

Iowa Water Excise Tax

Iowa Department of Revenue Formally Publishes Amended WET Tax Rules for Landlords - October 25, 2018

Jodie Clark McDougal

As discussed in previous posts, Iowa's new Water Excise Tax (WET) took effect on July 1, 2018. Since that time, the Iowa Department of Revenue (IDOR) has released two sets of proposed revised rules. On October 24, 2018, the IDOR formally published its Amended Rules (included later in this packet). These published rules are consistent with the proposed revised rules that the IDOR released earlier this fall.

In short, the Amended Rules provide that manufactured housing communities and apartment complexes who do not charge their residents a flat water fee, do not charge their residents based upon their actual water usage, and do not offer comparable lots/units at a lower price that do not have access to water service, are not furnishing water for compensation and, thus, are not subject to WET. This principle remains true regardless of whether the landlord purchases its water from a water utility or has its own water well.

Conversely, the Amended Rules provide that if a manufactured housing community or apartment owner separately bills and charges its tenants for water—either on a flat fee basis or a usage/metered basis—then such landlord is a water utility and must collect and remit the 6% WET tax on its monthly water charges.

These published Amended Rules should be formally adopted and enacted sometime later this year. On May 19, 2017, the Iowa Supreme Court handed down decisions in two highly publicized Iowa City cases in which tenants had brought suit against their landlords - Kline v. Southgate Property Management and Walton v. Gaffey. Both sides have appeared to claim victory from the decisions, and, while Iowa landlords can glean more clarity from the decisions in many respects, landlords are necessarily left with some uncertainty in other respects.

Iowa DOR Distributes Second Set of Revised Rules on WET - September 26, 2018

Jodie Clark McDougal

As discussed in previous posts (see direct links below), Iowa's new Water Excise Tax (WET) took effect on July 1, 2018. Since that time, the Iowa Department of Revenue (IDOR) issued an original set of proposed rules and, later, a revised set of proposed rules.

However, that revised set of WET rules still negatively affected Iowa manufactured housing communities who own or operate their own wells, but do not separately bill or otherwise charge their residents for water; these revised rules mandated that such communities are subject to WET. Accordingly, attorney Jodie McDougal was further retained by two Davis Brown clients to continue to press this issue with the IDOR, and, to that end, submitted a letter of objection to the IDOR dated September 7, 2018 (included later in this packet) setting forth further objections to the WET rules.

The IDOR has, once again, listened to the concerns and objections from the industry and responded in a positive manner for the industry. On September 24, 2018, the IDOR submitted a second set of revised proposed rules (included later in this packet). This second set of revised rules, specifically at proposed rule 97.5(3), provide, in short, that **manufactured housing communities who own or operate their own wells, but do not separately bill or otherwise charge their residents for water are not covered by WET**. This is another great victory for manufactured housing communities on this issue.

In sum, under the currently proposed version of the IDOR's WET rules, manufactured housing communities who:

- do not charge their residents a flat water fee,
- do not charge their residents for water based upon their actual water usage, and
- do not offer comparable lots/units at a lower price that do not have access to water service

are **not** deemed to be furnishing water for compensation and are, thus, not subject to WET, regardless of whether the manufactured housing community purchases its water from a water utility or has its own water well.

Please note that these rules are a preliminary version of the second set of revised rules and more changes may be coming to these rules, of which I will notify you. Further updates will be provided later this year.

Finally, in the event you now need to cancel your WET Permit due to the change in the WET rules, you can do so at: <https://www.idr.iowa.gov/ChangeForm/start.asp>.

Alternatively, you can fill out the print form (included later in this packet) and return it to the Department.

Iowa Department of Revenue Distributes Draft Version of Revised Proposed Rules on the Water Excise Tax Rules for Manufactured Housing Community - August 22, 2018

Jodie Clark McDougal

As discussed in previous posts, Iowa's new Water Excise Tax (WET) took effect on July 1, 2018. Shortly thereafter, the Iowa Department of Revenue (IDOR) issued its proposed rules for WET, only to be inundated with concerns and objections from Iowa's manufactured housing communities, thereby resulting in the IDOR distributing a draft version of its revised proposed rules (included later in this packet) today, August 22, 2018.

The IDOR added a new rule 97.5, which starts on page 6 of the rules, and made certain additional revisions. Please contact Jodie McDougal or otherwise consult your attorney regarding the potential impact of these revised rules.

Please note that these rules are a preliminary version of the revised rules and more changes may be coming to these rules, of which I will notify you. Particularly for communities who own or operate their own wells, you are still negatively impacted by these proposed revised rules, and, thus, you should continue to provide your feedback and concerns to the IDOR.

The IDOR will hold a public hearing on October 3, 2018, in light of the comments received on the first draft of the rules.

Iowa Department of Revenue Announces Re-Write of Water Excise Tax Rules for Manufactured Housing Community - August 15, 2018

Jodie Clark McDougal

As discussed in previous posts, Iowa's new Water Excise Tax (WET) took effect on July 1, 2018. The Iowa Department of Revenue's (IDoR) stated position regarding the applicability of WET has had a substantially negative impact on Iowa's manufactured housing communities.

Accordingly, over the last few months, many of us in the industry have discussed our concerns with the IDoR and explained to the IDoR the negative impact and difficulty in complying with WET for manufactured housing communities. In particular, numerous owners of individual manufactured housing communities, those of us who represent such communities, and Joe Kelly of the Iowa Manufacturing Housing Association coordinated our communication efforts and submitted written comments and objections to the IDoR regarding the proposed rules (my own letter of objection to the IDoR is included in this document).

I am pleased to report that the IDoR listened to the concerns raised, which is great news for the industry. In a meeting of the Iowa Rules Review Committee on Tuesday, August 14, the Iowa Department of Revenue announced it would be rewriting the WET rules as they apply to the manufactured housing community industry. We are cautiously optimistic as we await the publishing of the revised rules.

From the IDOR comments regarding their decision to rewrite rules, we anticipate:

- Parks who purchase their water service from a city or other water utility/supplier, and do not submeter or otherwise charge their residents for the water distributed to them, can carry on as they did when sales tax applied. These parks will continue to pay WET (formerly sales tax) to the city /water utility for the water, but the parks themselves will **not** be subject to WET. Instead, the cities and water suppliers will remain responsible for collecting the new water excise tax. The IDoR has stated, "water utilities who purchase their water service from another water utility are deemed the 'end user' of the water service unless they separately itemize and bill water service separately to their customers."
- Parks that purchase water and then itemize and charge their residents for water service will still be affected and covered by WET.

The effect of the revised rules on parks that do not fall into either of the above categories is somewhat unclear. When the revised rules are published, we will provide another update.

New Information RE: WET Itemization and Billing for Manufactured Housing Communities - July 26, 2018

Sean M. Raisch and Jodie Clark McDougal

A few weeks ago, we provided various details on Iowa's new Water Excise Tax (WET) that became effective on July 1, 2018. Herein, we have new information to provide based upon our most recent discussions with the Iowa Department of Revenue (IDOR) regarding the itemization and billing requirement under WET.

