

Senate Study Bill 1074 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
REVENUE BILL)

A BILL FOR

- 1 An Act relating to the administration of the streamlined sales
- 2 tax agreement by the department of revenue.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, Code 2011, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 0A. *“Advertising and promotional direct*
4 *mail”* means direct mail sent in order to attract public
5 attention to a product, person, business, or organization or
6 in an attempt to sell, popularize, or secure financial support
7 for a product, person, business, or organization. For purposes
8 of this subsection, *“product”* may include tangible personal
9 property, a service, or an item transferred electronically.

10 NEW SUBSECTION. 33A. *“Other direct mail”* means all direct
11 mail that is not advertising and promotional direct mail even
12 if advertising and promotional direct mail is included in the
13 same mailing. For purposes of this subsection, other direct
14 mail includes but is not limited to:

- 15 *a.* Transactional direct mail that contains personal
16 information specific to the addressee including but not limited
17 to invoices, bills, statements of account, and payroll advices.
18 *b.* A legally required mailing including but not limited to
19 privacy notices, tax reports, and stockholder reports.
20 *c.* Other nonpromotional direct mail delivered to existing or
21 former shareholders, customers, employees, or agents including
22 but not limited to newsletters and pieces of informational
23 literature.

24 Sec. 2. Section 423.1, subsection 14, Code 2011, is amended
25 to read as follows:

26 14. *a.* *“Direct mail”* means printed material delivered or
27 distributed by United States mail or other delivery service to
28 a mass audience or to addressees on a mailing list provided by
29 the purchaser or at the direction of the purchaser when the
30 cost of the items is not billed directly to the recipients.
31 *“Direct mail”* includes tangible personal property supplied
32 directly or indirectly by the purchaser to the direct mail
33 seller for inclusion in the package containing the printed
34 material.

35 *b.* *“Direct mail”* does not ~~include~~ include:

1 ~~multiple~~ Multiple items of printed material delivered
2 to a single address.

3 (2) The development of billing information or the provision
4 of a data processing service that is more than incidental.

5 Sec. 3. Section 423.1, subsection 19, Code 2011, is amended
6 to read as follows:

7 19. *"First use of a service"*. A *"first use of a service"*
8 occurs, for the purposes of this chapter, ~~when a service is~~
9 ~~rendered, furnished, or performed in Iowa or if rendered,~~
10 ~~furnished, or performed outside of Iowa, when the product or~~
11 ~~result of the service is used in Iowa at the location at which~~
12 the service is received. For purposes of this subsection, the
13 location at which the service is received is the location at
14 which the purchaser or the purchaser's donee can first make use
15 of the result of the service. For purposes of this subsection,
16 the location at which the seller performs the service is not
17 determinative of the location at which the service is received.

18 Sec. 4. Section 423.1, subsection 52, Code 2011, is amended
19 to read as follows:

20 52. *"Services"* means all acts or services rendered,
21 furnished, or performed, other than services used in processing
22 of tangible personal property for use in retail sales or
23 services, for an employer who pays the wages of an employee for
24 a valuable consideration by any person engaged in any business
25 or occupation specifically enumerated in section 423.2. The
26 tax shall be due and collectible when first use of the service
27 ~~is rendered, furnished, or performed for~~ received by the
28 ultimate user of the service.

29 Sec. 5. Section 423.3, subsection 60, paragraph b,
30 unnumbered paragraph 1, Code 2011, is amended to read as
31 follows:

32 "Durable medical equipment" means equipment, including repair
33 and replacement parts, and all components or attachments, but
34 does not include mobility enhancing equipment, to which all of
35 the following apply:

1 Sec. 6. Section 423.5, subsection 5, Code 2011, is amended
2 to read as follows:

3 5. The use in this state of services enumerated in section
4 423.2. This tax is applicable where services are furnished in
5 this state or where the product or result of the service is
6 first used in this state.

7 Sec. 7. Section 423.15, unnumbered paragraph 1, Code 2011,
8 is amended to read as follows:

9 ~~All sellers obligated to collect Iowa sales or use tax~~
10 ~~shall use the standards set out in this section to determine~~
11 ~~where sales of products occur, excluding sales enumerated in~~
12 ~~section 423.16. These provisions apply regardless of the~~
13 ~~characterization of a product as tangible personal property,~~
14 ~~a digital good, or a service, excluding telecommunications~~
15 ~~services. All sales of products, except those sales enumerated~~
16 ~~in section 423.16, shall be sourced according to this section~~
17 ~~by sellers obligated to collect Iowa sales and use tax. The~~
18 ~~sourcing rules described in this section apply to sales of~~
19 ~~tangible personal property, digital goods, and all services~~
20 ~~other than telecommunications services. This section only~~
21 ~~applies to determine a seller's obligation to pay or collect~~
22 ~~and remit a sales or use tax with respect to the seller's sale~~
23 ~~of a product. This section does not affect the obligation of a~~
24 ~~purchaser or lessee to remit tax on the use of the product to~~
25 ~~the taxing jurisdictions in which the use occurs. A seller's~~
26 ~~obligation to collect Iowa sales tax or Iowa use tax only~~
27 ~~occurs if the sale is sourced to this state. The application~~
28 ~~of whether~~ Whether Iowa sales tax applies to sales a sale
29 sourced to Iowa depends upon where shall be determined based
30 on the location at which the sale is consummated by delivery
31 or, in the case of a service, where the first use of the service
32 occurs.

