granting a waiver to achieve the objectives of the particular rule being waived.

50.124(6) If at any time the administrator finds the facts as stated in the waiver request are not true, that material facts have been withheld, or that the requester has failed to comply with conditions set forth in the waiver, the administrator may cancel the waiver and seek additional sanctions against the issuer and agent as provided by this chapter and Iowa Code chapter 502.

50.124(7) Any request for an appeal from a decision granting, denying, or canceling a waiver shall comply with the procedures provided in Iowa Code chapter 17A. An appeal shall be made within 30 days after the administrator's ruling in response to the waiver request.

50.124(8) All final rulings in response to waiver requests shall be indexed and available to members of the public at the administrator's office.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

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*Objection to rules 50.19 and 50.44, see IAC Supplement 3/8/76
◊Two ARCs

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DISBURSEMENT OF MONEY FROM CIVIL REPARATIONS TRUST FUND

CHAPTER 12
DISBURSEMENT OF MONEY FROM CIVIL REPARATIONS TRUST FUND

361—12.1(668A) Eligibility. Money in the civil reparations trust fund may be disbursed upon application for indigent civil litigation programs or insurance assistance programs.

361—12.2(668A) Notice of funds. The executive council shall provide notice of availability of money in the fund in the following ways:

12.2(1) *Iowa Administrative Bulletin.* The executive council shall publish notice of the balance in the fund in the Iowa Administrative Bulletin semiannually in January and July of each year and within 30 days of the deposit of any amount into the fund exceeding $10,000. If the deposit of an amount exceeding $10,000 would cause notice within 30 days of the deposit to be published in January or July, no additional publication is required.

12.2(2) *First-class mail.* The executive council shall maintain a mailing list of those persons who wish to receive notice of the balance in the fund. Notice shall be sent semiannually in January and July of each year and within 30 days of the deposit of any amount into the fund exceeding $10,000 by first-class mail to all persons on the mailing list. If the deposit of an amount exceeding $10,000 would cause notice within 30 days of the deposit to be mailed in January or July, no additional mailing is required. Any person may be added to the mailing list on request.

In the event that there is no money in the fund in January or July, no notice will be published or mailed.

361—12.3(668A) Applications. The executive council shall accept applications for money from the fund for a period of 30 days after notice has been published in the Iowa Administrative Bulletin or sent by first-class mail. Applications will be not be accepted in advance of this time period.

12.3(1) *Forms.* Application forms are available in the office of the state treasurer.

12.3(2) *Filing.* Applications shall be filed with the office of the state treasurer.

12.3(3) *Timeliness.* An application is timely if it is postmarked on the thirtieth day after the date of publication in the Iowa Administrative Bulletin or on the thirtieth day after the date affixed to the notice sent by first-class mail, whichever is later. The executive council may accept applications submitted after this deadline only for good cause upon motion in writing.

361—12.4(668A) Criteria. In determining whether to grant an application for money from the fund, the executive council shall consider the following factors:

1. The purpose for which the money will be utilized;
2. The number of people who will be served by the money;
3. The availability to the applicant of alternative sources of money;
4. The degree to which the applicant complied with legal restrictions on the use of the money under any prior applications.

361—12.5(668A) Disposition of applications. The executive council shall determine the disposition of all pending applications and notify all applicants of the decision by first-class mail. Notice of disposition shall be sent to all applicants on the same date.

361—12.6(668A) Motion for reconsideration. Any applicant who is aggrieved or adversely affected by the disposition of the applicant's application must file a motion for reconsideration in the office of the state treasurer within 15 days of the date affixed to the notice of disposition. The motion is deemed filed when received and date-stamped by the treasurer.

361—12.7(668A) Grounds. The motion for reconsideration must delineate the specific grounds for reconsideration. An applicant may request a contested case hearing; however, any request for a contested case hearing must specifically delineate the facts in dispute to be contested and determined at the hearing.

361—12.8(668A) Procedure. The executive council shall rule on any pending motion for reconsideration, including a request for a contested case hearing. In the event that a request for a contested case hearing is granted, the proceeding shall be conducted as provided in 361 IAC 10.8(17A,68B) et seq. The burden of proof by a preponderance of the evidence shall be on the requester to establish grounds for reconsideration. The decision of the executive council shall be defended by the office of the attorney general.

361—12.9(668A) Disbursement of money. No money will be disbursed from the fund after disposition of all applications until the time period for filing a motion for reconsideration has expired. After the time period for filing a motion for reconsideration has expired but while a motion for reconsideration by any applicant is pending, the executive council in its discretion may disburse money from the fund to applicants who have not filed a motion for reconsideration. Money may be disbursed to applicants while a motion for reconsideration is pending only to the extent that resolution of any pending motion could not affect the disbursement of money to other applicants.

361—12.10(668A) Administrative costs. The costs of administering this fund, including any costs associated with the conduct of any contested case proceeding challenging the disbursement of money from the fund and costs for postage and copying, shall be billed to the fund after approval by the executive council.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 7D and 668A.

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TITLE V
MANAGEMENT AREAS AND PRACTICES

CHAPTER 51
GAME MANAGEMENT AREAS

[Prior to 12/31/86, Conservation Commission[290] Chs 1,2,4,8,9,24]

571—51.1(481A) Definitions.

"Blind" means a constructed place of ambush or concealment for the purpose of hunting, observing, or photographing any species of wildlife.

"Commission" means the natural resource commission.

"Decoy" means a bird, or animal, or a likeness of one, used to lure game within shooting range.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or a designee.

"Handicapped person" means an individual commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a simple or double amputee of the legs; or a person with any other physical affliction which makes it impossible to ambulate successfully without the use of a motor vehicle.

571—51.2(481A) Jurisdiction. All lands and waters under the jurisdiction of the department are established as game management areas under the provisions of Iowa Code section 481A.6.

571—51.3(481A) Use of firearms.

51.3(1) *Restrictions.* The use or possession of firearms on certain game management areas is restricted.

a. Target shooting, for the purposes of this rule, is defined as the discharge of a firearm for any reason other than the taking of, or attempting to take, any game birds, game animals, or furbearers. Target shooting with shotguns shooting shot is not restricted to a specific range, except as otherwise provided. Target shooters using shotguns with lead shot cannot discharge the shot over water.

b. Target shooting shall occur only on the designated and posted shooting range.

c. Any person target shooting with any type of handgun or any type of rifle, or shooting shotgun slugs through a shotgun, must fire through one of the firing tubes, if provided, or at the firing points on the rifle or pistol range.

d. It is a violation of these rules to place any target on the top of the earthen backstop or to fire at any target placed on top of the backstop.

e. The shotgun range, if provided, is restricted to the use of shotguns and the shooting of shotshells only.

f. Target shooting shall occur only between the hours of sunrise and sunset.

g. No alcoholic beverages are allowed on the shooting range or adjacent parking area.

h. Target shooting is restricted to legal firearms and shall not be done with any fully automatic pistol, rifle, or shotgun of any kind. No armor-piercing ammunition is permitted.

i. Targets are restricted to paper or cardboard targets or metal silhouette-type targets. No glass, plastic containers, appliances, or other materials may be used. Targets must be removed from the area after use or must be disposed of in trash receptacles if provided.

j. All requirements listed in this subrule shall apply to the following shooting ranges:

(1) Badger Creek Area - Madison County.

(2) Banner Mine Area - Warren County.

(3) Bays Branch Area - Guthrie County.

(4) Hawkeye Wildlife Area - Johnson County.

(5) Hull Wildlife Area - Mahaska County.
(6) Mines of Spain - Dubuque County.
(7) Ocheyedan Wildlife Area - Clay County.
(8) Princeton Wildlife Area - Scott County.
(9) Spring Run Wildlife Area - Dickinson County.

k. In addition to the requirements listed, the following shooting range has specific restrictions.

Oyens Shooting Range - Plymouth County. The range is closed to the public except between 9 a.m. and sunset. Law enforcement firearms training and qualification of local, county, state or federal officers shall have priority over general public use of the range. Shotguns shooting birdshot may be fired outside the firing tubes, but within the designated range area. General shooting by the public shall take place on a first-come, first-served basis.

l. McIntosh Wildlife Area - Cerro Gordo County. The use or possession of firearms, except shotguns shooting shot only, is prohibited.

51.3(2) Reserved.

571—51.4(481A) Dogs prohibited—exception. Dogs shall be prohibited on all state-owned game management areas, as established under authority of Iowa Code section 481A.6, between the dates of March 15 and July 15 each year; except that, training of dogs shall be permitted on designated training areas. Field and retriever meets shall be conducted at designated sites. A permit as provided in Iowa Code section 481A.22 must be secured for field and retriever meets.

The permit shall show the exact designated site of said meet and all dogs shall be confined to that site.

571—51.5(481A) Use of blinds and decoys on game management areas.

51.5(1) *Stationary blinds.* The construction and use of stationary blinds on all game management areas are restricted as follows:

a. Construction. Any person may construct a stationary blind using only the natural vegetation found on the area. No trees or parts of trees other than willows may be cut for use in constructing a blind. No other man-made materials of any type may be used for building or providing access to a stationary blind.

b. Use of blinds. The use of any stationary blind which is constructed in violation of 51.5(1)*"a"* is prohibited.

c. Ownership of blinds. Any person who constructs or uses a stationary blind shall not have any proprietary right-of-ownership to the blind.

51.5(2) *Portable blinds.* The construction and use of portable blinds on game management areas shall be restricted as follows:

a. Construction. A portable blind may be constructed of any natural or man-made material, as long as it is a self-contained unit capable of being readily moved from one site to another.

b. Prohibited use. Portable blinds shall be prohibited from one-half hour after sunset until midnight each day. Portable blinds which are built on, or are part of, a boat shall be considered as removed from an area when the boat and blind are tied up or moored at an approved access site. No boat shall be anchored away from shore and left unattended unless it is attached to a legal buoy.

c. Exception—tree blinds. Portable blinds placed in trees and used for purposes other than hunting waterfowl may be left on an area for a continuous period of time beginning seven days prior to the open season for hunting deer or turkey and ending seven days after the final day of that open season. Portable blinds left on game management areas do not guarantee the owner exclusive use of the blind when unattended, or exclusive use of the site.

d. Protection of trees. The use of any spike, nail, pin, or other object which is driven or screwed into a tree is prohibited.

These rules are intended to implement Iowa Code sections 456A.24(2)*"a"* and 481A.6.

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10.5(7) Collection for a surcharge shall terminate at the end of 24 months if E911 service is not initiated for all or a part of the E911 service area as stated in Iowa Code subsection 34A.6(1). The E911 program manager for good cause may grant an extension.

a. The administrator shall provide 100 days' prior written notice to the joint E911 service board or the operating authority and to the service provider(s) collecting the fee of the termination of surcharge collection.

b. Individual subscribers within the E911 service area may petition the joint E911 service board or the operating authority for a refund. Petitions shall be filed within one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the E911 service fund and all interest accumulated shall be retained by the joint E911 service board. However, if the joint E911 service board ceases to operate any E911 service, the balance in the E911 service fund shall be payable to the state emergency management division. Moneys received by the division shall be used only to offset the costs for the administration of the E911 program.

605—10.6(34A) Waivers, variance request, and right to appeal.

10.6(1) All requests for variances or waivers shall be submitted to the E911 program manager in writing and shall contain the following information:

a. A description of the variance(s) or waiver(s) being requested.

b. Supporting information setting forth the reasons the variance or waiver is necessary.

c. A copy of the resolution or minutes of the joint E911 service board meeting which authorizes the application for a variance or waiver.

d. The signature of the chairperson of the joint E911 service board.

10.6(2) The E911 program manager may grant a variance or waiver based upon the provisions of Iowa Code chapter 34A or other applicable state law.

10.6(3) Upon receipt of a request for a variance or waiver, the E911 program manager shall evaluate the request and schedule a review within 20 working days of receipt of the request. Review shall be informal and the petitioner may present materials, documents and testimony in support of the petitioner's request. The E911 program manager shall determine if the request meets the criteria established and shall issue a decision within 20 working days. The E911 program manager shall notify the petitioner, in writing, of the acceptance or rejection of the petition. If the petition is rejected, such notice shall include the reasons for denial.

605—10.7(34A) Enhanced wireless 911 service plan. Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless 911 service plan for statewide implementation of enhanced wireless 911 phase I and phase II implementation.

10.7(1) *Plan specifications.* The enhanced wireless 911 service plan shall include, at a minimum, the following information:

1. Maps showing geographic area to be served by each PSAP receiving enhanced wireless 911 telephone calls.
2. A list of all public and private safety agencies within the enhanced wireless 911 service area.
3. The geographic location of each PSAP receiving enhanced wireless 911 calls and the name of the person responsible for the management of the PSAP.
4. A set of guidelines for determining eligible cost for wireless service providers, wire-line service providers, and public safety answering points.

5. A statement of estimated charges for the implementation and operation of enhanced wireless 911 phase I and phase II service, detailing the equipment operated or needed to operate enhanced wireless 911 service, including any technology upgrades necessary to provide service. Charges must be directly attributable to the implementation and operation of enhanced wireless 911 service. Charges shall be detailed showing item(s) or unit(s) of cost, or both, and include estimated charges from:

- Wireless service providers.
- Wire-line service providers for implementation and operation of enhanced wireless 911 service.
- Public safety answering points.

6. A schedule for the implementation of enhanced wireless 911 phase I and phase II service.

10.7(2) *Adoption by reference.* The "Wireless Enhanced 911 Implementation and Operation Plan," effective February 1, 2000, and available from the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference.

605—10.8(34A) E911 surcharge (wireless).

10.8(1) The E911 program manager shall adopt a monthly surcharge of up to 50 cents to be imposed on each wireless communications service number provided in this state. The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 50 cents per month, per customer service number.

10.8(2) The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator's best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.

10.8(3) The E911 program manager shall order the imposition of surcharge uniformly on a statewide basis and simultaneously on all wireless communications service numbers by giving at least 100 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 100-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

10.8(4) The wireless surcharge shall be 50 cents per month, per customer service number until changed by rule.

10.8(5) The wireless carrier shall list the surcharge as a separate line item on the customer's billing. If the wireless carrier receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder being applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing.

10.8(6) Remaining surcharge funds shall be remitted on a calendar-quarter basis within 20 days following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—10.9(34A) Wireless E911 emergency communications fund.

10.9(1) Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

10.9(2) Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

605—10.16(34A) Confidentiality. All financial or operations information provided by a wireless service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said wireless service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless service provider.

These rules are intended to implement Iowa Code chapter 34A.

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701—71.1(405,427A,428,441,499B) Classification of real estate.

71.1(1) *Responsibility of assessors.* All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue and finance pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

71.1(2) *Responsibility of boards of review, county auditors, and county treasurers.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

71.1(3) *Agricultural real estate.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

71.1(4) *Residential real estate.* Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, condominiums, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, condominiums not used as commercial ventures, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate. Effective January 1, 2000, property shall be classified as residential real estate if a majority of the condominiums are or will be used for residential purposes and have been sold, are available for sale, or are being rented, but the primary intent of the owner is to sell the units. For example, a building containing 25 condominiums of which 22 have been sold, are available for sale, or are being rented, but the primary intent of the owner is to sell the units, shall be classified as residential real estate. If more than one building is included in the horizontal property regime, the number of condominiums shall be combined to determine the majority use. Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.

71.1(5) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, condominiums, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)*"j,"* except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate, as shall condominiums not used as commercial ventures. Effective January 1, 2000, property shall be classified as commercial real estate if a majority of the condominiums are being used as a business or used for residential purposes and not sold, not available for sale, or are rented and the primary intent of the owner is to continue renting rather than sell the units. For example, a building containing 25 condominiums of which 22 are being used as businesses or used for residential purposes and not sold, not available for sale, or are rented and the primary intent of the owner is to continue renting rather than sell the units, is to be classified as commercial real estate. If more than one building is included in the horizontal property regime, the number of condominiums shall be combined to determine the majority use. Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.

71.1(6) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(6)*"a"*(1). Property in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises' primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises' primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo,* 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property's primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property's primary use for commercial purposes — the storage of grain.

(3) Property used primarily for the extraction of rock or mineral substances from the earth is not a manufacturing establishment if the only processing performed on the substance is to change its size by crushing or pulverizing. See *River Products Company v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

b. Machinery.

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner,* 247 Iowa 1264, 78 N.W.2d 527 (1956).

