

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sales and use tax for commercial fertilizer and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 17, “Exempt Sales,” Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” and Chapter 226, “Agricultural Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3.

Purpose and Summary

The Department received a petition for rule making on April 16, 2018, pursuant to Iowa Code section 17A.7 and rule 701—7.29(17A). The petitioner requested a change to rule 701—17.4(422,423) regarding an exemption from sales and use tax for sales of commercial fertilizer. The petition satisfied the requirements set forth in Iowa Code section 17A.7 and rule 701—7.29(17A). Upon review of the rule at issue, the Department agrees that a change to its rules regarding the sale of commercial fertilizer is needed.

Rule 701—17.4(422,423) is intended to implement Iowa Code section 422.42(3), which is now repealed. The legislature amended the sales and use tax provisions of the Iowa Code, including section 422.42, in 2003 to conform to the Streamlined Sales and Use Tax Agreement (Streamlined). Subsequently, the Department adopted new rules to reflect the changes brought about by the State’s participation in Streamlined. Included in those new rules is rule 701—226.6(423), Commercial fertilizer and agricultural limestone, which is very similar to rule 701—17.4(422,423). The Department did not rescind or otherwise amend the pre-Streamlined rules at that time.

After considering the petitioner’s suggestion to amend rule 701—17.4(422,423), the Department has concluded that rescinding rule 701—17.4(422,423) and amending rule 701—226.6(423) is appropriate to provide accuracy and clarity to the Department’s rules.

This rule making also amends subrule 18.5(7) to update a cross reference to rule 701—17.4(422,423).

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 Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 7, 2018. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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).

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve rule **701—17.4(422,423)**.

ITEM 2. Amend subrule 18.57(1) as follows:

18.57(1) Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an “insecticide” or “pesticide.” See rules ~~701—17.4(422,423)~~ 701—226.6(423) and 701—17.9(422,423) for more information regarding these exemptions.

ITEM 3. Amend rule 701—226.6(423) as follows:

701—226.6(423) Commercial fertilizer and agricultural limestone.

226.6(1) Commercial fertilizer. Sales of commercial fertilizer ~~and~~ are exempt from sales and use tax. Plant hormones are considered to be commercial fertilizer.

226.6(2) Agricultural limestone. Sales of agricultural limestone are exempt from sales and use tax only if the purchaser intends to use the ~~fertilizer or~~ limestone for ~~the~~ disease control, weed control, insect control, or health promotion of plants or livestock produced for market as part of agricultural production. See rule 701—211.1(423) for definitions of “agricultural production” and “plants.” ~~Plant hormones are considered to be commercial fertilizer.~~ Sales of ~~commercial fertilizer or~~ agricultural limestone used for other purposes are subject to sales tax. Examples of taxable use include, but are

not limited to: ~~commercial fertilizer sold~~ sales of agricultural limestone for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code subsections 423.3(4) and 423.3(5).