33 Sec. 8. Section 423.19, Code 2011, is amended by striking
34 the section and inserting in lieu thereof the following:

35 **423.19 Direct mail sourcing.**

1 1. Notwithstanding section 423.15, the following provisions
2 apply to sales of advertising and promotional direct mail:

3 a. A purchaser of advertising and promotional direct mail
4 may provide the seller with one of the following:

5 (1) A direct pay permit.

6 (2) An agreement certificate of exemption claiming to be
7 direct mail, or a similar written statement, if the statement
8 is approved, authorized, or accepted by the department.

9 (3) Information showing the jurisdiction to which the
10 advertising and promotional direct mail is to be delivered to
11 the recipient.

12 b. (1) If the purchaser provides the seller a permit, a
13 certificate of exemption, or an approved written statement
14 pursuant to paragraph "a", subparagraph (1) or (2), then,
15 in the absence of bad faith, the seller is relieved of the
16 obligation to collect, pay, or remit tax on a transaction
17 involving advertising and promotional direct mail to which the
18 permit, certificate, or approved written statement applies. In
19 such a transaction, the purchaser shall source the sale to the
20 jurisdiction in which the advertising and promotional direct
21 mail is to be delivered to the recipient and shall report and
22 pay any tax due accordingly.

23 (2) If the purchaser provides the seller information
24 showing the jurisdiction to which the advertising and
25 promotional direct mail is to be delivered pursuant to
26 paragraph "a", subparagraph (3), the seller shall source
27 the sale to the jurisdiction in which the advertising and
28 promotional direct mail is to be delivered and shall collect
29 and remit the tax due accordingly. If the seller has sourced
30 the sale according to the delivery information provided by the
31 purchaser, then, in the absence of bad faith, the seller is
32 relieved of any further obligation to collect tax on the sale
33 of the advertising and promotional direct mail.

34 c. (1) If the purchaser fails to provide the seller with
35 one of the items listed in paragraph "a", the sale shall be

1 sourced pursuant to the sourcing directive described in section
2 423.15, subsection 1, paragraph "e".

3 (2) If a sale is sourced to this state pursuant to
4 subparagraph (1), the full amount of the tax imposed by
5 subchapter II or III, as applicable, is due from the purchaser,
6 notwithstanding section 423.22.

7 2. Notwithstanding section 423.15, sales of other direct
8 mail are subject to all of the following:

9 a. Except as otherwise provided in this subsection, the sale
10 of other direct mail shall be sourced pursuant to the sourcing
11 directive described in section 423.15, subsection 1, paragraph
12 "c".

13 b. A purchaser of other direct mail may provide the seller
14 with either of the following:

15 (1) A direct pay permit.

16 (2) An agreement certificate of exemption claiming to be
17 direct mail, or a similar written statement, if the statement
18 is approved, authorized, or accepted by the department.

19 c. (1) If the purchaser provides the seller a permit, a
20 certificate of exemption, or an approved written statement
21 pursuant to paragraph "b", then, in the absence of bad faith,
22 the seller is relieved of the obligation to collect, pay, or
23 remit tax on a transaction involving other direct mail to which
24 the permit, certificate, or approved written statement applies.

25 (2) Notwithstanding paragraph "a", the sale of other direct
26 mail under the circumstances described in subparagraph (1)
27 shall be sourced to the jurisdiction in which the other direct
28 mail is to be delivered to the recipient, and the purchaser
29 shall report and pay any tax due accordingly.

30 Sec. 9. Section 423.50, subsection 4, Code 2011, is amended
31 to read as follows:

32 4. If a due date falls on a Saturday, a Sunday, legal
33 holiday, or a legal banking holiday in this state, the taxes
34 are payment, including any related payment voucher information,
35 is due on the next succeeding business day.

1 Sec. 10. Section 423.50, Code 2011, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 5A. If the federal reserve bank is closed
4 on the due date preventing a person from being able to make an
5 automated payment, the payment shall be accepted as timely if
6 made on the next day the federal reserve bank is open.

7 EXPLANATION

8 This bill relates to the administration of the sales and use
9 taxes under the streamlined sales tax agreement.

10 Iowa is a member of the streamlined sales and use tax
11 agreement which is an effort to administer state sales and
12 use taxes in all participating states according to the same
13 simplified system. Under the agreement, Iowa must periodically
14 make changes in the administration of the sales and use taxes
15 in order to remain in compliance. The bill makes changes
16 to a number of provisions in the uniform sales and use tax
17 administration Act in Code chapter 423, subchapter IV, to more
18 closely conform to the terms of the agreement.

19 The bill amends language relating to the sourcing of taxable
20 services. Currently, the first use of a service occurs when it
21 is rendered, furnished, performed, or used in Iowa. The bill
22 provides that the location at which the service is received
23 is the location of the first use of the service and makes
24 coordinating changes related to the sourcing of services.

25 The bill amends the definition of durable medical equipment
26 to include components and attachments of the equipment.

27 The bill strikes and replaces Code section 423.19 relating
28 to the sourcing of direct mail and makes conforming changes
29 for purposes of the taxation of shipping and handling charges.
30 Currently, Iowa does not tax shipping and handling charges on
31 direct mail, but compliance with the agreement nonetheless
32 requires that these provisions be enacted in Iowa law.

33 The bill amends Code section 423.50 to include new language
34 relating to the due dates and timeliness of sales and use tax
35 payments.