(2) Machinery owned or used by a manufacturer but not used within the manufacturing establishment is not assessed as industrial real estate. For example, "X" operates a factory which manufactures building materials for sale. In addition, "X" uses some of these building materials in construction contracts. The machinery which "X" would primarily use at the construction site would not be used in a manufacturing establishment and, therefore, would not be assessed as industrial real estate.

(3) Machinery used in manufacturing but not used in or by a manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

(4) Where the primary function of a manufacturing establishment is to manufacture personal property that is consumed by the manufacturer rather than sold, the machinery used in the manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

71.1(7) *Point-of-sale equipment.* As used in Iowa Code section 427A.1(1)*"j,"* the term "point-of-sale equipment" means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and which is located at the counter, desk, or other specific point at which the transaction occurs. As used in this subrule, the term "sale" means the sale or rental of goods or services and includes both retail and wholesale transactions. Point-of-sale equipment does not include equipment used primarily for depositing or withdrawing funds from financial institution accounts.

71.1(8) *Housing development property.* A county board of supervisors may adopt an ordinance providing that property acquired and subdivided for development of housing be classified the same as it was prior to its acquisition until the property is sold or, depending on a county's population, for a specified number of years from the date of subdivision, whichever is shorter. The applicable time period is five years in counties with a population of less than 20,000 and three years in counties with a population of 20,000 or more. The property is to be classified as residential or commercial, whichever is applicable, in the assessment year following the year in which it is sold or the applicable time period has expired. For purposes of this subrule, "subdivided" means to divide a tract of land into three or more lots.

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4, 441.21, 441.22, and 499B.11 as amended by 1999 Iowa Acts, chapter 187.

701—71.2(421,428,441) Assessment and valuation of real estate.

71.2(1) *Responsibility of assessor.* The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

71.2(2) *Responsibility of other assessing officials.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall follow the provisions of subrule 71.2(1) and rules 71.3(421,428,441) to 71.7(421,427A,428,441).

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.3(421,428,441) Valuation of agricultural real estate. Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the "Iowa Real Property Appraisal Manual" and any other guidelines issued by the department of revenue and finance pursuant to Iowa Code section 421.17(18).

In determining the productivity and net earning capacity of agricultural real estate the assessor shall also use available data from Iowa State University, the Iowa crop and livestock reporting service, the department of revenue and finance, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed.

The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.4(421,428,441) Valuation of residential real estate. Residential real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of residential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue and finance pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.5(421,428,441) Valuation of commercial real estate. Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. The director of revenue and finance shall assess the property of long distance telephone companies as defined in Iowa Code section 476.1D(10) which property is first assessed for taxation on or after January 1, 1996, in the same manner as commercial real estate.

In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue and finance pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 and Iowa Code section 476.1D(10) as amended by 1995 Iowa Acts, House File 518.

701—71.6(421,428,441) Valuation of industrial land and buildings. Industrial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue and finance pursuant to Iowa Code subsection 421.17(18), and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

(6) There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods Co. v. Board of Review for City of Waterloo*, 260 Iowa 1269,151 N.W. 2d 534(1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City*, 229 Iowa 1081, 296 N.W. 203(1941)).

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The notice shall contain the following information:

(1) The valuation and classification of the property as determined by the board of review.

(2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.

(3) The specific reasons for the board's decision with respect to the protest.

(4) That the board of review's decision may be appealed to the district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no earlier than May 31. Written notice of appeal shall be filed with the clerk of district court and notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review.

This rule is intended to implement Iowa Code section 441.31 as amended by 1997 Iowa Acts, House File 4, and sections 441.32 to 441.38.

701—71.21(428,441) Assessors.

71.21(1) *Conflict of interest.* An assessor shall not act as a private appraiser, or as a real estate broker or option agent in the jurisdiction in which serving as assessor (1976 O.A.G. 744).

71.21(2) *Listing of property.*

a. Forms. Assessors may design and use their own forms in lieu of those prescribed by the department of revenue and finance provided that the forms contain all information contained on the prescribed form, are not substantially different from the prescribed form, and are approved by the director of revenue and finance.

b. Assessment rolls. Assessment rolls must be prepared in duplicate for each property in a reassessment year as defined in Iowa Code section 428.4. However, the copy of the roll does not have to be issued to a taxpayer unless there is a change in the assessment or the taxpayer requests the issuance of the duplicate copy.

c. Whenever a date specified in Iowa Code chapter 441 falls on a Saturday, Sunday, or legal holiday, the action required to be completed on or before that date shall be considered to have been timely completed if performed on or before the following day which is not a Saturday, Sunday, or holiday.

d. Buildings erected or improvements made by a person other than the owner of the land on which they are located are to be assessed to the owner of the buildings or improvements. Unpaid taxes are a lien on the buildings or improvements and not a lien on the land on which they are located.

This rule is intended to implement Iowa Code chapter 428 as amended by 1997 Iowa Acts, House File 266, and Iowa Code chapter 441.

701—71.22 to **71.24** Reserved.

701—71.25(441,443) Omitted assessments.

71.25(1) *Property subject to omitted assessment.*

a. Land and buildings. An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

b. Previously exempt property. Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See *Talley v. Brown,* 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made to restore to taxation previously exempt property which ceases to be eligible for an exemption.

71.25(2) *Officials authorized to make an omitted assessment.*

a. Local board of review. A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

b. County auditor and local assessor. The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984).

c. County treasurer. The county treasurer may make an omitted assessment within two years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1999 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 2000. Thus, the county treasurer may make an omitted assessment for the 1999 assessment year at any time on or before June 30, 2002. The county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

d. Director of revenue and finance. The director of revenue and finance may make an omitted assessment of any property assessable by the director at any time within two years from the date the assessment should have been made.

This rule is intended to implement Iowa Code chapter 440 and sections 443.6 through 443.15 as amended by 1999 Iowa Acts, chapter 174.

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CHAPTER 73
PROPERTY TAX CREDIT AND RENT REIMBURSEMENT
[Prior to 12/17/86, Revenue Department[730]]

701—73.1(425) Eligible claimants. The property tax credit and rent reimbursement programs are available to claimants who: (1) were at least 23 years of age or a head of household on December 31 of the base year, (2) were not or will not be claimed as a dependent on another person's federal or state income tax return for the base year in the case of a claimant who is not disabled or at least 65 years of age, (3) did not have household income in excess of the indexed amount determined pursuant to Iowa Code section 425.23(4) during the base year, and (4) are domiciled in Iowa at the time the claim is filed or were at the time of the claimant's death.

In the case of a claim for rent reimbursement, the claimant must have occupied and rented the property during any part of the base year. In the case of a claim for property tax credit, the claimant must have occupied the property during any part of the fiscal year beginning July 1 of the base year.

If a homestead is occupied by two or more eligible claimants, each person may file a claim based upon each person's income and each person's share of the rent paid or property taxes due.

The computed credit or reimbursement shall be determined in accordance with the applicable schedule provided in Iowa Code section 425.23(1) as adjusted by the indexed amount determined in section 425.23(4).

This rule is intended to implement Iowa Code section 425.17(2) as amended by 1999 Iowa Acts, chapter 152, and section 425.23, and is effective for property tax credit and rent reimbursement claims filed on or after January 1, 2000.

701—73.2(425) Separate homesteads—husband and wife property tax credit. If a husband and wife are both qualified homeowners living in and maintaining separate and distinct homesteads and each is actually liable for and will pay the property tax for their respective homesteads, each is eligible to file an individual credit claim for property tax due.

This rule is intended to implement Iowa Code section 425.17(5).

701—73.3(425) Dual claims. A claimant changing homesteads during the base year who will make property tax payments during the fiscal year following the base year and who also made rent payments during the base year is entitled to receive both a property tax credit and rent reimbursement.

Separate claim forms for the property tax credit and the rental reimbursement shall be filed with the county treasurer and the Iowa department of revenue and finance, respectively.

The claims are to be based on the actual property tax due and rent constituting property tax paid with a combined maximum of $1000 upon which the credit and reimbursement can be calculated.

EXAMPLE: $800 property tax due
$400 rent constituting property taxes paid

The claim form for calculating the property tax credit shall reflect the entire $800 amount.

The claim form for calculating the rent reimbursement shall reflect only the remaining $200 of the $1000 maximum allowance.

The Iowa department of revenue and finance will issue refund warrants for rent reimbursement claims. The county treasurer will apply the property tax credits.

This rule is intended to implement Iowa Code section 425.24.

701—73.4(425) Multipurpose building. A multipurpose building is a building which is used for other purposes in addition to being used for living accommodations. If a portion of a homestead property is utilized for business purposes, the property is considered to be a multipurpose building.

The portion of the property tax due or rent constituting property tax paid attributable to the homestead only is to be used in determining the allowable credit or reimbursement. This portion is to be calculated by determining the percentage of the homestead square footage to the square footage of the entire multipurpose structure. This percentage is then to be applied to the property tax due in the current fiscal year or rent constituting property tax paid for the base year.

This rule is intended to implement Iowa Code section 425.17(9).

701—73.5(425) Multidwelling. A multidwelling is a structure which houses more than one homestead. This includes, but is not limited to: apartment buildings, duplexes, condominiums, town houses, nursing homes and rooming houses.

A claimant owning a multidwelling whose homestead is a portion of the multidwelling is entitled to a credit for only that portion of the property tax due attributable to the homestead.

This calculation of the credit or reimbursement is to be performed the same as for a multipurpose building as described in rule 73.4(425).

This rule is intended to implement Iowa Code section 425.17(9).

701—73.6(425) Income. Income includes the amount of in-kind assistance received by the claimant for housing expenses such as federal rent subsidy payments made directly to the landlord on behalf of the claimant and energy assistance benefits received by the claimant from or through a public utility.

In determining income, net operating losses and net capital losses are not to be considered. If the comparison of gains and losses results in a net gain, such amount shall be considered income. If the comparison results in a net loss, the net loss shall be disregarded.

This rule is intended to implement Iowa Code section 425.17(7) as amended by 1993 Iowa Acts, chapter 180.

701—73.7(425) Joint tenancy. Joint tenancy for purposes of a property tax credit is the common ownership of a homestead by two or more persons either as joint tenants with right of survivorship or tenants in common.

This rule is intended to implement Iowa Code section 425.17(9).

701—73.8(425) Amended claim. An amended claim can only be filed by a claimant who has timely filed a claim for property tax credit or rent constituting property tax paid for the appropriate base year.

The amended claim must be filed within three years from October 31 of the year in which the original claim was filed.

The amended claim shall be clearly marked by the claimant with the word "AMENDED."

If upon review by the Iowa department of revenue and finance an additional credit or reimbursement is indicated, the claimant shall be reimbursed the additional amount.

This rule is intended to implement Iowa Code section 425.27.

701—73.9(425) Simultaneous homesteads. A person who owns or rents one property and also owns or rents another property for a simultaneous period of time is limited to claiming a property tax credit or rent reimbursement on the property which is considered the person's domicile.

This rule is intended to implement Iowa Code section 425.17.

701—73.10(425) Confidential information. Income tax information contained on a property tax credit claim form is confidential except that the information may be conveyed by the department of revenue and finance to county treasurers for purposes of eligibility verification for tax credit claims. Information contained on a rent reimbursement claim form is confidential except that the information may be released to an employee of the department of inspections and appeals to assist in the performance of an audit or investigation. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code section 425.28 as amended by 1999 Iowa Acts, chapter 139.

701—73.11(425) Mobile, modular, and manufactured homes. An eligible claimant whose homestead is a mobile, modular, or manufactured home which the claimant owns and which was assessed as real estate resulting in property tax due may file a claim for credit for property tax due on the home and the land on which the home is located, provided the land is owned by the claimant.

An eligible claimant whose homestead is a mobile, modular, or manufactured home subject to the annual tax as provided in Iowa Code chapter 435 may file a claim for credit for property taxes due on the land upon which the home is located provided the land is owned by the claimant. Rent paid for occupancy of a home and the space occupied by the home is subject to reimbursement regardless of how the home is taxed.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.12(425) Totally disabled. A person who is totally disabled must be unable to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment. In addition, the impairment must have lasted or is reasonably expected to last for a continuous period of 12 months or is expected to result in death. This disabled condition must be the determining factor in the person's inability to engage in gainful employment. A claimant is considered totally disabled only if the physical or mental impairment or impairments are of such severity that the claimant is not only unable to do work previously performed but cannot, considering the claimant's age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which the claimant lives, or whether a specific job vacancy exists or whether the claimant would be hired if the claimant applied for work. See 42 U.S.C. §423. Examples of physical conditions which could possibly constitute total disability would include, but are not limited to: loss of major function of one or both legs or arms; progressive diseases which have resulted in the loss of one or both legs or arms or which have caused them to become useless; severe arthritis; diseases of the heart, lungs or blood vessels which have resulted in serious loss of heart or lung reserve; diseases of the digestive system which have resulted in severe malnutrition, weakness and anemia prohibiting gainful employment; damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation or memory; or, paralysis or diseases of the nervous system which prohibit coordination or major functioning of the body so as to prevent gainful employment.

For purposes of this rule, a person shall not be considered unable to engage in substantial gainful employment unless the person has attained the age of 18 on or before December 31 of the base year.

This rule is intended to implement Iowa Code subsection 425.17(11).

701—73.13(425) Nursing homes. A claimant whose homestead is a nursing home is eligible to file a reimbursement claim for rent constituting property tax paid.

This rule is intended to implement Iowa Code section 425.17(3) as amended by 1994 Iowa Acts, chapter 1125.

701—73.14(425) Household. Household includes the claimant and the claimant's spouse if living with the claimant at any time during the base year. "Living with" does not include a temporary visit. Only one claimant per household is entitled to a credit or reimbursement.

This rule is intended to implement Iowa Code section 425.17(5) as amended by 1999 Iowa Acts, chapter 152, and section 425.22.

701—73.15(425) Homestead. A person who owns a homestead but is confined to a care facility shall be considered as occupying the owned homestead provided the person does not lease or otherwise receive profits from others for the use of the homestead. The person shall be eligible for a property tax credit but shall not be eligible for a rent reimbursement.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.16(425) Household income. Household income includes income of the claimant and the claimant's spouse and actual monetary payments made to the claimant by any other person living with the claimant. Household income does not include Social Security benefits received by the claimant's child and given to the claimant.

Monetary payments do not include goods and services provided to the claimant by a person living with the claimant.

This rule is intended to implement Iowa Code section 425.17(6) as amended by 1994 Iowa Acts, chapter 1165, and section 425.17(7).

701—73.17(425) Timely filing of claims. If a timely mailed property tax credit or rent reimbursement claim is not received by the county treasurer or the department of revenue and finance or is received after the June 1 filing deadline, the claim will be considered to have been timely filed if the claimant complies with the provisions of Iowa Code section 622.105. The county treasurer may extend the time for filing a claim for property tax credit through September 30 of the same year. The director may also extend the filing deadline for property tax credit and rent reimbursement claims through December 31 of the following year. Late property tax credit claims will be reimbursed by the director directly to the claimant upon proof of tax payment.

In the case of a claim for property tax credit, the claimant must own and occupy the homestead at the time the claim for credit is filed or if a late claim, own and occupy the homestead on June 1 of the claim year.

This rule is intended to implement Iowa Code section 425.20 as amended by 1996 Iowa Acts, chapter 1167.

701—73.18(425) Separate homestead—husband and wife rent reimbursements. If a husband and wife are both qualified claimants renting separate and distinct homesteads, and rent is paid by each or a member of their respective households, each is eligible to file an individual reimbursement claim for rent constituting property tax paid.

This rule is intended to implement Iowa Code subsection 425.17(7).

701—73.19(425) Gross rent/rent constituting property taxes paid. Gross rent means the total amount of rent paid for use of the homestead by the claimant and rent constituting property taxes paid means 23 percent of the gross rent.

This rule is intended to implement Iowa Code sections 425.17(3) and 425.17(9) as amended by 1994 Iowa Acts, chapter 1125.

701—73.20(425) Leased land. An individual who owns a dwelling located on land owned by another may claim a credit of property taxes due on the dwelling and a reimbursement of rental payments made for the use of the land if the land has been assessed for taxation.

This rule is intended to implement Iowa Code subsection 425.17(5).

701—73.21(425) Property: taxable status. In order to be eligible to file a rent reimbursement claim, the property upon which the claimant resided during the base year must have been in a taxable status during the base year. If the property was taxable for only part of the base year, the rent reimbursement must be prorated accordingly. (OP.ST. BD. Tax Rev. 187). However, this restriction does not apply to property that became tax-exempt on or after July 1, 1986, provided the claimant received a reimbursement of rent constituting property taxes paid on the property when it was in a taxable status and continues to reside in the same property.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.22(425) Special assessments. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

This rule is intended to implement Iowa Code subsection 425.17(10).