Such discussions arose due to the concerns expressed by many of our manufactured housing community clients and association members regarding the lack of clarity in the statute regarding billing and the frequency and method by which the water service charge and 6% WET must be itemized. In particular, we discussed with the IDOR the administrative and financial burden that many communities would face if monthly water service bills had to be sent out within all communities regardless of each community's current billing practices. Thus, the Davis Brown Law Firm engaged in follow-up conversations with the IDOR about these concerns, as well as about more practical methods for communities to satisfy

the itemization/billing requirement of WET. IDOR's position on the itemization/billing requirement after those conversations is set forth below.

For manufactured housing communities that already itemize and bill monthly for water service, those landlords must now note on their monthly invoices the dollar amount of the 6% WET charged on that water service charge.

Conversely, for manufactured housing communities that currently do not bill monthly for water service and/or do not send out any monthly bills/invoices whatsoever, the IDOR has now agreed that those communities can merely provide a *one-time notification* to residents notifying them of the amount of the water charge residents are paying per month and the amount of WET being collected on the water portion of the rent. This notification can also be satisfied with a provision in the lease. To satisfy the new law, the water charge and WET tax should be shown as part of, and broken out of, the total monthly rental amount the resident pays.

For example, below is an appropriate breakdown for a \$400.00 lot rental amount that would satisfy the new WET law and could be set forth in the aforementioned one-time notification. The below example assumes that the landlord has reasonably determined that a \$40 monthly water service charge is the appropriate charge:

Rent:	\$357.60
Water:	\$40.00
6% WET:	<u>\$2.40</u>
Monthly Payment:	\$400

Finally, please note that the [proposed administrative rules](#) for WET have now been published for comment. The deadline for public comment is 4:30 PM on August 7, 2018.

What Landlords Need to Know about Iowa's New Water Service Excise Tax - June 27, 2018

Sean M. Raisch and Jodie Clark McDougal

Effective July 1, 2018, in the state of Iowa is a new Water Service Excise Tax ("WET"), which was passed as SF 512. Iowa landlords who furnish water in any way to their tenants, as well as other companies that could be deemed to be providing water service, need to take note of the new WET. The Iowa Department of Revenue ("IDOR") has provided some guidance regarding WET, including written materials and will continue to provide guidance in the future. The IDOR has indicated that proposed regulations, although not in final form, will be available on the IDOR's website on or before July 1, 2018.

The Tax

WET is a newly created excise tax—that is, a tax that applies to the sale or furnishing of a specific type of product or service—that applies to water service. Currently, water service is generally subject to sales tax. As of July 1, 2018, WET replaces the six percent (6%) sales tax and imposes a six percent (6%) excise tax on the sale of water service. Thus, as an initial matter, from the IDOR's perspective, WET is not an additional tax or a tax increase; rather, it takes the place of sales tax for water service only. WET is also not subject to Local Option Sales Tax.

Statutory Definitions

WET applies to the sale of "water service" by "water utilities," as those terms are defined in Chapter 423G. WET defines "water service" as the delivery of water by piped distribution system and defines "by piped distribution" as all deliveries of water where the water passes through a piped distribution system to its point of delivery. The term "water utility" is defined as any person, partnership, business association, or corporation, including municipally owned corporations, domestic or foreign, who own or operate any facilities for making sales of water service to the public for compensation. Per the IDOR's interpretation of WET, compensation or fees received for the sale of "water service" include fees relating to water service,

which would include, for example, water connection fees, fees for upkeep of the piped distribution system, or administrative fees associated with the water service. Finally, the term “facilities” is defined to include the following: storage tanks, wells, plants, reservoirs, aqueducts, hydrants, pumps, or any other similar device, mechanism, equipment, or amenity designed to hold, treat, sanitize or deliver water. Notably, “facilities” **does not include** interior plumbing.

Based on these statutory definitions, WET will apply if the following conditions are satisfied (and no exemptions apply):

1. A person, partnership, business association or corporation, including municipally owned corporations,
2. owns or operates,
3. any facility,
4. for the delivery of water by a piped distribution system,
5. for compensation.

Exemptions

Iowa apartment owners are likely not subject to WET because the above-noted “internal plumbing” exemption appears to apply to essentially all apartment complexes; however, the IDOR has yet to introduce regulations interpreting this exemption. Specifically, in our conversations with the IDOR, the IDOR has explained that Iowa apartment landlords are likely exempted from WET, but have also noted that this question will not be definitively answered until the finalized IDOR regulations are published, which will occur later this summer or fall. When the IDOR’s final regulations are published, we will update you regarding applicability of WET to apartment landlords, but at this point it appears that Iowa apartment owners will be exempt.

In addition, water service sold for resale or distribution to end consumers is also exempt from WET. For example, the transaction of a municipality or rural water association selling water to a manufactured housing community to be distributed to end residents would generally be exempt from WET, so long as an exemption certificate was obtained by the manufactured housing community (and provided to the municipality or rural water association).

This same exemption has existed under the current sales tax applicable to water service. If you are a manufactured housing community owner who is subject to WET and a municipality or rural water association charges you WET on the purchase of your water (to be distributed to your residents) after July 1, 2018, you should consult an attorney to discuss a tax exemption. Other exemptions not relevant to landlords also appear in the new WET.

Applicability

It is important to note that IDOR has expressed the view that water being provided to residents of manufactured housing communities is subject to WET one way or another, but that WET should never result in a double taxation of such water service. Further, the IDOR has interpreted and will continue to interpret the delivery of water for compensation to be much broader than many landlords believe. In particular, the IDOR has interpreted the sale of water service to mean water service being provided to tenants along with other products or services in exchange for compensation as part of a single transaction. Most relevant in this context, the IDOR interprets the sale of water service to include a manufactured housing community charging a flat fee for rent, so long as water service is provided from the landlord as a part of the rental transaction.

In addition, IDOR has expressed the following general principles to Davis Brown regarding the applicability of WET to manufactured housing companies, even though these principles are not expressly set forth in the statutory language regarding WET. First, per discussions with the IDOR, any time a manufactured housing community’s residents are charged for water service directly by a municipality or rural water association, the WET should be collected and remitted by the municipality/water association and not the manufactured housing communities. Conversely, any time a manufactured housing community’s residents are not charged for water service directly by a municipality or rural water association, the manufactured housing community is subject to WET, regardless of the landlord’s billing practices and policies regarding water being provided to residents (subject to a public use exception that likely does not apply, as is discussed below).

The following examples will illustrate these principles in regard to the applicability of WET to manufactured housing communities. Please note that these are only general examples and are based upon the IDOR's *current* interpretations and communications to Davis Brown regarding of WET. You should consult an attorney regarding your specific situation.

