

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed Emergency**

#### **Rule making related to sales and use tax imposed on the service of commercial recreation**

The Department of Revenue hereby amends Chapter 216, “Events, Amusements, and Other Related Activities,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 421.14.

#### *State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 423.2.

#### *Purpose and Summary*

In light of the significant concerns received after the official public comment period for ARC 6577C and the effective date of new rule 701—216.3 implementing the taxable service of commercial recreation, the Department has rescinded the new rule found in rule 701—216.3 and replace it with the text of prior rule, previously found in rule 701—26.24. This will allow the Department to consider the newly-raised concerns and reevaluate changes to the rule.

The Department would like to advise taxpayers to not obtain new permits or collect tax under the newly rescinded definition of “recreation.” The Department will process refunds as needed to reflect this change.

#### *Reason for Adoption of Rule Making Without Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because emergency adoption was approved by the Administrative Rules Review Committee.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee at its February 13, 2023, meeting reviewed the Department’s determination and this rule making and approved the emergency adoption.

#### *Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective February 13, 2023, to provide benefit to the segment of the public who raised significant concerns about the rule implementing the taxable service of commercial recreation.

### *Adoption of Rule Making*

This rule making was adopted by the Department on January 9, 2023.

### *Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process to allow for public comment.

### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 701—Chapter 7.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making became effective on February 13, 2023.

The following rule-making actions are proposed:

ITEM 1. Rescind rule 701—216.3(423) and adopt the following **new** rule in lieu thereof:

**701—216.3 (423) Golf and country clubs and all commercial recreation.** All fees, dues or charges paid to golf and country clubs are subject to tax. "Country clubs" shall include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Recreation" shall include all activities pursued for pleasure, including sports, games and activities which promote physical fitness, but shall not include admissions otherwise taxed under Iowa Code section 423.2.

Dance schools are the only schools the services of which are taxable under Iowa Code subsection 423.2(6). See rule 701—216.2(423) on dance schools and dance studios. The sales price from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

1. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink's facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink's facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump-sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

2. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be "instruction" are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a "class" with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be thought of as a "classroom," but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come-first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

3. The "instruction" must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special

training in the recreational activity taught if charges for that person's instruction are to be exempt from tax.

This rule is intended to implement Iowa Code subsection 423.2(6)(v).