701—73.23(425) Suspended, delinquent, or canceled taxes. No property tax credit shall be allowed to any person whose taxes have been canceled pursuant to Iowa Code section 427.8. A property tax credit shall be allowed to an eligible claimant whose taxes have been suspended pursuant to Iowa Code sections 427.8 and 427.9.

A property tax credit shall be allowed to an eligible claimant even though the claimant's taxes for a previous fiscal year are delinquent. The claimant may receive a reimbursement for delinquent taxes paid provided the taxes are paid by December 31 following the fiscal year in which the taxes became delinquent.

This rule is intended to implement Iowa Code section 425.17(8) and section 425.26(8) as amended by 1994 Iowa Acts, chapter 1165.

701—73.24(425) Income: spouse. The income of a spouse does not have to be reported on the claimant's return unless the spouse lived with the claimant at the property upon which the property tax credit or rent reimbursement is claimed. If the spouse lived with the claimant for only a portion of the base year, only that portion of the spouse's income which was received while living with the claimant must be reported as income.

This rule is intended to implement Iowa Code subsection 425.17(3).

701—73.25(425) Common law marriage. A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are husband and wife, (c) continuous cohabitation together as husband and wife (this means consummation of the marriage), and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage.

This rule is intended to implement Iowa Code section 425.17.

701—73.26 Rescinded, effective October 2, 1985.

701—73.27(425) Special assessment credit.

73.27(1) *Property taxes due.* Any person whose special assessment is paid by the department of revenue and finance pursuant to Iowa Code subsection 425.23(3) cannot include the special assessment as property taxes due under Iowa Code subsection 425.17(10) for purposes of determining a property tax credit.

73.27(2) *Special assessments eligible for credit.* As used in Iowa Code section 425.23(3), the term "special assessment" means special assessments made pursuant to Iowa Code sections 384.37 to 384.79.

73.27(3) *Special assessment credit qualifications.* No special assessment credit claim shall be allowed pursuant to Iowa Code section 425.23(3) unless at the time the application for credit is filed the property upon which the levy is made includes a homestead dwelling as defined in Iowa Code section 425.17(4) and the claimant's household income does not exceed the indexed amount determined pursuant to Iowa Code section 425.23(4).

73.27(4) *Special assessment installment due in current fiscal year.* The amount of a special assessment credit claim to be reimbursed by the Iowa department of revenue and finance pursuant to Iowa Code section 425.23 is limited to the amount of the installment payable during the current fiscal year for persons described in 1993 Iowa Acts, chapter 180, section 4, subsection 2, paragraph *"a,"* or one-half of that amount for persons described in 1993 Iowa Acts, chapter 180, section 4, subsection 2, paragraph *"b."*

73.27(5) *Audit by department of revenue and finance.* The director of revenue and finance may audit the books and records of the county treasurer to determine if the amounts certified by the county treasurer to the director of revenue and finance pursuant to Iowa Code section 425.23(3) are true and correct. The director of revenue and finance may also initiate investigations or assist the county treasurer's investigations into eligibility of a claimant for the special assessment credit in accordance with Iowa Code section 425.27. Upon investigation, the director of revenue and finance may order the county treasurer to reimburse the state of Iowa any amounts that were erroneously paid to the county treasurer or issue a reimbursement directly to the claimant if it is determined the claimant did not receive the benefits to which entitled pursuant to Iowa Code section 425.23(3).

This rule is intended to implement Iowa Code section 425.23(3) as amended by 1998 Iowa Acts, House File 2513, and is effective for special assessment credit claims filed on or after January 1, 1999.

701—73.28(425) Credit applied. The county treasurer shall apply the property tax credit equally to the claimant's first and second half tax liabilities.

This rule is intended to implement Iowa Code sections 425.16 to 425.39.

701—73.29(425) Deceased claimant. A claim for property tax credit or rent reimbursement may be filed on behalf of a deceased person by the person's spouse, attorney, guardian or the executor or administrator of the person's estate.

This rule is intended to implement Iowa Code section 425.17(2) as amended by 1999 Iowa Acts, chapter 152, and section 425.18.

701—73.30(425) Audit of claim.

73.30(1) *Authority.* The director of revenue and finance may audit the records of the county treasurer to determine the accuracy of claims filed for property tax credits. The director may also investigate the eligibility of a claimant for a property tax credit or rent reimbursement.

73.30(2) *Recomputed rent reimbursement claim.* If it is determined a computed rent reimbursement is in error, the director shall collect any overpayment from the claimant or reimburse the claimant for any underpayment. If a claimant fails to reimburse the department for an overpayment, the amount of overpayment shall be deducted from any future rent reimbursement to which the claimant is entitled.

73.30(3) *Recomputed property tax credit claim.* If it is determined a computed property tax credit has been overpaid, the director shall notify the claimant and county treasurer of the overpayment. The county treasurer shall collect the overpayment from the claimant as if it were an unpaid property tax and reimburse the director for the amount of overpayment. However, if the property upon which the credit was allowed is no longer owned by the claimant, the director shall collect the amount of overpayment directly from the claimant. If it is determined a computed property tax credit has been underpaid, the director shall reimburse the claimant directly for the amount of underpayment.

This rule is intended to implement Iowa Code section 425.27.

701—73.31(425) Extension of time for filing a claim. The granting of an extension of time for filing a claim for reimbursement or credit does not extend the time within which or the dates on or by which eligibility requirements must be satisfied.

701—73.32(425) Annual adjustment factor. Beginning with claims filed in 2000, the income levels used for determining the allowable percent of property tax credit or rent reimbursement or the amount of the mobile home reduced tax rate shall be adjusted each year to reflect the inflation factor as computed pursuant to Iowa Code section 422.4.

This rule is intended to implement Iowa Code sections 425.23(4) and 435.22(2) as amended by 1998 Iowa Acts, House File 2513.

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CHAPTER 74
MOBILE, MODULAR, AND MANUFACTURED HOME TAX
[Prior to 12/17/86, Revenue Department[730]]

701—74.1(435) Definitions.

1. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A "mobile home" is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976.

2. *"Manufactured home"* is a factory-built structure built under authority of 42 U.S.C. § 5403, is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

3. *"Modular home"* means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the state of Iowa building code for modular factory-built structures, and must display the seal issued by the state building code commissioner.

4. *"Mobile home park"* means any land upon which three or more mobile or manufactured homes, or a combination of such homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available. It does not include homes where the owner of the land is providing temporary housing for the owner's employees or students.

Wherever used in this chapter, "home" means a mobile home, a manufactured home, or a modular home unless specific reference is made to a particular type of home.

This rule is intended to implement Iowa Code section 435.1 as amended by 1998 Iowa Acts, Senate File 2400.

701—74.2(435) Movement of home to another county. If one or both installments of the tax for the current fiscal year have been paid and subsequently the home is moved to another county, the tax paid shall remain in the county in which originally collected. No reimbursement shall be made either to the owner of the home or to the county to which the home is moved. If only the first installment has been paid and the home is moved prior to January 1, the second installment shall be made to the county to which the home is moved.

This rule is intended to implement Iowa Code section 435.22.

701—74.3(435) Sale of home. If the owner of a home has paid one or both installments of the tax for the current fiscal year and subsequently sells the home, no reimbursement shall be made to the seller for any portion of the tax paid. If only the first installment has been paid and the home is sold prior to January 1, the purchaser is responsible for the second installment.

This rule is intended to implement Iowa Code section 435.22.

701—74.4(435) Reduced tax rate.

74.4(1) *Claimant.* The reduced rate of tax for Iowa residents who were at least 23 years of age on December 31 of the base year shall be computed as provided in Iowa Code subsection 435.22(2). The claimant's name must appear on the title to the home.

74.4(2) *Income.* In determining eligibility for the reduced tax rate, the claimant's income and that of the claimant's spouse shall be the income received during the base year, or the income tax accounting period ending during the base year, and must be less than the indexed amount determined pursuant to Iowa Code section 435.22(2). The base year is the calendar year immediately preceding the year in which the claim is filed.

74.4(3) *Claims.* Claims for the reduced tax rate must be filed with the county treasurer on or before June 1 immediately preceding the fiscal year during which the taxes are due. The county treasurer may extend the time for filing a claim for reduced tax rate through September 30 of the same year. The director of revenue and finance may also extend the time for filing a claim through December 31 if good cause exists. Late reduced tax rate claims will be reimbursed by the director directly to the claimant upon proof of tax payment. The claimant must own and occupy the home at the time the claim for credit is filed or, if deceased, at the time of the claimant's death or, if a late claim, on June 1 of the claim year. The claim forms shall be provided by the department of revenue and finance.

74.4(4) *Reports to department of revenue and finance.* On or before November 15 of each year, the county treasurer of each county shall report to the department of revenue and finance the amount of taxes not to be collected for the current fiscal year as a result of the reduced tax rate provided in Iowa Code subsection 435.22(2). All reports shall be made on forms provided by the department of revenue and finance.

74.4(5) *Payment of claims.* On December 15 of each year the department of revenue and finance shall remit to each county treasurer an amount equal to the taxes not collected during the current fiscal year as a result of the granting of the reduced tax rate.

This rule is intended to implement Iowa Code section 435.22 as amended by 1999 Iowa Acts, chapter 152, and is effective for reduced tax rate claims filed on or after January 1, 2000.

701—74.5(435) Taxation—real estate. Homes located outside of mobile home parks must be placed on a permanent foundation and are subject to assessment and taxation as real estate. The homes are eligible for all property tax credits and exemptions applicable to other real estate. The assessor shall collect the title to a home only when a security interest is noted on the title and the secured party is given a mortgage on the land on which the home is located. Homes located outside mobile home parks as of July 1, 1994, are not subject to the permanent foundation requirements unless the home is relocated. The homes are subject to assessment as real estate beginning January 1, 1995.

This rule is intended to implement Iowa Code section 435.26 as amended by 1994 Iowa Acts, chapter 1110.

701—74.6(435) Taxation—square footage. Homes located within mobile home parks are subject to a square footage tax at the rates specified in Iowa Code section 435.22. It shall be the responsibility of the owner to provide the county treasurer with appropriate documentation to verify eligibility for the reduced tax due to the home's age. Modular homes placed in mobile home parks that were not in existence on or before January 1, 1998, shall be subject to assessment and taxation as real estate.

This rule is intended to implement Iowa Code section 435.22 as amended by 1998 Iowa Acts, Senate File 2400.

701—74.7(435) Audit by department of revenue and finance. The director of revenue and finance may audit the books and records of the county treasurer to determine if the amounts certified by the county treasurer to the director of revenue and finance as tax not collected due to the reduced tax rate are true and correct. Upon investigation, the director of revenue and finance may order the county treasurer to reimburse the state of Iowa any amounts that were erroneously paid to the county treasurer. The director of revenue and finance may also require that additional payments be made to the county treasurer by the owner of a home if investigation reveals that the county treasurer did not receive the full amounts due in accordance with Iowa Code section 435.22.

The director of revenue and finance may initiate investigations or assist the county treasurer's investigations into eligibility of a claimant for the reduced tax rate in accordance with Iowa Code section 435.22. Upon investigation, the director of revenue and finance may order a claimant to reimburse the state of Iowa any amount erroneously claimed as a reduced tax rate which was reimbursed by the department of revenue and finance to the county treasurer in accordance with Iowa Code section 435.22. The director of revenue and finance may also issue a reimbursement directly to the claimant if it is determined the claimant did not receive the full benefits to which entitled pursuant to Iowa Code section 435.22.

This rule is intended to implement Iowa Code section 435.22.

701—74.8(435) Collection of tax.

74.8(1) *Partial payment of tax.* Partial payments of taxes may be allowed at the discretion of the county treasurer. If the treasurer elects to permit partial payments, the authorization shall apply to all taxpayers within the county. The treasurer may establish a minimum payment amount that must be made for partial payments to be accepted. If the partial payments made are insufficient to fully satisfy an installment due by the delinquency date, the unpaid portion of the installment shall draw interest as provided in Iowa Code section 445.39. Current year taxes may be paid at any time regardless of any prior year delinquent taxes. The minimum payment for delinquent taxes must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment due.

74.8(2) *When delinquent.* The date on which unpaid taxes become delinquent is to be determined as follows:

a. If the home is put to use between January 1 and March 31, the prorated tax for the period from the date the home is put to use through June 30 becomes delinquent on April 1.

b. If the home is put to use between April 1 and June 30, the prorated tax for the period from the date the home is put to use through June 30 becomes delinquent on October 1.

c. If the home is put to use between July 1 and September 30, the prorated tax for the period from the date the home is put to use through December 31 becomes delinquent on October 1.

d. If the home is put to use between October 1 and December 31, the prorated tax for the period from the date the home is put to use through December 31 becomes delinquent on April 1 of the following calendar year.

e. For purposes of this rule, a home is "put to use" upon its acquisition from a dealer or its being brought into Iowa for immediate use by a person who is not engaged in the business of manufacturing, sale, or transportation of homes.

74.8(3) *Collection of delinquent tax.* Delinquent taxes shall be collected by offering the home at tax sale in accordance with Iowa Code chapter 446.

This rule is intended to implement Iowa Code sections 435.24 and 435.25 and Iowa Code section 445.37 as amended by 1995 Iowa Acts, Senate File 458.

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CHAPTER 75
PROPERTY TAX ADMINISTRATION

701—75.1(441) Tax year. The assessment date is January 1 for taxes for the fiscal year which commences 6 months after the assessment date and which become delinquent during the fiscal year commencing 18 months after the assessment date. For example, taxes payable in fiscal year 1991-1992 are for fiscal year 1990-1991 and are based on the January 1, 1990, assessment.

This rule is intended to implement Iowa Code section 441.46.

701—75.2(445) Partial payment of tax. Partial payments of taxes may be allowed at the discretion of the county treasurer. If the treasurer elects to permit partial payments, the authorization shall apply to all taxpayers within the county. The treasurer may establish a minimum payment amount that must be made for partial payments to be accepted. If the partial payments made are insufficient to fully satisfy an installment due by the delinquency date, the unpaid portion of the installment shall draw interest at the rate specified in Iowa Code section 445.39. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax. The minimum payment for delinquent taxes must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment due.

This rule is intended to implement Iowa Code section 445.36A.

701—75.3(445) When delinquent. The first half installment of taxes shall become delinquent if not received by the county treasurer on or before the last business day preceding October 1 and the second half installment shall become delinquent if not received by the county treasurer on or before the last business day preceding April 1. If mailed, the payment envelope must bear a postmark date preceding October 1 or April 1 to avoid delinquency. Delinquent taxes shall draw interest at the rate specified in Iowa Code section 445.39.

This rule is intended to implement Iowa Code section 445.37 as amended by 1997 Iowa Acts, House File 645.

701—75.4(446) Payment of subsequent year taxes by purchaser. Taxes for a subsequent year may not be paid by the purchaser of the property sold at tax sale until 14 days following the date from which an installment becomes delinquent.

This rule is intended to implement Iowa Code section 446.32 as amended by 1993 Iowa Acts, chapter 73.

701—75.5(428,433,434,437,438) Central assessment confidentiality. The release of information contained in any reports filed under Iowa Code chapters 428, 433, 434, 437, and 438, or obtained by the department in the administration of those chapters, is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in those chapters. Any request for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code chapters 428, 433, 434, 437, and 438.

701—75.6(446) Tax sale. The county treasurer shall hold the annual tax sale on the third Monday in June. If, for good cause, the treasurer is unable to hold the tax sale on that date, the treasurer may designate a different date in June for the sale.

This rule is intended to implement Iowa Code section 446.7 as amended by 1999 Iowa Acts, chapter 4, section 1.

701—75.7(445) Refund of tax. The board of supervisors shall order the county treasurer to refund taxes found to have been erroneously or illegally collected. A claim for refund must be presented to the board within two years of the date the tax was due or if appealed within two years of the final decision.

This rule is intended to implement Iowa Code section 445.60 as amended by 1999 Iowa Acts, chapter 174, section 6.

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CHAPTER 77
DETERMINATION OF VALUE OF UTILITY COMPANIES
[Prior to 12/17/86, Revenue Department[730]]

701—77.1(428,433,437,438) Definition of terms.

77.1(1) The term *"utility company"* shall mean and include all persons engaged in the operating of gasworks, waterworks, telephones, including telecommunication companies and cities that own or operate a municipal utility providing local exchange services pursuant to Iowa Code chapter 476, pipelines, electric transmission lines, and electric light or power plants, as set forth in Iowa Code chapters 428, 433, 437, and 438.