First, per the IDOR's current interpretation, WET **does not apply** to manufactured housing communities in situations where a municipality, rural water association, or other water supplier *bills the residents directly*. For example:

A manufactured housing community owns or leases its pipe distribution system, but its residents are charged for water service directly by the municipality or rural water association. In this instance, the manufactured housing community **would not be subject** to WET. Instead, the municipality/water association would be the entity subject to WET. Presumably, the municipality/water association would be including the 6% WET charge in its bills to residents and then submitting all WET funds to the State.

Second, per the IDOR's current interpretation, WET **does apply** to manufactured housing communities whose water service is sub-metered and who bills their residents for their water usage. For example:

A manufactured housing community has a sub-metered water distribution system to its residents and sends each resident a monthly bill for water. In this instance, the manufactured housing community **is subject** to WET, just as the community was subject to sales tax for the sale of water to its residents prior to July 1, 2018.

Likewise, and by way of further example:

A manufactured housing community that bills residents a flat fee of \$10 a month for water. In this instance, the manufactured housing community is subject to WET, just as the community was subject to sales tax for the sale of water to its residents prior to July 1, 2018.

Remember that in any situation in which the manufactured housing community is subject to WET (including in the above two examples as well as the below example), the transaction of the manufactured housing community purchasing the water from the municipality or rural water association **is exempted** from WET. If you are being charged WET by a municipality or rural water association in this situation, you should consult an attorney.

Third, per the IDOR's current interpretation, **WET also applies** to manufactured housing communities in essentially all other situations in which its residents are not charged for water service directly by a municipality or rural water association (subject to the public use exception), including where a manufactured housing community does not actually charge the residents for water. This principle is illustrated by the following example:

Residents of a manufactured housing community are not charged for water service directly by a municipality or rural water association. In this manufactured housing community, the lease provides and/or the landlord states that it does not charge for water and/or purports to provide water to its residents free of charge. In this example, assume monthly lot rent is a flat fee of \$400 per lot, with no additional charge for water. In this instance, the IDOR's current position would be that the landlord's flat rental charge is compensation received by the landlord for the landlord's bundled services and products provided to all residents, including rental of the home sites, access to community amenities, access to community services, as well as water service. Thus, the manufactured housing community **is subject** to WET, as it is providing water service for compensation to its residents. Under the new law, the manufactured housing community must remit the 6% WET on the estimated portion of the rent that is charged or allocated for the water service provided to the residents. Such communities can collect that 6% WET from its residents.

Please note that the IDOR has indicated that there is an exception to the above scenario and/or similar scenarios (such as the campground scenario provided by the IDOR on its website) in the seemingly unlikely event that a manufactured housing community or other landlord provides water service to the general public free of charge; in such situation, the company would **not be subject** to WET. However, the IDOR will decide this on a case-by-case basis, and the IDOR has indicated to us that, at the very least, the water service purportedly being provided by a manufactured housing community

to the public free of charge would need to be greater than a public restroom or drinking fountain, and, further, there would need to be clear signage indicating that the water service was available and free to the general public.

Fourth, we have several manufactured housing community clients that charge residents for wastewater and/or sewerage discharge, rather than charging for water directly. We have discussed this specific scenario with the IDOR. According to the IDOR, this practice would still constitute selling water service for compensation, as water service would be part of the bundled services/products being provided by the landlord in exchange for the lump sum rental amount, and, accordingly, **would be subject** to WET. To be clear, according to the IDOR, the charges purportedly for wastewater and/or sewerage discharge are not subject to WET, but the IDOR still views the landlord as selling water service to its residents as part of its bundled services/products provided to residents in exchange for the monthly rental compensation.

Finally, where a water utility or other company charges a minimum cost for water service, regardless of whether the end consumer uses the service, the cost is still subject to WET.

The above examples are general examples and do not equate to legal advice in regard to any landlord's specific situation. Landlords should consult an attorney with any specific questions regarding the applicability of WET.

Permitting, Registration, and Payment

All landlords and other "water utilities" that are required to collect and remit WET must register for a WET permit. All WET reports and remittances must be made under that WET permit number. The WET permit registration form can be found on the IDOR website. There is no electronic registration, and the registration form must be completed and mailed to:

Registration Services
Iowa Department of Revenue
PO Box 10470
Des Moines, IA 50306-0470

Please note that a landlord or other water utility cannot use a sales tax permit for WET. For utilities that make sales of both water and other products/services, the sales tax report/remittance must be filed under the appropriate sales tax permit, and the WET report/remittance must be filed under the WET permit.

Most companies subject to WET will file quarterly returns, while others may be required to file annual or monthly returns, as is shown on the permit registration form. However, if the annual tax liability for combined WET and sales tax will not exceed \$120.00, a water utility may apply to the IDOR to file annual returns. Returns must be [filed electronically online](#). Instructions for filing returns can be found on the [IDOR website](#).

Billing

With regard to billing, by January 1, 2019, a water service fee, along with the 6% water service excise tax amount, must be separately itemized and stated on all bills and receipts, and must be identified separately from any other taxes collected. If a landlord or other water utility fails to separate the sale of water service from other charges or services, the IDOR will assume that the cost for the water service subject to WET is a pro rata portion of the total price, which generally results in a landlord paying much more WET than it should. Thus, manufactured housing communities and other landlords subject to WET should proactively take the necessary steps to start breaking out an appropriate charge for water to their residents, as well as expressly noting the 6% WET amount applicable to such water charge. The IDOR provides the following example for its pro rata determination on the compensation a company receives for water service.

A water utility is a campground that provides the following services for \$20.00: campground access; electricity; sewage; water; and trash removal. The campground does not bill its customers separately for any service. The IDOR will assume that the cost of each service is \$4.00 (total cost of \$20.00, divided by five separate services) and the campground will be billed accordingly.

Thus, landlords subject to WET who do not separately meter a resident's water consumption and do not currently break out a charge for water on its monthly charges to residents should determine a reasonable estimation as to how the entity's

total water amount is allocated amongst its residents and should separately itemize water on the monthly bills, so that the IDOR does not make that determination for you.

Finally, WET applies to water service/usage on and after July 1, 2018. For bills reflecting water usage prior to July 1, 2018, WET does not apply.

What if I Should Have Been Collecting Sales Tax for my Water Service?

In the event you believe you should have been collecting sales tax on water, or anything else, please consult an attorney to discuss the possibility of filing past returns with past sales information, the amount of sales tax owed (together with tax, penalty, and interest that is due), and your other options in this regard.

Will Wet Affect Certain Iowa IDNR's Regulations Re: Manufactured Housing Communities?

It is an open and unanswered question as to if and how WET--and the billing changes that will need to be made by manufactured housing communities to itemize water service subject to WET-- will apply to or otherwise affect the Iowa Department of Natural Resources' Drinking Water Regulations ("IDNR Regulations") and the classification of communities as public water supply systems. However, at this early stage it appears that a manufactured housing community's actions in complying with WET, including in the new billing requirements, could very well have an effect on the classification of that community as a public water supply system under the current IDNR regulations. In other words, it is certainly possible that payment of WET by a manufactured housing community could cause classification of that community as a public water supply system subject to all of the testing, monitoring, and other IDNR Regulations applicable to public water supply system, which is unfortunate. Thus, you should consult with an attorney and your industry associations regarding the potential applicability of the IDNR Regulations to your community.

