

701—211.23(423) Private employment agency, executive search agency.

211.23(1) *In general.* Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment, or aiding another in any way to procure employment are selling a service subject to sales tax, regardless of whether the service is rendered for a prospective employer or prospective employee.

211.23(2) *Principal place of employment outside of Iowa.* Services rendered by private employment agencies which place a person and where the person's principal place of employment is outside of Iowa are not subject to Iowa sales tax. For purposes of this rule, "principal place of employment" means the primary work location of the employee.

EXAMPLE 1: Company X contracts with Agency Z, an Iowa employment agency, to secure employment for an employee to work at a production plant in Illinois. Agency Z finds a suitable employee who is hired by Company X. Because the employee's principal place of employment is outside the state, this service is not subject to Iowa sales tax.

EXAMPLE 2: Company B, a sales company, contracts with Agency C, an employment agency, to secure a salesperson to travel throughout Iowa, Missouri, and Nebraska. Both Company B and Agency C are located in Iowa. Agency C is successful in finding a salesperson for Company B. Though the salesperson will be traveling throughout the three states, because Company B, the principal place of the salesperson's employment, is located within Iowa, Agency C's service is subject to Iowa sales tax.

211.23(3) *Executive search agencies.* Executive search agencies that are engaged in the business of securing employment for top-level management positions are selling a service subject to sales tax, regardless of whether the executive search agency is licensed under Iowa Code chapter 94A or not. Further, unlike the exclusion found in subrule 211.23(2) for private employment agencies, executive search agencies' services performed in Iowa are subject to Iowa sales tax regardless of whether the principal place of employment for the person the agency placed into employment is located within Iowa.

211.23(4) *Private employment versus executive search agencies.* To determine if an agency is an executive search agency or a private employment agency, the following nonexhaustive lists of elements may be used to distinguish the two.

- a. Private employment agency:
 - (1) All levels of jobs in an organization. All salary levels.
 - (2) Large number of clients at all times. Both possible employers and employees.
 - (3) Individual's résumé circulated to many possible employers.
 - (4) No extensive analysis of the position or the individual.
 - (5) Normally does not make travel arrangements for interviews, does not conduct salary negotiations, does not perform detailed follow-up studies.
 - (6) Paid by either the company or the job seeker.
 - (7) Paid on a contingent-fee basis. Paid only if a referred person is hired.
 - (8) Does engage in general advertising of available positions.
 - (9) Overall placement of an individual is not as extensive or sophisticated.
- b. Executive search agency:
 - (1) Top-level management positions.
 - (2) Serve only a few clients at one time. Employers only.
 - (3) Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.
 - (4) Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Preparation of detailed professional assessment of strengths and weaknesses of individuals.
 - (5) Make travel arrangements for interviews, conduct salary negotiations, perform follow-up studies.
 - (6) Only paid by the company seeking the employee.
 - (7) Paid on retainer or by an hourly charge or by contract. Paid whether or not an individual is hired.
 - (8) Does not advertise available positions.

(9) Overall placement of an individual requires extensive and sophisticated analysis of position and individual.

This rule is intended to implement Iowa Code section 423.2(6) “*ap*” and “*aq.*”
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