77.1(2) The term *"unit value"* or *"unit market value"* shall mean the market value arrived at by using the appraisal method of valuing an entire operating property, considered as a whole and capable of performing the function for which it was created, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas.

77.1(3) The term *"operating property"* shall mean all property owned by or leased to a utility company, not otherwise taxed separately, made nontaxable by law, or property leased to companies valued and assessed pursuant to Iowa Code chapter 428, which is necessary to and without which the utility could not perform the activities for which the utility is formed, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas. With regard to property whose identity as "operating" or "nonoperating" property is not clearly ascertainable, the property shall be considered operating property if the utility could not reasonably be expected to perform the referenced activities in the absence of such property.

77.1(4) The term *"nonoperating property"* shall mean all property owned by a utility not defined by subrule 77.1(3) as "operating property."

77.1(5) The term *"comparable sales"* shall mean actual sales transactions, between willing buyers and willing sellers, neither being under any compulsion to buy or sell, of property which is similar in purpose, function and design to the property to which the comparison is being made. Where the determination of value is being made, the sale of a portion of a unit which is nominally similar in purpose and function to the unit being valued shall not be considered a comparable sale, absent proof by evidence other than the terms of the sale itself, that the sales price was based on some unit of measurement which is common both to the property sold and the property being valued and which is not affected by the fact that less than the entire unit is being sold, such as (by way of illustration and not limitation) the price per square foot of the property.

77.1(6) The term *"income approach to unit value"* shall mean the estimate of unit market value obtained by dividing an appropriate income stream by an appropriate discount rate.

77.1(7) The term *"stock and debt approach to unit value"* shall mean the estimate of unit market value determined by combining the market value of the stock, debt, current liabilities, other liabilities, including leases, except those leases of companies valued and assessed pursuant to Iowa Code chapter 428, and deferred credits associated with the operating property of a utility company.

77.1(8) The term *"cost approach to unit value"* shall mean the estimate of value determined by combining the original cost less a depreciation allowance for the operating property of a utility company.

77.1(9) The term *"respondent"* shall include the utility company whose property is to be valued.

77.1(10) The term *"leased assets"* shall mean both operational and capital leases.

77.1(11) The term *"original cost"* shall mean the actual cost of the property to its present owner, not the first cost at the time it was originally constructed and placed in service.

77.1(12) *"Long distance telephone company"* means an entity that provides telephone service and facilities between local exchanges and has been classified as such by the utilities board of the department of commerce, but does not include a cellular service provider or a local exchange utility holding a certificate issued under Iowa Code section 476.29(12). The rules contained in 701—Chapter 71, rather than this chapter, apply to the assessment of long distance telephone company property first assessed for taxation on or after January 1, 1996.

This rule is intended to implement Iowa Code chapters 428, 437, and 438; section 433.12 as amended by 1999 Iowa Acts, chapter 63; and Iowa Code section 476.1D(10).

701—77.2(428,433,437,438) Filing of annual reports.

77.2(1) Annual reports required to be filed by the reporting utility company shall be on forms prescribed and supplied by the department. It shall be the responsibility of the utility company to obtain the forms supplied by the department.

77.2(2) Additional schedules or attachments submitted by respondent shall be identified as to subject matter, shall be typed on paper of similar size to that used in the annual report, and all data contained in the schedules or attachments shall be adequately explained and documented as to source. When such additional schedules or attachments are submitted, they shall be considered part of the annual report.

77.2(3) The director may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

This rule is intended to implement Iowa Code sections 428.23, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

701—77.3(428,433,437,438) Comparable sales. Sale prices of comparable property in normal transactions shall be taken into consideration in arriving at its market value. In the event comparable sales are not available, the market value of operating property shall be determined by utilizing the three recognized unit approaches to value (i.e., stock and debt approach, income capitalization approach and the cost approach).

This rule is intended to implement Iowa Code sections 428.28, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

701—77.4(428,433,437,438) Stock and debt approach to unit value.

77.4(1) The stock and debt approach to unit value estimates the market value of the operating property by combining the market values of the common stock, preferred stock, debt, current liabilities, other liabilities, leases, and deferred credits associated with the operating property of the utility company, on the basis that the market value of these items may be used as a surrogate for the market value of the operating property itself.

77.4(2) The market value of the long-term debt associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the long-term debt and the result obtained shall be the market value of the long-term debt associated with the operating property. The market value of publicly traded debt shall be determined by utilizing an average of the monthly high and low value of the debt for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the securities are traded. If all or some of the securities are not publicly traded, the value of the securities shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have a similar maturity date and coupon rate, as well as risk indicators similar to the untraded security. In each instance, the utility company shall provide the department a statement of the market value of all securities and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

77.4(3) The market value of the preferred stock associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the preferred stock and the result obtained shall be the market value of the preferred stock associated with the operating property.

77.4(7) The value determined by summing the portions of the enumerated sources of capital associated with the operating property of the utility company provided in subrules 77.4(2) to 77.4(6) shall be the unit value of the operating properties determined by the stock and debt approach to unit value.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.5(428,433,437,438) Income capitalization approach to unit value.

77.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The purpose and intent of the income indicator of value is to match income with sources of capital and, therefore, every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income.

In the event the utility company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

If the utility company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. If any other operating property is clearly not income producing, therefore, not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such non-income-producing properties where the sources can be clearly identified, otherwise the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital.

77.5(2) If the utility company is one which can earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market-determined capital structure, with the exception of deferred credits whose market value shall be equal to its value on the company's books and whose cost shall be zero. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital, otherwise, the cost of the sources of capital shall be presumed to be equal to the overall market-weighted costs of the identified sources of capital. The following is an example of the application of this rule:

	(1) Market Value	(2) Market Rate of Return	(3) % to Total	(4) Component (Col. 2 × Col. 3)
Common Stock	60,000	15%	62.50	9.38
Preferred Stock	5,000	13%	5.21	.68
Debt	25,000	12%	26.04	3.12
Deferred Credits	6,000	—0—	6.25	—0—
	96,000		100.00	13.18

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.6(428,433,437,438) Cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.7(428,433,437,438) Correlation. In making a final determination of value the director may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, for other than pipeline companies, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly. The correlation for pipeline companies will consider the cost indicator to be the most useful, the income indicator the next most useful, and the stock and debt indicator the least useful. In making the final determination of value, the director will weigh the stock and debt indicator of value at 10 percent, the income indicator of value at 40 percent and the cost indicator of value at 50 percent.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.8(428,433,437,438) Allocation of unit value to state.

77.8(1) *Allocation by director.* The director shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors which are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

a. Gross operating property weighted 75 percent, and

b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

77.8(2) *Alternative methods.* In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the director shall consider such other factors as the director deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

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CHAPTER 78
PROPERTY TAX EXEMPTIONS
[Prior to 12/17/86, Revenue Department[730]]

701—78.1(427,441) Responsibility of local assessors.

78.1(1) The assessor shall determine the taxable status of all property. If an application for exemption is required to be filed under Iowa Code subsection 427.1(14), the assessor shall consider the information contained in the application in determining the taxable status of the property. The assessor may also request from any property owner or claimant any additional information necessary to the determination of the taxable status of the property. However, the assessor shall not base the determination of the taxable status of property solely on the statement of objects or purposes of the organization, institution, or society seeking an exemption. The use of the property rather than the objects or purposes of the organization, institution, or society shall be the controlling factor in determining the taxable status of property. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines,* 200 N.W.2d 509; *Northwest Community Hospital v. Board of Review of Des Moines,* 229 N.W.2d 738.)

78.1(2) In determining the taxable status of property, the assessor shall construe the appropriate exemption statute and these rules in a strict manner. If there exists any doubt as to the taxable status of property, the property shall be subject to taxation. The burden shall be upon the organization, society, or institution to show that the exemption should be granted. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines,* 200 N.W.2d 509; *Southside Church of Christ of Des Moines v. Des Moines Board of Review,* 243 N.W.2d 650; *Aerie 1287, Fraternal Order of Eagles v. Holland,* 226 N.W.2d 22.)

78.1(3) If the assessor determines that all or part of a property is subject to taxation, the assessor shall notify the taxpayer by the issuance of an assessment roll as provided in Iowa Code sections 441.26 and 441.27. If the assessor determines that property has been erroneously exempted from taxation, the assessor shall revoke the exemption for the current assessment year but not for prior assessment years.

78.1(4) The assessor's determination of the taxable status of property may be appealed to the local board of review pursuant to Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 427.1 and 441.17(11).

701—78.2(441) Responsibility of local boards of review.

78.2(1) If the board of review determines that property has been erroneously exempted from taxation, the board of review shall revoke the exemption for the current assessment year, but not for prior assessment years, and give notice to the taxpayer as provided in Iowa Code section 441.36.

78.2(2) If a board of review acts in response to a protest arising from an assessor's determination of the taxable status of property, the board of review shall notify the taxpayer of its disposition of the protest in accordance with the provisions of Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 441.35(3), 441.36 and 441.37.

701—78.3(427) Responsibility of director of revenue and finance. The director may revoke an exemption on property found to have been erroneously granted by the local taxing officials. The director may revoke an exemption for the current assessment year, but not for prior assessment years. Any taxpayer or taxing district may request that the director revoke an exemption or the director may on the director's own determination revoke an exemption. The director shall hold a hearing on the appropriateness of the exemption prior to issuing an order for revocation. The director's order to revoke an exemption may be appealed in accordance with chapter 17A of the Iowa administrative procedures Act or in the district court of the county in which the property is located.

This rule is intended to implement Iowa Code section 427.1(16) as amended by 1997 Iowa Acts, House File 266.

701—78.4(427) Application for exemption.

78.4(1) Each society or organization seeking an exemption under Iowa Code section 427.1(5), 427.1(8), or 427.1(21) shall file with the appropriate assessor a statement containing the following information:

a. The legal description of the property for which an exemption is requested.

b. The use of all portions of the property, including the percentage of space not used for the appropriate objects of the society or organization and the percentage of time such space is so utilized.

c. A financial statement showing the income derived and the expenses incurred in the operation of the property.

d. The name of the organization seeking the exemption.

e. If the exemption is sought under Iowa Code subsection 427.1(8), the appropriate objects of the society or organization.

f. The book and page number on which is recorded the contract of purchase or the deed to the property and any lease by which the property is held.

g. An oath that no persistent violations of the laws of the state of Iowa will be permitted or have been permitted on such property.

h. The signature of the president or other responsible official of the society or organization showing that information contained in the claim has been verified under oath as correct.

78.4(2) The statement of objects and uses required by Iowa Code subsection 427.1(14) shall be filed only on forms prescribed by the director of revenue and finance and made available by assessors.

78.4(3) Applications for exemptions required under Iowa Code subsection 427.1(14) must be filed with the assessor not later than April 15 of the year for which the exemption is requested.

78.4(4) If a properly completed application is not filed by April 15 of the assessment year for which the exemption would apply, no exemption shall be allowed against the property. (1964 O.A.G. 437.)

This rule is intended to implement Iowa Code subsection 427.1(14) as amended by 1999 Iowa Acts, chapter 151, section 41.

701—78.5(427) Partial exemptions. In the event a portion of property is determined to be subject to taxation, the taxable value of such property shall be an amount which bears the same relationship to the total value of the entire property as the area of the portion subject to taxation bears to the area of the entire property. If a portion of a structure is subject to taxation, a proportionate amount of the value assigned to the land upon which the structure is located shall also be subject to taxation.

This rule is intended to implement Iowa Code section 427.1.

701—78.6(427,441) Taxable status of property.

78.6(1) The status of property on July 1 of the fiscal year which commences during the assessment year determines its eligibility for exemption in situations where no claim is required to be filed to procure a tax exemption. If the property is in a taxable status on July 1, no exemption is allowable for that fiscal year. If the property is in an exempt status on July 1, no taxes are to be levied against the property during that fiscal year.

Exceptions to this rule are as follows:

a. Land acquired by the state of Iowa or a political subdivision thereof after July 1 in connection with the establishment, improvement or maintenance of a public road shall be taxable for that portion of the fiscal year in which the property was privately owned.

b. All current and delinquent tax liabilities are to be canceled and no future taxes levied against property acquired by the United States or its instrumentalities, regardless of the date of acquisition, unless the United States Congress has authorized the taxation of specific federally owned property. (1980 O.A.G. 80-1-19.) The following exceptions apply:

(1) Real and personal property owned by the Federal Housing Authority (FHA) and real property owned by the Federal Land Bank Association is subject to taxation and any tax liabilities existing at the time of the acquisition are not to be canceled. However, the personal property of the Federal Land Bank Association is exempt from taxation. (1982 O.A.G. 82-1-16; 12 USCS §2055.)

(2) Existing tax liabilities against property acquired by the Small Business Administration are not to be canceled if the acquisition takes place after the date of levy. However, no taxes are to be levied if the acquisition takes place prior to the levy date or for subsequent fiscal years in which the Small Business Administration owns the property on July 1. (15 USCS §646.)

78.6(2) The status of property during the fiscal year for which an exemption was claimed determines its eligibility for exemption in situations where a claim is required to be filed to procure a tax exemption. If the property is used for an appropriate purpose for which an exemption is allowable for all of the fiscal year for which the exemption is claimed, no taxes are to be levied against the property during that fiscal year. If the property for which an exemption has been received is used for an appropriate purpose for which an exemption is allowable for only a portion of the fiscal year for which the exemption is claimed, the taxes shall be prorated in accordance with the period of time the property was in a taxable status during the fiscal year.

This rule is intended to implement Iowa Code sections 427.1(1) and 427.2.

701—78.7 Personal property. Rescinded IAB 10/14/92, effective 11/18/92.

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CHAPTER 79
REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE
[Prior to 12/17/86, Revenue Department[730]]

701—79.1(428A) Real estate transfer tax: Responsibility of county recorders.

79.1(1) *Materials and equipment.* County recorders shall use only materials, forms, devices and equipment provided by the department of revenue and finance for the collection of real estate transfer tax and the recording and reporting of such tax collections.

79.1(2) *Monthly reports.* County recorders shall submit a report to the department of revenue and finance on or before the tenth day of each month enumerating real estate transfer tax collection information for the preceding month. This report shall be submitted on forms prescribed by the department of revenue and finance and shall contain such information as is deemed necessary by the department.

79.1(3) *Equipment use, repair and maintenance.*

a. Effective for tax collections commencing July 1, 1983, the department of revenue and finance shall provide each county recorder with a device to be used to evidence real estate transfer tax payment. Such devices shall imprint on the document or instrument presented for recording or presented for tax payment, a standard information format on which the recorder shall enter the actual tax payment, date of payment, and initials of the recorder or authorized employee of the recorder. The department of revenue and finance shall be responsible for repair or replacement of these devices.

b. It shall be the responsibility of each county recorder to ensure that proper security measures are taken to safeguard the use and storage of the devices utilized to evidence real estate transfer tax payment provided in subrule 79.1(3), paragraph *"a."*

c. County recorders shall accept for recording any documents or instruments for which the correct amount of real estate transfer tax had been paid prior to July 1, 1983, as evidenced by real estate transfer tax stamps issued by equipment formerly provided to county recorders by the department of revenue and finance.

d. Upon approval by the department of revenue and finance, county recorders may elect to continue to use equipment issued by the department prior to July 1, 1983, which issued stamps to evidence tax payment. If approved for use, stamps evidencing tax payment shall be used in lieu of tax payment evidence devices provided in subrule 79.1(3), paragraph *"a,"* and shall be used only by affixing such stamps to documents or instruments presented for recording or tax payment. Each stamp shall be initialed by the recorder or authorized employee of the recorder.

e. County recorders who have been authorized by the department to continue using real estate transfer tax equipment issued by the department of revenue and finance prior to July 1, 1983, as provided in subrule 79.1(3), paragraph *"d,"* shall be responsible for all supplies, maintenance and repair of the equipment. However, to ensure uniformity of tax payment evidence, county recorders shall obtain approval from the department of revenue and finance prior to using any product producing the actual real estate transfer tax stamp.

f. This rule shall not be construed to prevent payment of the real estate transfer tax for conveyances in which the documents or instruments are not actually recorded provided that evidence of tax payment as required by subrule 79.1(3), paragraphs *"a"* and *"d,"* is placed on such documents or instruments.