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to water service excise tax and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 97, “State-Imposed Water Service Excise Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 512.

Purpose and Summary

Item 2 proposes to adopt new Chapter 97 within Title XIII, which establishes rules to administer the water service excise tax passed by the General Assembly in 2018. Specifically, these rules implement sections 10 through 17 of 2018 Iowa Acts, Senate File 512, which exempts certain sales of water from sales tax and enacts Iowa Code chapter 423G, which establishes a water service excise tax.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 512. That estimate predicts that in FY 2019, Senate File 512 will have no impact on the General Fund, will reduce Secure an Advanced Vision (SAVE) Program revenues by \$3.9 million, and will reduce local option sales tax (LOST) revenues by \$3 million. The estimate further predicts that by FY 2030, Senate File 512 will reduce General Fund revenues by \$26.1 million, will reduce SAVE revenues by \$5.2 million, and will reduce LOST revenues by \$4 million.

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:

Joe Fraioli
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.4057
Email: joe.fraioli@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. Adopt the following **new** Title XIII:

TITLE XIII
WATER SERVICE EXCISE TAX

ITEM 2. Adopt the following **new** 701—Chapter 97:

CHAPTER 97
STATE-IMPOSED WATER SERVICE EXCISE TAX

701—97.1(87GA,SF512) Definitions. For the purposes of this chapter and 701—Chapters 98 and 99, unless the context otherwise requires:

“*Bundled water service sales*” means a sale consisting of water service and other distinct and identifiable tangible personal property or non-water services for one nonitemized price.

“*Department*” means the department of revenue.

“*Director*” means the director of the department of revenue.

“*Facilities*,” for purposes of the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, sections 11 to 17, means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water. “Facilities” shall not include interior plumbing.

“*Other sales*” means sales of any other tangible personal property or services, whether taxable or not, other than sales of water service.

“*Person*” means the same as the term is defined in rule 701—211.1(423).

“*Purchaser*” means a person to whom water service is provided for compensation and means the same as the term is defined in rule 701—211.1(423).

“*Sales price*” means the amount of consideration paid for water service and means the same as the term is defined in rule 701—211.1(423).

“*State-imposed tax*” or “*tax*” means the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, section 13.

“Tax,” unless otherwise indicated, shall refer to the water service excise tax.

“Water service” means the delivery of water by piped distribution system, as defined in 2018 Iowa Acts, Senate File 512, section 10.

“Water utility” means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing water by piped distribution to the public for compensation, as defined in 2018 Iowa Acts, Senate File 512, section 10. “Corporation” as used in this definition includes municipal corporations. See 1968 Iowa Op. Atty. Gen. 1-21, 1968 WL 172465.

All other words and phrases used in this chapter and 701—Chapters 98 and 99 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 12 and 13.

701—97.2(87GA,SF512) Imposition. A state-imposed tax of 6 percent is imposed upon the sales price of water service by a water utility to a purchaser. The tax shall be collected by water utilities.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.3(87GA,SF512) Administration. The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement. The requirements of 701—Chapter 11 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 10, 13, and 15.

701—97.4(87GA,SF512) Charges and fees included in the provision of water service.

97.4(1) Sales integral to the ability to furnish water. The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if billed separately.

97.4(2) Examples of sales integral to the provision of water service. Sales of services to customers or users that are considered integral to furnishing water by piped distribution include, but are not limited to, the following:

- a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4) “a”(2).
- b. The sales price of water sold, whether metered or not.
- c. Service or account charges and administrative fees for water service, including new customer account charges and minimum charges for access to water service whether the customer uses the water or not.
- d. Fees for connection, disconnection, or reconnection to or from a water supply.
- e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including fees for labor and nonitemized fees for materials.
- f. Fees for using or checking water meters, excluding the rental of water meters.
- g. Tap fees.
- h. Water distribution system infrastructure and improvement fees.

97.4(3) Examples of sales that are not considered water service or integral to the provision of water service. Sales of services that are not considered integral to furnishing water by piped distribution include, but are not limited to, the following:

- a. Residential service contracts regulated under Iowa Code chapter 523C.
- b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. See subparagraph 97.4(4) “a”(1).
- c. Returned check fees.
- d. Deposits, including check and meter.
- e. Fees for printed bills, statements, labels, and other documents.
- f. Fees for late charges and nonpayment penalties.

g. Leak detection fees.

97.4(4) Sales generally not subject to water service excise tax. Water utilities may make other sales that may or may not be integral to the sale of water service but which are not subject to water service excise tax because they are separately taxable under Iowa Code section 423.2 as the sale of tangible personal property or non-water services.

a. *Sales of tangible personal property.* Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether it is sold to the consumer or user for a separately itemized price.

(1) Itemized tangible personal property. Sales or rentals of tangible personal property by a water utility for a separately itemized price on a water bill are not subject to the water service excise tax but may be subject to sales and use tax.

(2) Nonitemized tangible personal property. If the sale of tangible personal property is not itemized and is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(3), then the entire sales price is subject to the water service excise tax.

b. *Painting of hydrants.* Painting of hydrants constitutes painting services under Iowa Code section 423.2(6)“a.” Painting is subject to sales tax and is not subject to water service excise tax.

c. *Plumbing and pipefitting.* Some repairs of a water distribution system may constitute plumbing and pipefitting under Iowa Code section 423.2(6)“a.” Plumbing and pipefitting services are subject to sales tax and are not subject to water service excise tax.

97.4(5) Exemptions. The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 14 and 15.

701—97.5(87GA,SF512) Itemization of tax required. The water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of any other sales that may have also been made by the purchaser at that time. This rule shall take effect on January 1, 2019.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.6(87GA,SF512) Apportionment of bundled water service sales—rebuttable presumption. Where a water utility makes bundled water service sales as defined in rule 701—97.1(87GA,SF512) and does not separately charge and bill the sale of water service as required by rule 701—97.4(87GA,SF512), there is a rebuttable presumption that the cost for the sale of water service subject to the water service excise tax is a pro rata portion of the total bundled water service sales price. Where a water utility makes other sales as defined in rule 701—97.1(87GA,SF512) as well as bundled water service sales at an additional cost in a single transaction, this calculation shall only apply to the additional cost for the bundled water service sale.

EXAMPLE 1: A water utility sells combined water and sewage services for nonresidential commercial operations for \$50 per month. The water utility does not bill its customers separately for the sale of water service and only remits to the department sales tax on the \$50. The department will assume that the cost of water service is \$25 and the cost of sewage service is \$25. Accordingly, the water utility will be assessed penalty and interest on the \$25 for its failure to properly remit the water service excise tax.