79.1(4) *Recording refused.* The county recorder shall refuse to record any deed, instrument, or writing regardless of any statement by the grantor, grantee, or their agents that the transaction is exempt pursuant to Iowa Code section 428A.2, if, in the recorder's judgment, additional facts are necessary to clarify the taxable status of the transfer or determine the full consideration paid for the property. The county recorder may request from the grantor, grantee, or their agents, any information necessary to determine the taxable status of the transfer or the full amount of consideration involved in the transaction. County recorders under no circumstance shall record any deed or instrument of conveyance for which the proper amount of real estate transfer tax has not been collected. This applies to the collection of tax in excess of the amount due for the actual amount of consideration as well as situations in which an insufficient amount of tax has been collected.

79.1(5) *Refunds.* County recorders shall not refund any overpayment of a real estate transfer tax. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of the overpayment amount paid to the treasurer of state. A refund of the remaining portion of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

79.1(6) *Multiple parcels.* If the real estate conveyance contains multiple parcels, the tax is to be paid to each county in which the property is located based on the consideration paid for each property.

This rule is intended to implement Iowa Code chapter 428A as amended by 1999 Iowa Acts, chapter 175.

701—79.2(428A) Taxable status of real estate transfers.

79.2(1) *Federal rules and regulations.* In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26 USCA 4361) that imposed a real estate transfer tax, the department of revenue and finance and county recorders shall follow the federal rules and regulations in administering the provisions of Iowa Code chapter 428A. (1968 O.A.G. 643)

79.2(2) *Transfer of realty to a corporation or partnership.* Capital stock, partnership shares and debt securities received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21. (1976 O.A.G. 776)

Real estate transfer tax is not due when real property is conveyed to a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 in an incorporation or organization action where the only consideration is the issuance of capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. Actual consideration other than these shares or debt securities is subject to real estate transfer tax.

79.2(3) *Trades of real estate.* Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21.

79.2(4) *Conveyance to the United States government or the state of Iowa.* Any conveyance of real estate to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivision thereof not exempt from the real estate transfer tax pursuant to Iowa Code section 428A.2, is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law (7 USCS §1984).

79.3(4) *Completion of forms.* County recorders and city and county assessors shall complete declaration of value forms in accordance with instructions issued by the department. The assessed values entered on the forms are to be the final values as of January 1 of the year in which the transfer occurred.

This rule is intended to implement Iowa Code section 428A.1.

701—79.4(428A) Certain transfers of agricultural realty.

79.4(1) In determining whether agricultural realty is purchased by a corporation, limited partnership, trust, alien, or nonresident alien for purposes of providing information required for such transfers by Iowa Code section 428A.1, the definitions in this rule shall apply.

79.4(2) Corporation defined. "Corporation" means a domestic or foreign corporation and includes a nonprofit corporation and cooperatives.

79.4(3) Limited partnership defined. "Limited partnership" means a partnership as defined in Iowa Code section 545.1 and which owns or leases agricultural land or is engaged in farming.

79.4(4) Trust defined. "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as a trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Trust does not include a person acting in a fiduciary capacity as an executor, administrator, personal representative, guardian, conservator or receiver.

79.4(5) Alien defined. "Alien" means a person born out of the United States and unnaturalized under the Constitution and laws of the United States. (*Breuer v. Beery,* 189 N.W. 714, 194 Iowa 243, 244 (1922).)

79.4(6) Nonresident alien defined. "Nonresident alien" means an alien as defined in subrule 79.4(5) who is not a resident of the state of Iowa.

This rule is intended to implement Iowa Code section 428A.1.

701—79.5(428A) Form completion and filing requirements.

79.5(1) *Real estate transfer—declaration of value form.* A real estate transfer—declaration of value form shall be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property, except those specifically exempted by law, if the document presented for recording clearly states on its face that it is a document exempt from the reporting requirements as enumerated in Iowa Code section 428A.2, subsections 2 to 13 and 16 to 21, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer—declaration of value form is not required for any transaction that does not grant, assign, transfer or convey real property.

79.5(2) *Real estate transfer—declaration of value: Real estate transfer tax.* Requirements for completing real estate transfer-declaration of value forms or exceptions from filing the forms shall not be construed to alter the liability for the real estate transfer tax or the amount of such tax as provided in Iowa Code chapter 428A.

79.5(3) *Agent defined.* As used in Iowa Code section 428A.1, an agent is defined as any person designated or approved by the buyer or seller to act on behalf of the buyer or seller in the real estate transfer transaction.

79.5(4) *Government agency filing requirements.* The real estate transfer-declaration of value form does not have to be completed for any real estate transfer document in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantor, assignor, transferor or conveyor or for any transfer in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantee or assignee where there is no consideration. However, any transfer in which any unit of government is the grantee or assignee where there is consideration is subject to the real estate transfer-declaration of value filing requirements (1980 O.A.G. 92) and any transfer to which the United States or any agency or instrumentality thereof is a party to the transfer is subject to the real estate transfer-declaration of value filing requirements. An exception to this subrule is conveyances for public purposes occurring through the exercise of the power of eminent domain.

79.5(5) *Recording refused.* The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if the form is not completed accurately and completely by the buyer or seller or the agent of either. The declaration of value shall include the social security number or federal identification number of the buyer and seller and all other information required by the director of revenue and finance, *(Iowa Association of Realtors et al v. Iowa Department of Revenue,* CE 18-10479, Polk County District Court, February 4, 1983.) However, if having made good faith effort, the person or person's agent completing the declaration of value is unable to obtain the social security or federal identification number of the other party to the transaction due to factors beyond the control of the person or person's agent, a signed affidavit stating that the effort was made and the reasons why the number could not be obtained shall be submitted with the incomplete declaration of value. The declaration of value with attached affidavit shall be considered sufficient compliance with Iowa Code section 428A.1 and the affidavit shall be considered a part of the declaration of value subject to the provisions of Iowa Code section 428A.15.

79.5(6) *Multiple parcels.* Separate declarations of value are to be submitted to each county recorder if the real estate conveyed consists of parcels located in more than one county. The consideration paid for each property must be separately stated on the declaration of value or the recorder shall refuse to record the instrument of conveyance.

This rule is intended to implement Iowa Code sections 428A.1, 428A.2, and 428A.4 as amended by 1999 Iowa Acts, chapter 175.

701—79.6(428A) Public access to declarations of value. Declarations of value are public records and shall be made available for public inspection in accordance with Iowa Code chapter 68A.

This rule is intended to implement Iowa Code chapter 428A.

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*Effective date of subrule 79.1(4) was delayed by the Administrative Rules Review Committee 70 days and delay was lifted on November 14, 1979.

c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission,* 235 Iowa 222, 16 N.W.2d 215)

f. If the homestead property contains two dwelling houses and one of the dwelling houses and a portion of the land is sold after a valid application for homestead tax credit has been filed, the assessor shall prorate the assessment so as to allow the seller a homestead tax credit on that portion of the property which is retained and also allow the purchaser a homestead tax credit on that portion of the property which is purchased, provided the purchaser files a valid application for homestead tax credit by July 1 of the claim year.

g. A homestead tax credit shall be allowed against the assessed value of the land on which a dwelling house did not exist as of January 1 of the year in which the credit is claimed provided a dwelling house is owned and occupied by the claimant on July 1 of that year.

This rule is intended to implement Iowa Code chapter 425 as amended by 1997 Iowa Acts, House File 726.

701—80.2(426A) Military service tax exemption.

80.2(1) *Application for exemption.*

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 427.6 as amended by 1999 Iowa Acts, chapter 151, section 88. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the military service tax exemption may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for a military service tax exemption. If it is the opinion of the assessor that a military service tax exemption should not be allowed, the assessor shall accept the application for exemption and recommend disallowance.

e. If the owner of the property is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for military service tax exemption may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

80.2(2) *Eligibility for exemption.*

a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)

b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)

c. Former members of the United States armed forces must have served on active duty during one of the war or conflict time periods enumerated in 1999 Iowa Acts, chapter 180, section 2. There is no minimum number of days a former member of the armed forces of the United States must have served on active duty. Former members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years after January 28, 1973. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

d. A military service tax exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission,* 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle,* State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)

e. As used in Iowa Code subsection 427.4(3) as amended by 1999 Iowa Acts, chapter 151, the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 427.4 as amended by 1999 Iowa Acts, chapter 151. (1942 O.A.G. 140)

h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)

i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is paid until expiration of the life estate. (1946 O.A.G. 155)

j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)

l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)

m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))

n. No military service tax exemption shall be allowed on property that is owned by a corporation, except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1), partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441)

o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 194) If property is solely owned by one spouse, the owner spouse may claim both exemptions on such property providing the nonowner spouse does not claim his or her exemption on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unremarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

80.2(3) *Application of exemption.*

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission,* 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (1938 O.A.G. 288)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

This rule is intended to implement Iowa Code chapter 426A and sections 427.3 to 427.6 as amended by 1999 Iowa Acts, chapters 151 and 180.

701—80.3(427) Pollution control and recycling property tax exemption.

80.3(1) To secure an exemption for pollution control or recycling property, an application must be filed with the assessing authority on or before February 1 of the assessment year for which the exemption is first claimed. It is the responsibility of the taxpayer to secure the necessary certification from the department of natural resources in sufficient time to file the application for exemption with the assessing authority on or before February 1. An exemption for new pollution control or recycling property can be secured by filing an application with the assessing authority by February 1 of the assessment year following the year in which the property is installed or constructed. If no application is timely filed in that year, the property will first qualify for exemption in any subsequent year in which an application is filed with the assessing authority on or before February 1.

80.3(2) In the event February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

80.3(3) In the event February 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

80.3(4) No exemption shall be allowed unless the application is signed by the owner of the property or the owner's qualified designee.

80.3(5) An assessor may not refuse to accept an application for a pollution control exemption if timely filed and if the necessary certification has been obtained from the department of natural resources.

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(32) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

80.3(7) No exemption shall be allowed unless the department of natural resources has certified that the primary use of the property for which the taxpayer is seeking an exemption is to control or abate air or water pollution or to enhance the quality of any air or water in this state or that the primary use of the property is for recycling.

80.3(8) In the event that qualified property is assessed as a unit with other property not having a pollution control or recycling function, the exemption shall be limited to the increase in the assessed valuation of the unit which is attributable to the pollution control or recycling property.

EXAMPLE

Valuation of unit with pollution control or recycling property	$100,000
Valuation of unit without pollution control or recycling property	50,000
Allowable amount of exemption	$ 50,000

80.3(9) The value of property to be exempt from taxation shall be the fair and reasonable market value of such property as of January 1 of each year for which the exemption is claimed, rather than the original cost of such property.

This rule is intended to implement Iowa Code subsection 427.1(32) as amended by 1993 Iowa Acts, chapter 159.

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(21), the term "nonprofit organization" means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(21), the term "low-rent housing" means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(21), the term "elderly" means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(21), the term "persons with physical or mental disabilities" means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(21) extends only to property which is both owned and operated by a nonprofit organization. Property either owned or operated by a private person is not eligible for exemption under Iowa Code subsection 427.1(21).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(21) shall not be considered in determining the property's taxable status.

80.4(7) An organization seeking an exemption under Iowa Code subsection 427.1(21) shall file a statement with the local assessor pursuant to Iowa Code subsection 427.1(14).

80.4(8) The exemption authorized by Iowa Code subsection 427.1(21) extends only until the original low-rent housing development mortgage on the property is paid in full or expires. If an additional mortgage has been secured, the exemption shall extend only until the original mortgage is paid in full or otherwise discharged.

80.4(9) In complying with the requirements of Iowa Code subsection 427.1(14), the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code subsection 427.1(21), the appropriate assessor shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If only a portion of a structure is used to provide low-rent housing units to the elderly and persons with disabilities, the exemption for the property on which the structure is located shall be limited to that portion of the structure so used. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and persons with disabilities bears to the total area of the structure unless a better method for determining the exempt valuation is available. The valuation of the land shall be exempted in the same proportion.

80.4(12) The property tax exemption provided in Iowa Code subsection 427.1(21) shall be based upon occupancy by elderly or persons with disabilities as of July 1 of the assessment year. However, nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code subsections 427.1(14) and 427.1(21).

701—80.5(427) Speculative shell buildings.

80.5(1) *Authority of city council and board of supervisors.* A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction, reconstruction or renovation of speculative shell buildings owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code section 427.1(41) for definitions. The percentage of exemption and period of time over which the exemption may be allowed are established by the council or board in the ordinance authorizing the exemption and the same exemption applies to all qualifying property within that jurisdiction.

80.5(2) *Eligibility for exemption.* The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval.

80.5(3) *Application for exemption.*

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added is first assessed. If approved, no application for exemption is required to be filed in subsequent years for that value added. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. In the event that February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1, or in the event that February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) *Prior approval.* To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects must receive prior approval to qualify for exemption.

80.5(5) *Termination of exemption.* The exemption continues until the property is leased or sold, the time period specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption are to be granted an exemption upon completion of the project.

This rule is intended to implement Iowa Code section 427.1(41) as amended by 1995 Iowa Acts, House File 556.

701—80.6(427B) Industrial property tax exemption.

80.6(1) *Authority of city council and board of supervisors.* A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term "qualifying property" means property classified and assessed as real estate pursuant to 701—subrule 71.1(6), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. "Warehouse" means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. "Distribution center" means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A "research service facility" is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. "Owner-operated cattle facility" means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

80.11(3) *Application of credit.* The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of $5.40 multiplied by the taxable value of the eligible tract.

This rule is intended to implement Iowa Code chapter 425A as amended by 1996 Iowa Acts, House File 560.

701—80.12(427) Methane gas conversion property.

80.12(1) *Application for exemption.* An application for exemption is required to be filed with the appropriate assessing authority by February 1 of each year. The assessed value of the property is to be prorated to reflect the appropriate amount of exemption if the property used to convert the methane gas to energy also uses another fuel. The first year exemption shall be equal to the estimated ratio that the methane gas consumed bears to the total fuel consumed times the assessed value of the property. The exemption for subsequent years shall be based on the actual ratio for the previous year.

80.12(2) *Eligibility for exemption.* To qualify for exemption, the property must be used in connection with a publicly owned sanitary landfill where methane gas is produced as a byproduct of waste decomposition and converted to energy.

This rule is intended to implement Iowa Code section 427.1(43).

701—80.13(427B) Wind energy conversion property. A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor shall value the property in accordance with the schedule provided in Iowa Code Supplement section 427B.26(2). Public utility property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year the property is first assessed for tax to have the property locally assessed.

This rule is intended to implement Iowa Code section 427B.26.

701—80.14(427) Mobile home park storm shelter.

80.14(1) *Application for exemption.* An application for exemption must be filed with the assessing authority by April 15 of the first year the exemption is requested. Applications for exemption are not required in subsequent years if the property remains eligible for exemption.

80.14(2) *Eligibility for exemption.* The structure must be located in a mobile home park as defined in Iowa Code section 435.1.

80.14(3) *Valuation exempted.* If the structure is used exclusively as a storm shelter, it shall be fully exempt from taxation. If not used exclusively as a storm shelter, the exemption shall be limited to 25 percent of the structure's valuation.

This rule is intended to implement Iowa Code section 427.1 as amended by 1999 Iowa Acts, chapter 186, section 3.

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TITLE XV
LOCAL OPTION SALES AND SERVICE TAX

CHAPTER 107
LOCAL OPTION SALES AND SERVICE TAX
[Prior to 12/17/86, Revenue Department [730]]

701—107.1(422B) Definitions. The following words and terms are used in the administration of the local option sales and service tax:

The word "city" means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word "department" is used, it means the "Iowa department of revenue and finance."

The term "unincorporated area of the county" means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

When the meaning of the word "sale" cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

701—107.2(422B) Local option sales and service tax.

107.2(1) *Imposition and jurisdiction.* Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue and finance is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

107.2(2) *Procedures for implementing and repealing the tax.*

a. Implementing the tax. The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from the date of the election in which a majority of those voting on the tax favored its imposition. Within ten days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable election to the director of revenue and finance. For the purposes of this rule, the "abstract of ballot" is defined as abstract of votes as provided in 721—21.800(4).

b. Repeal of the tax. A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).

Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.

This rule is intended to implement Iowa Code sections 422B.1 and 422B.8 as amended by 1999 Iowa Acts, chapter 151, section 31, and Iowa Code section 422B.9 as amended by 1999 Iowa Acts, chapter 156.

701—107.3(422B) Transactions subject to and excluded from local option sales tax.