EXAMPLE 2: A water utility is a campground that provides the following services for \$20 per night: campground access, electricity, sewage, water, and trash removal. The water utility does not bill its customers separately for any of these services and only remits to the department sales tax on \$20. The department will assume that the cost of each of the five services is \$4 (total cost of \$20 divided by five separate services = \$4 per service). Accordingly, the water utility will be assessed penalty and interest on the \$4 for its failure to properly remit the water service excise tax.

EXAMPLE 3: A water utility sells varying service packages for different prices per day as follows:

	Campsite Access	Electricity	Water and Sewage	Total Cost
Package A	\$10			\$10
Package B	\$10	\$10		\$20
Package C	\$10	\$10	\$10	\$30

If the water utility makes sales of Package C, the department will assume the cost of water service for that sale is \$5 (the pro rata cost of water service included in the bundled water service sale).

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 13 and 15.

701—97.7(87GA,SF512) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings which span the effective date of July 1, 2018, and the future repeal date as described in 2018 Iowa Acts, Senate File 512, section 17, the provisions of 701—subrule 14.3(9) shall apply.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.8(87GA,SF512) Filing returns; payment of tax; penalty and interest.

97.8(1) Application of 701—Chapter 12. The requirements of 701—Chapter 12 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.8(2) Frequency of deposit filing based on combined water service excise tax and sales tax. With respect to the tax thresholds used for determining whether a retailer must remit sales tax semimonthly, monthly, quarterly, or annually as described in rule 701—12.13(422), the threshold for determining the frequency with which a water utility must remit the water service excise tax shall be based on the sum of the total amount of sales tax collected and the total amount of water service excise tax collected.

EXAMPLE: Prior to the imposition of the water service excise tax, a water utility collected \$70,000 in sales tax per year. Pursuant to 701—subrule 12.13(2), the water utility filed its sales tax deposits with the department on a semimonthly basis. Following the imposition of the water service excise tax, the water utility now collects \$35,000 in sales tax per year and \$35,000 in water service excise tax per year. The combined sum of the water utility's monthly collected sales tax and water service excise tax is \$70,000. Therefore, the water utility will continue to make semimonthly deposits.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.9(87GA,SF512) Permits.

97.9(1) Application of 701—Chapter 13. The requirements of 701—Chapter 13 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.9(2) Separate water service excise tax permit required. All water utilities must register for a water service excise tax permit, and the water service excise tax shall be remitted under that permit. Water utilities that make water service sales and other sales subject to sales tax shall obtain a water service excise tax permit in addition to their current sales tax permit and shall remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** Title XIII:

TITLE XIII

WATER SERVICE EXCISE TAX

ITEM 2. Adopt the following **new** 701—Chapter 97:

CHAPTER 97

STATE-IMPOSED WATER SERVICE EXCISE TAX

701—97.1(87GA,SF512) Definitions. For the purposes of this chapter, unless the context otherwise requires:

“Bundled water service sales” means a sale of water service and other distinct and identifiable tangible personal property or non-water services for one nonitemized price.

“Department” means the department of revenue.

“Director” means the director of the department of revenue.

“Facilities,” means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, pipes, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water.

“Other sales” means sales of any other tangible personal property or non-water services, whether taxable or not.

“Person” means the same as the term is defined in rule 701—211.1(423).

“Purchaser” means a person to whom water service is provided for compensation and means the same as the term is defined in rule 701—211.1(423).

“Sales price” means the amount of consideration paid for water service and means the same as the term is defined in rule 701—211.1(423).

“State-imposed tax” or *“tax,”* unless otherwise indicated, means the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, section 13.

“Water supply” means any source from which water is obtained other than from a water utility.

“Water utility” means the same as defined in 2018 Iowa Acts, Senate File 512, section 10. “Corporation” as used in this definition includes municipal corporations. See 1968 Iowa Op. Atty. Gen. 1-21, 1968 WL 172465.

All other words and phrases used in this chapter shall have the meaning as defined in rule 701—211.1(423), unless otherwise indicated.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 12 and 13.

701—97.2(87GA,SF512) Imposition. A state-imposed tax of 6 percent is imposed upon the sales price of water service by a water utility to a purchaser. The tax shall be collected by water utilities.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.3(87GA,SF512) Administration. The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required

to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the Iowa Code which implements the streamlined sales and use tax agreement. The requirements of 701—Chapter 11 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 10, 13, and 15.

701—97.4(87GA,SF512) Charges and fees included in the provision of water service.

97.4(1) *Sales integral to the ability to furnish water service.* The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if billed separately.

97.4(2) *Examples of sales integral to the provision of water service.* Sales of services to customers or users that are considered integral to furnishing water by piped distribution include, but are not limited to, the following:

a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4) “a”(2).

b. The sales price of water sold, regardless of whether the water is metered.

c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.

d. Fees for connection, disconnection, or reconnection to or from a water utility's facilities, including tap fees.

e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.

f. Fees for using or checking water meters.

g. Water distribution system infrastructure and improvement fees.

97.4(3) *Examples of sales that are not water service or are not integral to the provision of water service.* Sales of services that are not integral to the furnishing of water by piped distribution include but are not limited to the following:

a. Residential service contracts regulated under Iowa Code chapter 523C.

b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. See subparagraph 97.4(4)“a”(1).

c. Returned check fees.

d. Deposits, including but not limited to check and meter deposits.

e. Fees for printed bills, statements, labels, and other documents.

f. Fees for late charges and nonpayment penalties.

g. Leak detection fees.

97.4(4) *Sales generally not subject to water service excise tax.* Water utilities may make other sales that may or may not be integral to the sale of water service but which are not subject to water service excise tax because those non-integral sales are separately taxable under Iowa Code section 423.2 as the sale of tangible personal property or non-water services.

a. Sales of tangible personal property. Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether the tangible personal property is sold to the consumer or user for a separately itemized price.

(1) Itemized tangible personal property. Sales or rentals of tangible personal property by a water utility for a separately itemized price are not subject to the water service excise tax, but may be subject to sales and use tax.

(2) Nonitemized tangible personal property. If the sale of tangible personal property is not itemized, but is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(2), then the entire sales price is subject to the water service excise tax.

b. Painting of hydrants. The painting of hydrants constitutes painting services under Iowa Code section 423.2(6)“a.” Painting is subject to sales tax and is not subject to water service excise tax.

c. Plumbing and pipefitting. Some repairs of a water distribution system may constitute plumbing and pipefitting under Iowa Code section 423.2(6)“a.” Plumbing and pipefitting services are subject to sales tax and are not subject to water service excise tax.

97.4(5) *Exemptions.* The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax.

701—97.5(87GA,SF512) Water utility determination—when water service is furnished for compensation.

97.5(1) *Persons furnishing water service for compensation.*

a. Persons who distribute from a water supply. Where a person furnishes water service as part of a retail sale using water obtained by that person from a water supply, that person is a water utility and is furnishing water service for compensation.

EXAMPLE: Water service from water supply

A manufactured housing community (MHC) owns or operates a well, and distributes water from the well to each lot in the community through a piped distribution system. The MHC separately bills each of the tenants \$500 per month for lot rental, which includes access to the water service. The MHC is a water utility making sales of water service and must collect and remit water service excise tax on that portion of the \$500 monthly charge that is for water service.

b. Persons who itemize sales or make bundled water service sales. A person who furnishes water service for a separately itemized price or makes bundled water service sales , including persons who resell water service purchased from a water utility, is a water utility and is furnishing water service for compensation. That person may purchase the water service tax exempt as a sale for resale.

EXAMPLE: Itemized sale of water service

Z is an entity that provides water from a well by piped distribution to various homes in the community. Each home that is connected to the well pays \$20 per month, which is used by Z for maintaining the water distribution system. Z is a water utility making sales of water service and must collect and remit water service excise tax on the \$20 monthly fee charged to each of its

members. *See In the Matter of Lakewood Utilities*, Iowa Dep't of Revenue, Docket No. 78-161-6A-RC (Feb. 8, 1980).

EXAMPLE: Bundled water service sales

A homeowner's association (HOA) collects a monthly fee of \$100 from each of the residents that are members of the HOA. The \$100 fee covers various services for a single, nonitemized price, including water service from a well operated by the HOA and non-water services. The HOA is a water utility making sales of water service and must collect and remit water service excise tax on that portion of the \$100 monthly charge that is for water service.

EXAMPLE: Sale for resale

An apartment owner purchases water from a city water utility and distributes the water to each unit through a system of pipes. The city meters the apartment owner's use of water each month and charges the apartment owner for the water service. The apartment owner separately bills each of the tenants \$40 per month for water service, including the cost of water and maintenance on the water distribution system. The apartment owner is a water utility and must collect and remit water service excise tax on the \$40 monthly charge for water service. The apartment owner may purchase the water from the city tax exempt as a sale for resale.

97.5(2) *Persons not furnishing water for compensation.* Persons who purchase water service from a water utility, and do not subsequently make itemized sales of water service or bundled water service sales as described in subrule 97.5(1)(b), are the end user of the water service and are not required to collect and remit the water service excise tax.

EXAMPLE: Purchaser as end user

A manufactured housing community (MHC) purchases water from a city water utility, and distributes the water to each lot in the community through a system of pipes. The city meters

the MHC's use of water each month and charges the MHC for the water service and the applicable water service excise tax. The MHC charges its tenants \$500 for lot rental. The MHC does not separately bill any of the tenants for water service. The MHC is the end user of the water service and is not required to collect or remit water service excise tax.

EXAMPLE: Purchaser as end user

A hotel purchases water from a city water utility and distributes the water to each room in the hotel through a system of pipes. The city meters the hotel's use of water each month and charges the hotel for the water service and the applicable water service excise tax. The hotel charges its guests \$100 per night to rent a room. The hotel does not separately bill any of the guests for water service. The hotel is the end user of the water service and is not required to collect or remit water service excise tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.6(87GA,SF512) Itemization of tax required. The water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item on any bill, receipt, agreement, or other similar document. The tax shall be identified as the water service excise tax and the amount of tax paid shall be displayed clearly upon the bill, receipt, agreement, or similar document provided to the purchaser. This rule shall take effect on January 1, 2019.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.7(87GA,SF512) Apportionment of bundled water service sales—rebuttable presumption. Where a water utility makes bundled water service sales as defined in rule 701—

97.1(87GA,SF512) and does not separately itemize the sale of water service as required by rule 701—97.6(87GA,SF512), there is a rebuttable presumption that the cost for the sale of water service subject to the water service excise tax is a pro rata portion of the total bundled water service sales price. Where a water utility makes other sales as well as bundled water service sales at an additional cost in a single transaction, this calculation shall only apply to the additional cost for the bundled water service sale.

EXAMPLE 1: A water utility sells combined water and sewage services for nonresidential commercial operations for \$50 per month. The water utility does not bill its customers separately for the sale of water service and only remits to the department sales tax on the \$50. The department will assume that the cost of water service is \$25 and the cost of sewage service is \$25 (total cost of \$50 divided by two separate services = \$25 per service). Accordingly, the water utility will be assessed penalty and interest on the \$25 for its failure to properly remit the water service excise tax.

EXAMPLE 2: A water utility is a campground that provides the following services for \$20 per night: campground access, electricity, sewage, water, and trash removal. The water utility does not bill its customers separately for any of these services and only remits to the department sales tax on \$20. The department will assume that the cost of each of the five services is \$4 (total cost of \$20 divided by five separate services = \$4 per service). Accordingly, the water utility will be assessed penalty and interest on the \$4 for its failure to properly remit the water service excise tax.

EXAMPLE 3: A water utility sells varying service packages for different prices per day as follows:

	Campsite Access	Electricity	Water and Sewage	Total Cost
Package A	\$10			\$10
Package B	\$10	\$10		\$20
Package C	\$10	\$10	\$10	\$30

If the water utility makes sales of Package C, the department will assume the cost of water service for that sale is \$5—the pro rata cost of water service included in the bundled water service sale of water service and sewage service. The water utility must remit water service excise tax on \$5 per sale of Package C.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 13 and 15.

701—97.8(87GA,SF512) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings which span the effective date of July 1, 2018 and the future repeal date as described in 2018 Iowa Acts, Senate File 512, section 17, the provisions of 701—subrule 14.3(9) shall apply.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 51.

701—97.9(87GA,SF512) Filing returns; payment of tax; penalty and interest.

97.9(1) *Application of 701—Chapter 12.* The requirements of 701—Chapter 12 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.9(2) *Frequency of deposit filing based on combined water service excise tax and sales tax.* With respect to the tax thresholds used for determining whether a retailer must remit sales tax semimonthly, monthly, quarterly, or annually, as described in rule 701—12.13(422), the threshold for determining how frequently a water utility must remit the water service excise tax shall be based on the sum of the total amount of sales tax collected and the total amount of water service excise tax collected.

EXAMPLE: Prior to the imposition of the water service excise tax, a water utility collected \$70,000 in sales tax per year. Pursuant to 701—subrule 12.13(2), the water utility filed its sales tax deposits with the department on a semimonthly basis. Following the imposition of the water service excise tax, the water utility now collects \$35,000 in sales tax per year and \$35,000 in water service excise tax per year. The combined sum of the water utility's monthly collected sales tax and water service excise tax is \$70,000. Therefore, the water utility will continue to make semimonthly deposits.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.10(87GA,SF512) Permits.