107.3(1) *Sales of tangible personal property.* The local option sales tax is imposed upon the gross receipts from "sales" of tangible personal property which occur within that portion of a county where a tax is imposed. There is no local option use tax. The taxable event which determines where a sale occurs is "delivery" of the tangible personal property pursuant to contract for sale. If "delivery" occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). Delivery usually occurs when the seller of tangible personal property transfers physical possession of the property to the buyer. In most instances, this transfer takes place at the seller's place of business. However, if the seller transfers the property to the buyer from the seller's own vehicle, then the transfer usually takes place at the buyer's residence or place of business. Finally, if the seller transfers the property to a common carrier or the United States Postal Service for subsequent transport to the buyer, then "delivery" of the property occurs at the time and place where the seller transfers possession of the property to the postal service or the common carrier.

EXAMPLE 1. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Mr. Edwards lives in Polk County and visits Smith's Furniture Storeroom also located in Polk County. Mr. Edwards enters into a contract to purchase furniture. Smith's Furniture Storeroom transports the furniture to a common carrier located in Polk County, who in turn transports it to Mr. Edwards' residence in Polk County. Local option sales tax is imposed since the delivery, and therefore the sale of the tangible personal property, occurred in a taxing jurisdiction. "Delivery" of the furniture occurred when the seller transferred physical possession of the furniture to the common carrier.

EXAMPLE 2. Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith's Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith's Furniture Showroom truck and transported to Mr. Jones' home in Jasper County. "Delivery" of the furniture has occurred in Jasper County at the buyer's residence because that is where Smith's Furniture Showroom (the seller) transferred physical possession of the furniture to Mr. Jones (the buyer) under their contract of sale. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.

EXAMPLE 3. Assume the same factual circumstances as exist in the previous example except that Mr. Jones has driven from Jasper County to Smith's Furniture Showroom in a pickup truck and the furniture which Mr. Jones has contracted to buy is transferred onto his truck at the Smith's Furniture Showroom loading ramp. In this example, "delivery," and thus the sale of the furniture, has taken place in Polk County because that is where the seller transferred physical possession of the furniture to the buyer. Since delivery occurred in Polk County, Polk County local option sales tax would be due upon the gross receipts of the sale.

EXAMPLE 4. Again, assume that the whole of Polk County has enacted a local option sales tax. Again, assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House transports the furniture in its own truck from Newton to Ms. Wilson's home in Des Moines. "Delivery" of the furniture has occurred at Ms. Wilson's residence in Polk County because that is where physical possession of the furniture passed from the seller to the buyer. Since delivery has occurred within Polk County, the sale has occurred there, and the gross receipts of the sale are subject to Polk County's local option sales tax. Jackson's Furniture House is obligated to collect the Polk County local option sales tax and to remit that tax to the department of revenue and finance.

EXAMPLE 5. Assume the same circumstances as in Example 4 except that Ms. Wilson has driven to Jackson's Furniture House in Newton in a pickup truck. The furniture is loaded into her pickup truck from the Jackson's Furniture House loading dock. In this situation delivery has occurred at the seller's loading dock outside Polk County; therefore, no obligation to pay Polk County local option sales tax exists with regard to the gross receipts of the sale.

107.3(2) *Taxation of sales of tangible personal property moved by carrier with and without the use of "F.O.B." or a similar term.*

a. Ordinarily, property "sold" in a local option sales tax jurisdiction is subject to that jurisdiction's tax. Property moved into or out of a local option sales tax jurisdiction by common carrier is "sold" when the seller transfers physical possession of the property to a carrier for shipment to a buyer unless the buyer and seller indicate their intent that the sale will occur elsewhere by use of the term F.O.B. or of a phrase similar to F.O.B. See Iowa Code section 554.2504. Use of an F.O.B. point located at a place other than that where a seller transfers possession of goods to a carrier usually indicates that the buyer and seller have agreed that sale of the goods will occur at the F.O.B. point. See *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). In the following examples, assume that Dubuque County has enacted a local option sales tax and Polk County has not.

EXAMPLE A. Assume that Company A is located in Dubuque County and Customer B is located in Des Moines, Iowa, in Polk County. Customer B orders a load of office furniture from Company A. A and B agree that A will secure a common carrier to transport the office furniture to B. A secures the services of Dubuque Cartage Co., which takes possession of the furniture in Dubuque, Iowa, and transports it to Des Moines. There is no mention of the term F.O.B. or any other indication of a delivery point in the contract of sale between A and B. In this case, sale of the furniture was in Dubuque County because that is where the seller of the furniture surrendered physical possession of it to the carrier. A is obligated to collect from B the local option sales tax imposed by Dubuque County.

EXAMPLE B. Assume the same facts as in Example A except that under the terms of the contract of sale delivery of the office furniture is "F.O.B. Des Moines." In this case, sale of the office furniture has occurred in Des Moines in Polk County and not in Dubuque County because the buyer and seller have, with the use of the term "F.O.B. Des Moines," agreed that the sale will take place there. Because of this, A cannot collect from B local option sales tax imposed by Dubuque County.

EXAMPLE C. Mr. Jones, a resident of Polk County, drives to Smith's Furniture Showroom located in Dubuque County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. Delivery of the furniture is to be "F.O.B. Dubuque." Smith's Furniture Showroom transfers the furniture to a common carrier in Dubuque who transports the furniture to Mr. Jones in Polk County. In this example, sale of the furniture has occurred in Dubuque County because Mr. Jones and Smith's Furniture Showroom have agreed with the use of the term "F.O.B. Dubuque" that the sale will occur there. Because of this, the sale of the furniture is subject to Dubuque County's local option tax.

b. Taxation of property imported into a local option sales tax jurisdiction by a carrier. In the examples below (except for Example E), assume that the whole of Dubuque County, Iowa, has imposed a local option sales tax and that no portion of Polk County has imposed this tax. Further assume, unless otherwise noted, that any seller has the contacts (described in rule 107.8(422B)) with Dubuque County necessary for the county to require the seller to collect its local option sales tax.

EXAMPLE A. Company A is located in Dubuque County. The company orders a load of office furniture from Seller B located in Chicago, Illinois. Under the contract of sale, it is the obligation of B to place the furniture upon a carrier for transport to A. Chicago Transport picks up the furniture at B's loading dock in Chicago. Under these circumstances, sale of the furniture took place when B transferred possession of the furniture to Chicago Transport. Since sale of the furniture occurred in Illinois, the sale of the furniture is not subject to the Dubuque County local option sales tax.

EXAMPLE B. Assume the same facts as in Example A except that the contract for sale of the furniture between A and B calls for delivery of the furniture "F.O.B. Dubuque County." In this case, with the F.O.B. provision, the parties have agreed that sale of the furniture will occur in Dubuque County, Iowa. Thus, B is obligated to collect Dubuque County local option sales tax from A.

EXAMPLE C. Assume, again, that Company A is located in Dubuque County. However, for the purposes of this example, assume that Company B is located in Des Moines in Polk County, Iowa. A orders office furniture from B; shipment to Dubuque, Iowa, is by carrier with no mention of an F.O.B. point or any other indication of a delivery point in the contract between A and B for the sale of the furniture. In this case, sale occurred in Polk County when B placed the furniture in the hands of the carrier. B cannot collect Dubuque County local option sales tax from A.

EXAMPLE D. Assume the facts are as stated in Example C except that the contract between A and B specifies that delivery of the furniture shall be "F.O.B. Dubuque, Iowa." In this case, B is obligated to collect Dubuque County local option sales tax.

EXAMPLE E. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House delivers the furniture to a common carrier for shipment F.O.B. Ms. Wilson's home in Polk County. Since delivery (by virtue of the F.O.B. point) is in Polk County, that jurisdiction's local option tax is imposed on the sale.

c. Taxation of exports from a jurisdiction imposing Iowa local option sales tax. Sales of property which a seller transfers to a carrier for subsequent shipment to a point outside Iowa are not subject to Iowa local option sales tax. This exemption does not apply if the property is subsequently returned to a point anywhere within Iowa (not only within the jurisdiction imposing the local option sales tax), unless the return is solely in the course of interstate commerce or transportation; nor does the exemption apply if the buyer or the buyer's agent other than the carrier takes physical possession of the property within the jurisdiction imposing the local option sales tax. For additional material relating to this exemption see rule 701—17.8(422). For the purposes of this paragraph *"c,"* assume that the whole of Dubuque County imposes a local option sales tax, that Company B sells furniture and is located in Dubuque, Iowa, and that Company A is located outside Dubuque, Iowa.

EXAMPLE A. Company A is located in Chicago, Illinois. The company orders a load of office furniture from Company B. Under the contract for sale, transport of the furniture from Dubuque County to Chicago, Illinois, is by carrier with no F.O.B. point or other indication of a delivery point mentioned. Sale of the furniture occurs in Dubuque County because that is the point at which the seller transferred the furniture to the carrier transporting it. However, that sale is exempt from Dubuque County local option sales tax because Company B transferred the furniture to the carrier for shipment to a point outside Iowa (Chicago, Illinois) and the furniture was subsequently used there.

EXAMPLE B. Assume the same facts as in Example A except that Company A's purchasing agent comes to Dubuque County, purchases the furniture there, takes possession of the furniture in Dubuque County and then arranges for a carrier to transport the furniture from Dubuque County to Chicago, Illinois. In this case, the exemption is not applicable and local option sales tax applies since the buyer (Company A) took possession of the furniture in Dubuque County prior to transferring the furniture to the carrier.

107.3(3) *Place of sale of tangible personal property in various special situations.*

a. The place of sale for sales from vending machines is the location of each individual vending machine. This is the point at which the property is delivered to the consumer.

b. The usual place of sales by an itinerant merchant or peddler or by a salesperson having a route is the customer's home, business establishment, or any other point at which the itinerant peddler meets with a customer and solicits an order or completes a contract for sale. The point where the property which is the subject of the contract of sale is delivered is the point which determines if the local option sales tax is imposed.

EXAMPLE. A Super Sweep vacuum cleaner salesperson has a sales route which takes in most of Polk County, Iowa. Assume that local option sales tax is imposed only within the corporate boundaries of Polk City, Polk County. The salesperson travels to Polk City and enters into contracts for sales of vacuum cleaners to persons A, B, and C. Under the contract for sale with person A, the vacuum cleaner is immediately delivered from the salesperson's truck to person A. Under the contract with person B, the vacuum cleaner will be delivered to that person's home in Polk City at a later date. Under the contract with person C, the vacuum cleaner will be delivered, at a future date, to the home of that person's mother in Des Moines. The gross receipts from the sales to persons A and B would be subject to local option sales tax, but not the gross receipts from the sale to person C.

c. If a person who purchases items for resale or processing withdraws those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of such items are subject to local option sales tax if they are withdrawn within the area of a county in which the local option tax is imposed, regardless of where these items were purchased.

EXAMPLE. Assume that the whole of Polk County has a local option sales tax and Jasper County does not. Ms. Carver's home and furniture store are located in Polk County. In Jasper County she purchases five unfinished rocking chairs and the stain and varnish to finish them for sale. She gives the Jasper County retailer exemption certificates stating that the rockers are purchased for resale and the stain and varnish for use in processing. After returning to Polk County Ms. Carver finishes one rocking chair, and instead of selling it, uses it in her own home. Polk County local option sales tax is due upon the value of the rocker, stain, and varnish withdrawn and used.

107.3(4) *Sales of tangible personal property to contractors, contractor-retailers, and the use of property by the manufacturer as building material.*

a. Owners, contractors, subcontractors, or builders purchasing building materials, supplies, and equipment for the erection of buildings, or the alteration, repair, or improvement of real property are liable for payment of local option sales tax if they take delivery of any material, supplies, or equipment in that portion of a county in which the tax is imposed. Neither the place where the parties contract for sale, nor the place where the materials, supplies or equipment are stored or used is of importance in determining liability for the tax.

As of May 4, 1988, construction contractors may apply for refund of additional local option sales or service tax paid as a result of the imposition of or an increase in the rate of local option tax if the following circumstances exist:

(1) The additional tax was paid upon tangible personal property incorporated into an improvement to real estate in fulfillment of a written construction contract fully executed prior to the date local option sales tax is imposed or its rate increased, and

(2) The contractor has paid the full amount of both state and local option sales tax due to the department or to a retailer, and

(3) The claim is filed on forms provided by the department within six months of the date on which the contractor has paid the tax.

See rule 701—19.2(422,423) for a description of a similar right of refund applicable to state sales tax. The rule contains several examples useful in understanding this right of refund for local option tax paid. This local option tax right of refund is not applicable to equipment transferred under a mixed construction contract. See rule 701—19.9(422,423) for a description of a mixed construction contract and rule 701—19.10(422,423) for a description of "equipment."

b. In the case of contractors, subcontractors, or builders who are also retailers (see rule 701—19.4(422,423) for a description of these persons) local option sales tax may be imposed by a county in which those persons withdraw building materials, supplies, and equipment from inventory for construction purposes or in which the property is delivered to users or consumers who have purchased it.

c. The use within any county of tangible personal property by that property's manufacturer, as building materials, supplies, or equipment in the performance of a construction contract, or for any purpose except for resale or processing is a sale at retail within the county by the manufacturer. The local option sales tax is computed upon the cost for the manufacturer of the fabrication or production of the materials, supplies, or equipment.

701—107.4(422B) Transactions subject to and excluded from local option service tax.

107.4(1) Local option service tax is imposed upon any enumerated service if the service is rendered, furnished, or performed within the area of a county where that tax is imposed. If only the product or result of a service is used within such an area, no local option service tax may be imposed upon the gross receipts of that service. For the purposes of Examples 1, 2, and 3 in this subrule, assume that a local option service tax is imposed within all of Polk County and that no such tax is imposed within Jasper County.

EXAMPLE 1. Boat repair is a taxable, enumerated service. George, a resident of Polk County, takes his boat to Jasper County to be repaired by Bob. Completely within the boundaries of Jasper County, Bob renders the enumerated service of boat repair. Bob then returns the boat to George's home in Polk County. No tax is due upon Bob's charges for the repair. The entire service of boat repair was rendered in Jasper County where there is no local option tax. Even if George and Bob had entered into a contract for the repair of the boat within Polk County, this transaction would not be subject to Polk County's local option service tax. Rendering or furnishing of the service, not entry into a binding contract for performance of the service, is the taxable event for the purpose of local option service tax.

EXAMPLE 2. Mr. Jolson is a contractor-retailer who performs roof repair services and also has a store where he sells roofing materials. The store is located in Jasper County. Roof repair is a taxable service. Mr. Keller's home is located in Polk County. At the store in Jasper County, Mr. Keller and Mr. Jolson contract for repair of Mr. Keller's roof. Mr. Jolson then enters Polk County, repairs the roof on Mr. Keller's home, and returns to Jasper County. The gross receipts from this roof repair would be subject to Polk County local option service tax regardless of where Mr. Keller and Mr. Jolson entered into the contract for repair of the roof.

701—107.7(422B) Special rules regarding utility payments. Delivery of gas and water occurs and the services of electricity, heat, communication, and cable television are rendered, furnished, or performed at the address of the subscriber who is billed for the purchase of this property or services. If a telephone subscriber with an address in a local option service tax county uses a telephone credit card within Iowa but outside that county to make an intrastate telephone call, billings to the subscriber's number within the local option service tax county are subject to local option tax.

EXAMPLE. Assume the whole of Polk County, but no other county in Iowa, has a local option service tax. Mrs. Adams lives in Polk County and has a telephone credit card. While staying at a Fort Dodge hotel, Mrs. Adams uses a telephone credit card to call a number in Cedar Rapids. The charge for this use is billed to Mrs. Adams' number in Polk County. The amount of the charge is subject to Polk County local option service tax.

701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer.

107.8(1) *Nexus requirements for retailers prior to July 1, 1999.* Before any retailer can be required to collect the local option sales or service tax, certain minimal connections must exist between the county imposing the tax and the retailer. These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities for which the obligation to collect local option sales tax can be imposed upon a retailer. *Quill Corporation v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa that does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; Quill, supra. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer. A retailer that sells to a purchaser that possesses a valid direct pay permit issued by the department need not collect local option sales or service tax from the purchaser. Instead, the purchaser must remit tax directly to the department. However, a retailer should obtain a valid exemption certificate from the purchaser for the tax not collected. For further details regarding direct pay permits see rule 701—12.3(422) and for further details regarding exemption certificates see rule 701—15.3(422,423).

EXAMPLE A. Assume that Dubuque County has a local option tax and Polk County does not. Customer A is located in Dubuque County and Company B in Polk County. A buys office furniture from B with delivery of the furniture to be by common carrier "F.O.B. Dubuque, Iowa." Company B has no employees or property in Dubuque County, solicits no business there, and does not engage in any other activities purposefully directed toward Dubuque County. Thus, Company B engages in no purposefully directed activities in Dubuque County which could be used to require B to collect Dubuque County local option sales tax. In this case, even though sale of the furniture took place in Dubuque County (see rule 107.3(422B)) B cannot be required to collect local option sales tax from A.