97.10(1) *Application of 701—Chapter 13.* The requirements of 701—Chapter 13 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.10(2) *Separate water service excise tax permit required.* All water utilities must register for a water service excise tax permit, and the water service excise tax shall be remitted

under that permit. Water utilities that make water service sales and other sales subject to sales tax shall obtain a water service excise tax permit in addition to their current sales tax permit and shall remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

The following rule-making actions are proposed:

Item 1. Adopt the following **new** Title XIII:

TITLE XIII

WATER SERVICE EXCISE TAX

Item 2. Adopt the following **new** 701—Chapter 97:

CHAPTER 97

STATE-IMPOSED WATER SERVICE EXCISE TAX

701—97.1(87GA,SF512) Definitions. To the extent it is consistent with 2018 Iowa Acts, Senate File 512 and this chapter, all words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and rule 701—211.1(423). For the purposes of this chapter, unless the context otherwise requires:

“*Facilities*” means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, pipes, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water.

“*State-imposed tax*” or “*tax*,” unless otherwise indicated, means the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, section 13.

“*Water utility*” means the same as defined in 2018 Iowa Acts, Senate File 512, section 10. “Corporation” as used in Iowa Code section 476.1(3) and as incorporated by 2018 Iowa Acts, Senate File 512, section 10, includes municipal corporations. *See* 1968 Iowa Op. Atty. Gen. 1–21, 1968 WL 172465.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 12 and 13.

701—97.2(87GA,SF512) Imposition. A state-imposed tax of 6 percent is imposed upon

the sales price of water service furnished by a water utility to a purchaser.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.3(87GA,SF512) Administration.

97.3(1) *Generally.* The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the Iowa Code which implements the streamlined sales and use tax agreement.

97.3(2) *Application of 701—Chapter 11.* The requirements of 701—Chapter 11 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 10, 13, and 15.

701—97.4(87GA,SF512) Charges and fees included in the provision of water service.

97.4(1) *Sales integral to the ability to furnish water service.* The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if billed separately.

97.4(2) *Examples of sales integral to the provision of water service.* Sales of services to customers or users that are considered integral to the furnishing of water by piped distribution include, but are not limited to, the following:

a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4) “a”(2).

b. The sales price of water sold, regardless of whether the water is metered.

c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.

d. Fees for connection, disconnection, or reconnection to or from a water utility’s facilities, including tap fees.

e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.

f. Fees for using or checking water meters.

g. Water distribution system infrastructure and improvement fees.

97.4(3) *Examples of sales that are not water service or are not integral to the provision of water service.* Sales of services that are not integral to the furnishing of water by piped distribution include, but are not limited to, the following:

a. Residential service contracts regulated under Iowa Code chapter 523C.

b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. See subparagraph 97.4(4) “a”(1).

c. Returned check fees.

d. Deposits, including but not limited to check and meter deposits.

e. Fees for printed bills, statements, labels, and other documents.

f. Fees for late charges and nonpayment penalties.

g. Leak detection fees.

97.4(4) *Sales generally not subject to water service excise tax.* Water utilities may make sales that may or may not be integral to the sale of water service but that are not subject to water service excise tax because those non-integral sales are subject to sales tax under Iowa Code section 423.2 as the sale of tangible personal property or as enumerated non-water services.

a. Sales of tangible personal property. Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether the tangible personal property is sold to the consumer or user for a separately itemized price.

(1) Itemized tangible personal property. Sales or rentals of tangible personal property by a water utility for a separately itemized price are not subject to the water service excise tax but may be subject to sales and use tax.

(2) Nonitemized tangible personal property. If the sale of tangible personal property is not itemized but is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(2), then the entire sales price is subject to the water service excise tax.

b. Painting of hydrants. The painting of hydrants constitutes painting services under Iowa Code section 423.2(6) “a.” Painting is subject to sales tax and is not subject to water service excise tax.

c. Plumbing and pipefitting. Some repairs of a water distribution system may constitute plumbing and pipefitting under Iowa Code section 423.2(6) “a.” Plumbing and pipefitting services are subject to sales tax and are not subject to water service excise tax.

97.4(5) Exemptions. The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax. For example, a water utility that purchases water service from a different water utility may be eligible to claim the sale for resale exemption pursuant to Iowa Code section 423.3(2).

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 14 and 15.

701—97.5(87GA,SF512) When water service is furnished for compensation.

97.5(1) Itemized sales of water service. Water service is furnished for compensation when water service is sold for a separately itemized price.

EXAMPLE: Itemized sale of water service. Z is an entity that provides water from a well by piped distribution to various homes in the community. Each home that is connected to the well pays \$20 per month, which is used by Z for maintaining the water distribution system. Z is a water utility making sales of water service and must collect and remit water service excise tax on the \$20 monthly fee charged to each of Z's members. *See In the Matter of Lakewood Utils.*, Iowa Dep't of Revenue, Docket No. 78-161-6A-RC (Feb. 8, 1980).

EXAMPLE: Sale for resale. An apartment owner purchases water from a city water utility and distributes the water to each unit through a system of pipes. The city meters the apartment owner's use of water each month and charges the apartment owner for the water service. The apartment owner separately bills each of the tenants \$40 per month for water service, including the cost of water and maintenance on the water distribution system. The apartment owner is a water utility and must collect and remit water service

excise tax on the \$40 monthly charge for water service. The apartment owner may purchase the water from the city tax exempt as a sale for resale.

97.5(2) *Water service sold for an identifiable price.* Water service is furnished for compensation when the price of the water service is identifiable from an invoice, bill, catalogue, price list, rate card, receipt, agreement, or other similar document, including where the total sales price increases when water service is included in the sale.

EXAMPLE: Cost varies with inclusion of water service. A campground provides three campsite packages to its customers:

Package A includes only campsite access for \$10 per night.

Package B includes campsite access and an electrical hookup for \$20 per night.

Package C includes campsite access, an electrical hookup, and water service for \$30 per night.

Sales of Package C by the campground include sales of water service. The campground must collect and remit water service excise tax on \$10—the identifiable sales price of water service.

97.5(3) *Water service not furnished for compensation; incidental sales.* No sale of water service for compensation occurs where water service is not sold for a separately itemized or identifiable price and is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one non-itemized price. A Manufactured Housing Community (MHC) owner owns a well and pipes water to the units in its lot. The MHC owner charges tenants \$500 per month for each unit. Water from the well is included in the \$500 rental charge. The MHC owner does not charge a flat water fee, does not charge tenants based on their actual water used, and does not offer

comparable units at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.6(87GA,SF512) Itemization of tax required. A water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item on any bill, receipt, agreement, or other similar document. The tax shall be identified as the water service excise tax, and the amount of tax paid shall be displayed clearly upon the bill, receipt, agreement, or other similar document provided to the purchaser. This rule shall take effect on January 1, 2019.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.7(87GA,SF512) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings which span across the 2018 Iowa Acts, Senate File 512, effective date of July 1, 2018, and the future repeal date as described in 2018 Iowa Acts, Senate File 512, section 17, the provisions of 701—subrule 14.3(9) shall apply.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.7(87GA,SF512) Filing returns; payment of tax; penalty and interest.