EXAMPLE B. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture with delivery "F.O.B. Des Moines, Polk County." Jackson's Furniture House transfers the furniture to a common carrier who transports it to Ms. Wilson in Polk County. Unlike the retailer in Example A above, Jackson's Furniture House actively solicits business in Polk County by way of television and newspaper advertising. It also transports some furniture to Polk County customers in its own trucks, and its employees at times enter Polk County to repair furniture previously sold to Polk County residents. Jackson's Furniture House is obviously engaged in purposefully directed activities toward Polk County (some of the activities involving its physical presence there and some not), and by virtue of those activities is obligated to collect Polk County's local option sales tax.

EXAMPLE C. Assume the same facts as in Example B immediately above except assume that Jackson's Furniture House engages continuously and intentionally in soliciting business in Polk County by way of television and newspaper advertising, but has no "physical presence" in Polk County. Jackson's Furniture House has no employees delivering or repairing furniture in Polk County, and no property in that jurisdiction; for example, no trucks or furniture repair tools. Jackson's Furniture House is still engaged in "purposeful activity" in Polk County consisting of a continuous and widespread solicitation of business which is of such a nature that this activity requires it to collect local option tax on the gross receipts from its sales there.

EXAMPLE D. For the purposes of understanding this example, assume that the whole of Polk County has enacted a local option sales tax. Don's Mail Order House has offices and a warehouse in Kansas City, Missouri. Don's Mail Order House continuously solicits business in Polk County by way of advertising there on local television and radio and by sending fliers and catalogs to Polk County residents through the mails. However, Don's Mail Order House has no physical presence anywhere in Polk County. It sends no representatives into Polk County for any purpose, owns no property there, and has no independent contractors performing activities on its behalf in Polk County. So, as a result of its solicitations which are purposefully directed at the Polk County market, the due process clause of the Fourteenth Amendment of the United States Constitution does not prohibit Polk County from requiring Don's Mail Order House to collect its tax. However, since Don's Mail Order House is an out-of-state retailer (in contrast to the retailer described in Example C above) with no physical presence in Polk County, the commerce clause of the United States Constitution prevents the county from requiring that Don's Mail Order House collect its local option tax. Under the facts as stated in this example, it would be unconstitutional to require Don's Mail Order House to collect Polk County's local option sales tax.

EXAMPLE E. Assume the existence of the same facts as in Example D except that Don's Mail Order House has a representative with an office located in Polk County whose job it is to solicit and develop business for Don's Mail Order House in the state of Iowa. Because of that representative's presence in Polk County, the commerce clause of the United States Constitution no longer prohibits Polk County from requiring Don's Mail Order House to collect its local option sales tax.

The "connections" with a county described in this rule are not to be confused with the concepts of "sale" and "delivery" mentioned in rule 107.3(422B) above. A retailer may have connections with a county imposing a local option sales tax significant to the point that the county can, constitutionally, require the retailer to collect its tax if the retailer sells goods or performs taxable services within the county. However, if the retailer neither sells goods nor performs services within that county, the retailer cannot be forced to collect a tax there. Conversely, if a retailer delivers (and thus sells) goods in a county imposing a local option sales tax, but does not have the connections described in this rule with that county, then the retailer cannot be made to collect that county's local option tax even if it is making sales of goods there. It is only very rarely, if ever, that a retailer would be performing services within a county but would not have the connections with that county necessary to require the retailer to collect its tax.

107.8(2) *Nexus requirements for retailers effective on and after July 1, 1999.* Effective on and after July 1, 1999, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and "delivery," as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information see the definition of "retailer" as provided in Iowa Code sections 422.42(13) and 423.1(8). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.

Rules 107.1(422B) to 107.8(422B) are intended to implement Iowa Code section 422.53 and Iowa Code chapter 422B as amended by 1999 Iowa Acts, chapter 156.

701—107.9(422B) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with eight exceptions:

1. The sale of Iowa lottery tickets or shares is not subject to local option sales tax.
2. All gross receipts from the sale of motor fuel and special fuel as defined in Iowa Code chapter 452A.
3. For the period beginning July 1, 1985, and ending June 30, 1987, the sale or rental of farm machinery and equipment and industrial machinery, equipment, and certain computers is not subject to local option sales or service tax.
4. For taxes imposed on and after January 1, 1986, the gross receipts from the rental of rooms, apartments, or other sleeping quarters which are taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax is imposed shall be exempt from local option sales tax.
5. For taxes imposed on or after January 1, 1986, the gross receipts from the sale of natural gas or electricity in a city or county shall be exempt from tax if the gross receipts are subject to a franchise or user fee during the period the franchise or user fee is imposed.
6. On and after February 8, 1996, a local taxing jurisdiction is prohibited from taxing the gross receipts from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government's Telecommunications Act of 1996 defines a "direct-to-home satellite service" as "only programming transmitted or broadcast by satellite directly to the subscribers' premises or in the uplink process to the satellite." A "local taxing jurisdiction" is "any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state."
7. On and after July 1, 1989, the gross receipts from sales of equipment by the Iowa state department of transportation are exempt from local option sales tax.
8. Certain construction-related equipment and other items are exempt.

The general application of this exception is as follows: The gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures are exempt from local option sales tax.

The following definitions apply to this rule:

"Directly used" includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is "directly used," one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be "directly used," it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that the machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also "directly used" in such an activity. Machinery or equipment may be necessary to one of the previously mentioned activities, but so remote from it that it is not directly used in the activity.

In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.
2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment's use is direct rather than remote.
3. The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.

"Equipment" means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Equipment" may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.

"Primarily used" includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is "primarily used" in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

"Real property" includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. *Mid-American Growers, Inc. v. Dept. of Revenue,* 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property "building material" and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

"Replacement parts" means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment's exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Replacement parts" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.

"Self-propelled building equipment" has the same meaning as that in 701—subrule 17.9(5), paragraph *"c,"* where the term is defined as an implement which is capable of movement from one place to another under its own power. "Self-propelled building equipment" includes, but is not limited to, skid-loaders, earthmovers and tractors.

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. However, effective May 1, 1999, if a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. Local excise tax is to be collected and administered in the same manner as local option sales and service tax. Except as otherwise provided in this chapter, all rules governing local option sales and service tax also apply to local excise tax. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, gross receipts from the sale are exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 422.45(46).) Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

Any limitation upon the right of a subdivision of the state to impose a sales or service tax upon a transaction is not applicable to the local option sales and service tax if the statute which contains the limitation has an effective date prior to July 1, 1985. As a nonexclusive example, a county is not prohibited from imposing a local option sales tax upon the gross receipts from sales of cigarettes or tobacco products which are subject to state sales tax.

This rule is intended to implement Iowa Code section 422B.8 as amended by 1999 Iowa Acts, chapter 151.

701—107.10(422B) Local option sales and service tax payments to local governments. For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. Effective May 20, 1999, the adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county's account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

"The most recent certified federal census" is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. If a subsequent certified census occurs which modifies the "most recent certified federal census" for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The "sum of property tax dollars levied" by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.

Division of the amount from each county's account to be distributed is done with these steps.

1. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

2. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

3. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately then totaled. The property tax amount for each sales tax imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

4. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in "3" is added to the amount found in "2." This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and service tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1. If a local option sales tax is approved for all of Pottawattamie County, the distribution of $100,000 in countywide receipts would be made in this manner:

Step 1:

Distribution Basis	**Amount**
Population	$ 75,000.00
Property Taxes Levied	25,000.00
Total	$100,000.00

Step 2:

	Certified Population		**Receipts to be**
Jurisdiction	**Number**	**Percentage**	**Distributed**
Avoca	1,650	1.91%	$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	17,796	20.59%	15,442.50
Total	86,442	100.00%	$75,000.00

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.

Step 3:

Jurisdiction	Three-Year Total Taxes Levied Amount	Percentage	Receipts to be Distributed
Avoca	$454,556	0.82%	$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	21,782,457	39.42%	9,855.00
Total	$55,262,284	100.00%	$25,000.00

Step 4:

Jurisdiction	Amount to be Distributed By Population	By Taxes	Total Distribution
Avoca	$ 1,432.50	$ 205.00	$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	15,442.50	9,855.00	25,297.50
Total	$75,000.00	$25,000.00	$100,000.00

EXAMPLE 2. If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and $10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	$ 7,500.00
Property Taxes Levied	2,500.00
Total	$10,000.00

Step 2:

	Certified Population		Receipts to be
Jurisdiction	Number	Percentage	Distributed
Avoca	1,650	39.45%	$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	981	23.45%	1,758.75
Total	4,183	100.00%	$7,500.00

Step 3:

	Three-Year Total Taxes Levied		Receipts to be
Jurisdiction	Amount	Percentage	Distributed
Avoca	$ 454,556	40.56%	$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	346,849	30.96%	774.50
Total	$1,120,558	100.00%	$2,500.00

Step 4:

	Amount to be Distributed		Total
Jurisdiction	By Population	By Taxes	Distribution
Avoca	$2,958.75	$1,014.00	$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	1,758.75	774.00	2,532.75
Total	$7,500.00	$2,500.00	$10,000.00

EXAMPLE 3. For the purposes of understanding this example, assume that the numbers for "certified population" from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The towns' percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1752}{1752 + 1493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1493}{1493 + 1752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

	Certified Population		Receipts to be
Jurisdiction	**Number**	**Percentage**	**Distributed**
Avoca	1,752	41.46%	$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	981	23.21%	1,740.75
Total	4,226	100.00%	$7,500.00

The "amount to be distributed by population" found in Step 4 of Example 2 would then be recomputed based on the new figures.

Rule 107.10(422B) is intended to implement Iowa Code section 422B.10 as amended by 1999 Iowa Acts, chapter 151, section 34, and chapter 156, section 14.

701—107.11(422B) Procedure if county of receipt's origins is unknown. If the director is unable to determine from which county gross receipts were collected, those receipts shall be allocated among the various counties in which local option sales and service tax is imposed according to the following procedure:

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and service tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection which have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and service tax is imposed shall be determined.

4. The amount of population so determined in "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and service tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and service tax is imposed is determined.

5. The sum determined to exist in "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in "3" above and the denominator of which is the number calculated by the method described in "4." The procedure described herein in "5" shall be used until the amount of tax due to every county imposing local option sales and service tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and service tax fund. See rule 107.10(422B) for characterization of the term "most recent certified federal census" and for methods of rounding off percentages and monetary sums.

This rule is intended to implement Iowa Code subsection 422B.10(1).

701—107.12(422B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, local option sales tax is payable if tangible personal property is delivered under a contract for sale or if taxable services are rendered, furnished, or performed within that portion of a county where a tax is imposed. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula which rationally apportions the progress of an excursion gambling boat among jurisdictions which impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples A and C utilize a "distance" formula for apportionment. Examples B and D utilize a "time" formula for apportionment. In Examples A and B, state sales tax is included in the sale price of the taxable items. In Examples C and D, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE A. The "Auric" is based in Clinton. Assume that during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters which are part of a local option sales tax jurisdiction and 25 of those miles which are not. The amount of state sales tax due and the amount of local option sales tax due using a "distance" apportionment formula are determined as follows:

Computation of state sales tax due

1. $10,000 ÷ 1.04 = $9,615.38
2. $10,000 — $9,615.38 = $384.62 = amount of state sales tax due

Computation of local option tax due

1. $9,615.38 ÷ 1.01 = $9,520.18
2. $9,615.38 — $9,520.18 = $95.20
3. $95.20 × ½ = $ 47.60 = amount of local option sales tax due

EXAMPLE B. The gambling excursion boat "Blue Diamond" is based in Davenport. Assume that, as in Example A, during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example A, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this case, all calculations are the same as those performed in Example A, except that the last calculation is performed as follows:

$95.20 × 2/3 = $63.40 = amount of local option sales tax due

EXAMPLE C. The excursion gambling boat "Golconda" is based in Dubuque, Iowa. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles the Golconda is passing through waters which are part of a local option sales tax jurisdiction. Assume that on one particular cruise, $100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the $100,000 amount but not state sales tax. Thus, the total amount collected is $104,000; $100,000 in gross receipts, $4,000 in state sales tax. Local option tax is calculated as follows: Divide $100,000 by 1.01. This result is $99,009.90. Subtract this from $100,000 leaving $990.10. $990.10 is the amount of local option tax which would be due if all sales during the cruise had occurred in a jurisdiction imposing a local option tax. Since only half the distance traveled was in a jurisdiction imposing the tax, $990.10 is multiplied by .5 to discover the amount of local option tax due ($495.05).

EXAMPLE D. The gambling excursion boat "Black Jack" is based in Davenport. Assume that during a particular cruise there is $150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is $156,000; $6,000 in state sales tax and $150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example B, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example tax is computed as follows:

1. $150,000 + 1.01 = $148,514.85
2. $150,000 — $148,514.85 = $1,485.15
3. $1,485.15 × 2/3 = $989.11 = amount of tax due

Upon beginning operation, a licensee may choose to employ either the "distance" method of apportionment set out in Examples A and C or the "time" method set out in B and D above without informing the department in advance of filing a sales tax return of its choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method, and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 422B.8.

701—107.13(421,422B) Officers and partners, personal liability for unpaid tax. If a retailer or purchaser fails to pay local option sales tax when due for taxes due and unpaid on and after July 1, 1990, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting local option sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to local option tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. See rule 701—12.15(422,423) for a description of various criteria used to determine personal liability and for a characterization of the term "accounts receivable."

This rule is intended to implement Iowa Code section 421.26 and chapter 422B.

701—107.14(422B) Local option sales and service tax imposed by a city.

107.14(1) On or before January 1, 1998, a city may impose by ordinance of its council a local sales and service tax if all of the following circumstances exist:

a. The city's corporate boundaries include areas of two Iowa counties.

b. All the residents of the city live in one county as determined by the latest federal census preceding the election described in paragraph *"c"* immediately below. Effective May 20, 1999, at least 85 percent of the residents of the city must live in one county to qualify.

c. The county in which the city's residents reside has held an election on the questions of the imposition of a local sales and service tax and a majority of those voting on the question in the city favored its imposition. Effective May 20, 1999, the city residents must live in the county and have held an election on the question of the imposition of the local sales and service tax and a majority of those voting on the question in the city favored its imposition.

d. The city has entered into an agreement on the distribution of the sales and service tax revenues collected from the area where the city tax is imposed with the county where such area is located.

107.14(2) Imposition of the tax is subject to the following restrictions:

a. The tax shall only be imposed in the area of the city located in the county where none of its residents reside. Effective May 20, 1999, the tax shall only be imposed in the area of the city located in the county where not more than 15 percent of the city's residents reside.

b. The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

c. The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

d. The tax shall be imposed on the same basis as provided in rule 107.9(422B).

e. The city shall assist the department of revenue and finance to identify the businesses in the areas which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

f. The agreement on the distribution of the revenue collected from the city-imposed tax shall provide that 50 percent of such revenue shall be remitted to the county in which the part of the city where the city tax is imposed is located.

This rule is intended to implement Iowa Code chapter 422B as amended by 1999 Iowa Acts, chapter 156, sections 5 and 6.

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◊Two ARCs

CHAPTER 108
LOCAL OPTION SCHOOL INFRASTRUCTURE SALES AND SERVICE TAX

701—108.1(422E) Definitions. The following words and terms are used in the administration of the local option school infrastructure sales and service tax:

"County" means an involuntary political or civil division of the state, created by general statute, to aid in the administration of government and is simply a governmental auxiliary. *Shirkey v. Keokuk County*, 275 N.W. 706, 712, 225 Iowa 1159 (1938). A county is generally known to include a designated geographic area which may comprise municipalities, cities, or towns.

"Department" means the Iowa department of revenue and finance.

"Director" means the director of the Iowa department of revenue and finance.

"Sale" means the same as defined in 701—107.1(422B).

"School district" means a school corporation that has exclusive jurisdiction in all school matters over a designated geographic area. See Iowa Code section 274.1.

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1. Qualifying activities include construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, or bus garages. School infrastructure activities also include the procurement of schoolhouse construction sites and making site improvements. Additional qualifying activities include the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this rule and the payment or retirement of such bonds.

However, "school infrastructure" does not include activities related to a teacher's or superintendent's home or homes.

This rule is intended to implement Iowa Code chapter 422E.

701—108.2(422E) Authorization, rate of tax, imposition, use of revenues, and administration.

108.2(1) *Authorization and imposition.* Effective April 20, 1998, a local option school infrastructure sales and service tax will only be imposed after an election in which a majority of those voting on the question favors the imposition of the tax. A local option school tax that has been approved by an election will be applied to all incorporated and unincorporated areas of that county. A request for the local option school tax may be made either by the county or a school district which contains at least 50 percent of the county population in which it is located. Each type of request has specific requirements for proposing the tax under this chapter. The requirements are set forth as follows:

a. Imposition by county. A petition must be submitted to a county board of supervisors requesting imposition of a local school infrastructure sales and service tax. To qualify, the petition must be signed by eligible voters of the whole county in a number equal to 5 percent of the persons in the whole county who voted in the last preceding state general election. Within 30 days of receiving the petition, the county board of supervisors must inform the county commissioner of elections to submit the question of imposing the tax to the registered voters of the whole county.

b. Imposition by school district. A motion or motions requesting the question of imposing a local option school infrastructure sales and service tax may be proposed and adopted by the governing body of a school district or school districts located within a county. To qualify for imposing this tax, a school district located within a county must contain a total, or a combined total in the case of more than one school district, of at least 50 percent of the population of the county. Upon adoption of the motion, the governing body of a school district must notify the county board of supervisors of the adoption of the motion. A motion is no longer valid at the time of the regular election of members of the governing body which adopted the motion. The county board of supervisors must then submit the motion to the county commissioner of elections, who will publish the notice of the ballot proposition regarding the local option school infrastructure sales and service tax.

108.2(2) *Ballot proposition—procedure for imposition of the tax whether by county or the school district.* A county commissioner for elections must submit the question for imposing the tax under this chapter at a state general election or a special election held at any time other than the time of a city regular election. The election cannot be sooner than 60 days after publication of the notice of the ballot proposition. The ballot proposition must be in the form established by the state commissioner of elections. For additional information regarding the form and content of the ballot proposition, see 721—21.803(77GA,HF2282).

108.2(3) *Tax rate, election, and repeal.* The maximum rate of tax imposed under this rule shall be 1 percent. The tax shall be imposed without regard to any other local sales and service tax authorized under the Iowa Code. The rate of tax may be increased up to 1 percent, decreased, or repealed after an election in which a majority of those voting are in favor of the question of rate change or repeal of the tax. However, the tax cannot be repealed before the tax has been in effect for one year.

The election for a change in the tax rate or repeal of the tax may be called and held under the same conditions as previously set forth for the election imposing the tax. The election may be held not sooner than 60 days following the publication of the notice of the ballot proposition.

Local option school infrastructure sales and service tax is automatically repealed at the expiration of ten years from the date of imposition or a shorter period provided in the ballot proposition.

A local option school infrastructure sales and service tax cannot be repealed or reduced in rate if bond obligations are outstanding unless sufficient funds to pay the principal, interest, and premium, if any, on the outstanding obligation at and prior to maturity have been properly set aside and pledged for that purpose.

For elections held on or after April 1, 2000, the tax may only be imposed with an effective date of either January 1 or July 1, but not sooner than 90 days following the favorable election.

For elections held on or after April 1, 2000, this tax shall be repealed on either June 30 or December 31, but not sooner than 90 days following a favorable election if one is held. If a tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the tax may be repealed on that date despite the previously mentioned dates set forth.

108.2(4) *Use of revenues.* Local option sales and service tax revenues received under this chapter shall be used for infrastructure purposes as defined in rule 701—108.1(422E). In addition, certain cities may obtain revenues from the local option school tax. A school district in a county that has imposed this tax may enter into an Iowa Code chapter 28E agreement with a city or cities whose boundaries encompass all or a part of the school district; the city may then receive a portion of the revenues from this tax as determined by the 28E agreement. A city may utilize revenues from this tax for school infrastructure purposes or any valid purposes authorized by the governing board of the city.

108.2(5) *Notice of election results.* The county auditor must give written notice by certified mail to the director of the results of an election in which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, within ten days of the date of the election. This written notice must consist of a copy of the abstract of ballot from the favorable election. For the purposes of this rule, "abstract of ballot" means abstract of votes as set forth in 721—21.803(4).

108.2(6) *Administration of the tax.* The local option school infrastructure sales and service tax is to be imposed on the gross receipts of sales of tangible personal property sold within the local option jurisdiction and upon the gross receipts from services rendered, furnished, or performed within the local option jurisdiction. This tax may only be imposed by a county in the manner set forth previously in this rule. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. For further details, see 701—108.5(422E). With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. See rule 701—14.2(422,423) for a tax table setting forth the combined rate for a state sales tax of 5 percent and the local sales tax rate of 1 percent. Frequency of deposits and quarterly reports of local option tax filed with the department of revenue and finance are governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of the filing under Iowa Code section 422.52.

Prior to April 1, 2000, a local option school infrastructure tax cannot be imposed until 40 days after there has been a favorable election to impose the tax. All local option school infrastructure tax must be imposed January 1, April 1, July 1, or October 1. The tax can be repealed only on March 31, June 30, September 30, or December 31. However, this tax must not be repealed before the tax has been in effect for one year. For imposition and repeal date restrictions on or after April 1, 2000, see subrule 108.2(3).

This rule is intended to implement Iowa Code section 422E.2 as amended by 1999 Iowa Acts, chapters 151 and 156.

701—108.3(422E) Collection of the tax. After a majority vote favoring the imposition of the tax under this chapter, the county board of supervisors shall impose the tax at the rate specified and for a duration not to exceed ten years or less as specified on the ballot. To determine the amount of tax to be imposed on a sale, the taxable amount must not include any state gross receipts taxes or any other local option taxes. A retailer need only have a state tax permit to collect the local option sales and service tax under this chapter. This tax is to be imposed and collected in the following manner:

1. Sale of tangible personal property. This local option sales and service tax is imposed on the gross receipts from "sales" of tangible personal property in which delivery occurs within a jurisdiction imposing the tax. Department rule 701—107.3(422B), which governs transactions subject to and excluded from local option sales tax, is applicable to and governs transactions subject to tax under this chapter as well. As a result, the text of 701—107.3(422B) is incorporated by reference into this chapter.

2. The sale of enumerated services. Department rules 701—107.4(422B), 701—107.5(422B), and 701—107.6(422B), which govern transactions subject to and excluded from local option service tax, single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax, and motor vehicle, recreational vehicle, and recreational boat rentals subject to local option service tax, respectively, are applicable to and govern transactions subject to tax under this chapter. As a result, the text of 701—107.4(422B), 701—107.5(422B), and 701—107.6(422B) is incorporated by reference into this chapter.

This rule is intended to implement Iowa Code section 422E.3.

701—108.4(422E) Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107. The administration of the tax imposed under this chapter is similar to the local option tax imposed under Iowa Code chapter 422B and 701—Chapter 107. As a result, a few of the rules set forth in 701—Chapter 107 are also applicable and govern the local option sales and service school infrastructure tax as well. Accordingly, the following rules are incorporated by reference into this chapter and will govern their respective topics in relation to the local option sales and school infrastructure tax:

1. 701—107.7(422B) Special rules regarding utility payments.
2. 701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer.
3. 701—107.12(422B) Computation of local option tax due from mixed sales on excursion boats.
4. 701—107.13(421,422B) Officers and partners, personal liability for unpaid tax.

This rule is intended to implement Iowa Code section 422E.3.

701—108.5(422E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax for school infrastructure is imposed upon the same basis as the Iowa state sales and service tax. However, like the local option sales and service tax set forth in Iowa Code chapter 422B and department rule 701—107.9(422B), there are sales and services that are subject to Iowa state sales tax, but such sales or services are not subject to local option sales and service tax. Department rule 701—107.9(422B), which governs the sales not subject to local option sales and service tax pursuant to Iowa Code section 422B.8, is incorporated by reference into this chapter and will govern the local option sales and service tax for school infrastructure tax with the following exception:

For transactions prior to May 1, 1999. The gross receipts from the sale of natural gas or electricity in a city or county which are subject to a franchise or user fee are not exempt from the local option school infrastructure sales and service tax.

Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax, and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax.

This rule is intended to implement Iowa Code section 422E.1 as amended by 1999 Iowa Acts, chapter 151, section 36, and Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 151, sections 37 and 38.

701—108.6(422E) Deposits of receipts. The director of revenue and finance shall credit tax receipts, interest, and penalties from the tax under this chapter. If the director is unable to determine from which county any of the receipts from this tax were collected, those receipts shall be allocated among the possible counties based on the allocation rules set forth in 701—107.11(422B).

This rule is intended to implement Iowa Code section 422E.3.

701—108.7(422E) Local option school infrastructure tax payments to school districts. The director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each school district where the local option school infrastructure tax is imposed, an estimate of the tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the school district to the school district on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. Effective on or after May 20, 1999, an adjustment for an overpayment that has resulted during the previous fiscal year will be reflected beginning with the November payment.

If more than one school district or a portion of a school district is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro-rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments for all school districts that attend school in the county. A student's enrollment is based on the residency of the student. The formula to compute this ratio is the following:

$$\frac{\text{actual enrollment for the school district at issue}}{\text{actual combined enrollment for the county}}$$

The combined actual enrollment for the county, for purposes of this tax, shall be determined for each county imposing the tax under this rule by the Iowa department of management based on the actual enrollment figures reported by October 1 of each year to the department of management by the department of education pursuant to Iowa Code section 257.6(1). Enrollment figures to be used for the purpose of this formula are the enrollment figures reported by the department of education for the year preceding the favorable vote by a county to implement the local option school infrastructure sales and service tax.

EXAMPLE: In November of 1998, Polk County holds a valid election that results in a favorable vote to impose the local option school infrastructure tax. To determine the proper ratio of funds to be distributed to the multiple school districts located in Polk County, the enrollment figures reported by the department of education to the department of management by October of 1997 must be obtained to compute the formula as set forth.

For additional information regarding the formula for tax revenues to be distributed to the school districts, see the department of education's rules regarding this tax under 281—Chapter 96, Iowa Administrative Code.

This rule is intended to implement Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 156, section 19.

701—108.8 (422E) Construction contract refunds. Effective May 20, 1999, and retroactively applied to July 1, 1998, construction contractors may apply to the department for a refund of local option school infrastructure tax paid on goods, wares, or merchandise if the following conditions are met:

1. The goods, wares or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition or increase in rate of the local option school infrastructure tax. The refund shall not apply to equipment transferred in fulfillment of a mixed contract.

2. The local option school infrastructure tax must have been effective in the jurisdiction on or after July 1, 1998.

3. The contractor has paid to the department or to a retailer the full amount of the state and local option tax.

4. The claim is filed on forms provided by the department and is filed within six months of the date the tax is paid.

The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund.

The penalty provisions contained in Iowa Code section 422B.11(3) apply regarding erroneous application for refund of tax under this chapter.

This rule is intended to implement Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 156, section 19.

701—108.9(422E) 28E agreements. A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues from the tax imposed under this chapter that a city or each city may receive. A city or cities entering into an Iowa Code chapter 28E agreement is authorized to expend its designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a county whose boundaries encompass all or a part of an area of a school district may enter into an Iowa Code chapter 28E agreement with that school district. The terms of the Iowa Code chapter 28E agreement will designate a portion of tax revenues received from the tax imposed under this chapter that a county is entitled to receive. A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a school district where local option school infrastructure tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option school infrastructure revenues for infrastructure purposes.

This rule is intended to implement Iowa Code section 422E.4 as amended by 1999 Iowa Acts, chapter 156, section 20.

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CHAPTERS 109 to 112
Reserved

CHAPTER 113
Rescinded, effective 10/15/86

CHAPTERS 114 to 119
Reserved

705—2.12(99E) Suspension or revocation of a license.

2.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99E or these rules;

b. Violating any of the provisions of chapter 99E, these rules, or the license terms and conditions;

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery;

d. If public convenience is adequately served by other licensees;

e. Failing to sell a minimum number of tickets as established by the lottery;

f. A history of thefts or other forms of losses of tickets or revenue from the business;

g. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control;

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake;

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery;

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted;

k. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license;

l. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery;

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event;

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event;

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event;

p. For a licensee who is an individual, where the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance; or

q. Allowing activities on the licensed premises which could compromise the dignity of the state.

2.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

2.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 705—2.13(99E,252J).

2.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code section 99E.18(2). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery shall suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery shall suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license shall be suspended for one year.

2.12(5) Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property. The lottery will settle the retailer's account as if the retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement Iowa Code sections 99E.9(3)"*k*," 99E.16, 99E.17, 99E.18, and 252J.8.

705—2.13(99E,252J) Methods of service. The notice required by Iowa Code Supplement section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 705—2.12(99E) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," and 99E.16, and 252J.8.

705—2.14(99E,252J) Licensee's obligation. Licensees and license applicants shall keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16, and 252J.8.

705—2.15(99E,252J) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"*k*," 99E.16, 252J.8 and 252J.9.

705—2.16(99E) Financial responsibility. The lottery shall use the following guidelines to determine financial responsibility for a retailer seeking a license to sell lottery products.

2.16(1) *Sole proprietorship.* If the license applicant is a sole proprietor, during the past two years, the applicant may have up to four accounts past due and no accounts over 90 days past due. The lottery will not require a bond with this credit history.

2.16(2) *Partnership.* If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 2.16(1). If the requirements of subrule 2.16(1) are satisfied, the lottery will not require a bond with this credit history.

2.16(3) *Fraternal or civic associations.* If the license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 2.16(1). If the requirements of subrule 2.16(1) are satisfied, the lottery will not require a bond with this credit history. If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 2.16(1). If the requirements of subrule 2.16(1) are satisfied, the lottery will not require a bond with this credit history.

2.16(4) *Corporations and limited liability companies—two years or more.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application, the license applicant must meet all of the following financial responsibility guidelines:

a. The license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk class provided by a financial and credit reporting entity of less than 5 or an equivalent rating.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

2.16(5) *Corporations and limited liability companies—less than two years.* If a corporation has been in existence for less than two years from the date of the application, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 2.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 2.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

2.16(6) *Bonding requirements.* With respect to any license applicant whose credit history does not meet the guidelines described in subrules 2.16(1) and 2.16(4), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The following minimum amounts will be required:

a.	Sale of pull-tab tickets only	$500
b.	Sale of pull-tab and instant tickets only	$1,500
c.	Sale of all products including on-line games	$2,500

2.16(7) *Holding period for bond.* The lottery will hold the bond provided by license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code section 99E.16(4).

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63 Fed. Reg. 13339 (March 19, 1998)

63 Fed. Reg. 17093 (April 8, 1998)

63 Fed. Reg. 20098 (April 23, 1998)

63 Fed. Reg. 33467 (June 18, 1998)

63 Fed. Reg. 50729 (September 22, 1998)

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CHAPTERS 11 to 25
Reserved

60 Fed. Reg. 9625 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)
60 Fed. Reg. 33345 (June 28, 1995)
60 Fed. Reg. 34001 (June 29, 1995)
60 Fed. Reg. 36044 (July 13, 1995)
60 Fed. Reg. 39255 (August 2, 1995)
60 Fed. Reg. 50412 (September 29, 1995)
61 Fed. Reg. 5509 (February 13, 1996)
61 Fed. Reg. 9248 (March 7, 1996)
61 Fed. Reg. 31431 (June 20, 1996)
61 Fed. Reg. 41738 (August 12, 1996)
61 Fed. Reg. 43458 (August 23, 1996)
61 Fed. Reg. 46104 (August 30, 1996)
61 Fed. Reg. 56856 (November 4, 1996)
61 Fed. Reg. 59831 (November 25, 1996)
62 Fed. Reg. 1619 (January 10, 1997)
63 Fed. Reg. 1295 (January 8, 1998)
63 Fed. Reg. 1919 (January 13, 1998)
63 Fed. Reg. 3814 (January 27, 1998)
63 Fed. Reg. 13340 (March 19, 1998)
63 Fed. Reg. 17094 (April 8, 1998)
63 Fed. Reg. 20099 (April 23, 1998)
63 Fed. Reg. 33468 (June 18, 1998)
63 Fed. Reg. 35138 (June 29, 1998)
63 Fed. Reg. 66274 (December 1, 1998)
64 Fed. Reg. 22552 (April 27, 1999)

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

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See CORRECTIONS DEPARTMENT

JOBS
See ECONOMIC DEVELOPMENT DEPARTMENT; EMPLOYMENT; REHABILITATION; WORK AND TRAINING PROGRAMS

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