97.8(1) *Application of 701—Chapter 12.* The requirements of 701—Chapter 12 shall apply to water utilities in the same manner that those requirements apply to all sellers and

retailers making sales subject to state sales tax.

97.8(2) *Frequency of deposit filing based on combined water service excise tax and sales tax.* With respect to the tax thresholds used for determining whether a retailer must remit sales tax semimonthly, monthly, quarterly, or annually, as described in rule 701—12.13(422), the threshold for determining how frequently a water utility must remit the water service excise tax shall be based on the sum of the total amount of sales tax collected and the total amount of water service excise tax collected.

Example: Prior to the imposition of the water service excise tax, a water utility collected \$70,000 in sales tax per year. Pursuant to 701—subrule 12.13(2), the water utility filed its sales tax deposits with the department on a semimonthly basis. Following the imposition of the water service excise tax, the water utility now collects \$35,000 in sales tax per year and \$35,000 in water service excise tax per year. The combined sum of the water utility's monthly collected sales tax and water service excise tax is \$70,000. Therefore, the water utility will continue to make semimonthly deposits.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.9(87GA,SF512) Permits.

97.9(1) *Application of 701—Chapter 13.* The requirements of 701—Chapter 13 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.9(2) *Separate water service excise tax permit required.* All water utilities must register for a water service excise tax permit, and the water service excise tax shall be remitted under that permit. Water utilities that make water service sales subject to water

service excise tax and other sales subject to sales tax shall obtain a water service excise tax permit in addition to their current sales tax permit and shall remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.



Jodie Clark McDougal
JodieMcDougal@davisbrownlaw.com
Direct Dial: 515-246-7951
Des Moines Office

September 7, 2018

Via Email and US Mail

Department of Revenue
ATTN: Joe Fraioli
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Email: joe.fraioli@iowa.gov

RE: Comments to Proposed ARC 3896C Rules RE: New Chapter 97, "State-Imposed Water Service Excise Tax," of the Iowa Administrative Code

Dear Joe:

Please consider this letter to constitute my comments to the Iowa Department of Revenue's ("IDOR") *revised/rewritten* version of the proposed rules under which the IDOR is proposing to adopt a new Chapter 97, "State-Imposed Water Service Excise Tax," of the Iowa Administrative Code ("Rules"), regarding Senate File 512 and the new Water Service Excise Tax ("WET") set forth within Senate File 512.

In particular, the comments and objections set forth herein are focused on the IDOR's current position, as set forth in Section 97.5(1)(a) of the revised version of the Rules, that WET applies to a manufactured housing community ("MHC") that owns and operates its own well, *but does not charge its residents for water*.

(1) First and foremost, the position that the IDOR is currently taking regarding the application of the new WET to MHCs who have their own water wells and do not charge for water is directly opposite to the position that the IDOR previously took on this issue, which has been relied upon for decades by the MHCs throughout Iowa.

In 1987, the Iowa Manufactured Housing Association specifically sought guidance from the IDOR on this very issue. Below is the letter from the IDOR in this regard:

<p>March 31, 1987</p> <p>Joe Kelly Manufactured Housing Association of Iowa 1400 Dean Avenue Des Moines, IA 50316</p> <p>Dear Mr. Kelly:</p>	<p>Department of Revenue and Finance Gerald D. Bair, Director</p>
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#2998442

DAVIS BROWN KOEHN SHORS & ROBERTS P.C.

Thank you for your patience while the Department has reviewed the tax consequences of sales of water by mobile home parks to their customers.

The Department takes the position that where there is no separate charge for the water by the mobile home park, no sales subject to the tax will exist. The transfer of water would not be subject to the tax. However, the mobile home park would be treated as the consumer or user of the water. Tax would be due on any sale of water between a utility and the mobile home park.

If there is a separate charge by the mobile home park for the water, the water is subject to the tax. In this case, the mobile home park is a retailer and should have a retail sales tax permit and collect the sales tax. The Department's position is based on the Declaratory Ruling in the matter of Macombe Motel and Rule 701-16.15.

Any audits that have been completed are being returned to our field office for adjustment or cancellation.

This position of the Department is an opinion only. Under Rule 701 - 7.25, the only statements binding on the Department are through a Declaratory Ruling.

If you have any questions, feel free to contact me.

Sincerely,

David L. Casey,
Manager Audit Services Section
Audit & Compliance Division

DLC/nrc

(See Letter from Department of Revenue and Finance dated March 31, 1987) (emphasis added).

The above-noted prior position of the IDOR--that there is no sale of water subject to tax where there is no separate charge for water by the MHC to its residents--makes perfect sense and should not be changed. Moreover, there is no reasonable or rational justification for the IDOR to now change its position on the application of sales tax/WET to some, but not all, MHCs who are not charging their residents for water, as further set forth below.

(2) Second, the Rules, in their present form, contain an unreasonable, arbitrary, and capricious inconsistency and inequality in regard to their applicability to MHCs.

Specifically, Section 97.5(1)(a) of the Rules provides the following:

a. Persons who distribute from a water supply. Where a person furnishes water service as part of a retail sale using water obtained by that person from a water supply, that person is a water utility and is furnishing water service for compensation.

EXAMPLE: Water service from water supply:

A manufactured housing community (MHC) owns or operates a well, and distributes water from the well to each lot in the community through a piped distribution system.

The MHC separately bills each of the tenants \$500 per month for lot rental, which includes access to the water service. The MHC is a water utility making sales of water service and must collect and remit water service excise tax on that portion of the \$500 monthly charge that is for water service.

Section 97.5(2) of the Rules provide, in relevant part:

Persons not furnishing water for compensation. Persons who purchase water service from a water utility, and do not subsequently make itemized sales of water service or bundled water service sales as described in subrule 97.5(1)(b), are the end user of the water service and are not required to collect and remit the water service excise tax.

EXAMPLE: Purchaser as end user:

A manufactured housing community (MHC) purchases water from a city water utility, and distributes the water to each lot in the community through a system of pipes. The city meters the MHC's use of water each month and charges the MHC for the water service and the applicable water service excise tax. The MHC charges its tenants \$500 for lot rental. The MHC does not separately bill any of the tenants for water service. The MHC is the end user of the water service and is not required to collect or remit water service excise tax.

As discussed in greater detail below, the application of WET to a MHC that owns and operates its own well and does not charge its residents for water, while not applying WET to a MHC that purchases water from a utility and does not charge its residents for water, is unreasonable, arbitrary and capricious. Indeed, neither category of MHCs are engaging in the sale of water to their residents, and, thus, neither category of MHCs should be subject to WET.

As you know, prior to this revised/rewritten iteration of the Rules, the IDOR's previously communicated position had been that the second example community's \$500 lot rental fee would constitute a sale of water service, and, therefore, would be subject to WET. Fortunately, the IDOR correctly changed such prior position earlier this summer and determined that such previous position conflicted with its position in In the Matter of MaComb Motel, Inc., Docket No. 583, 1986 WL 171618 (Iowa Bd. Tax Rev. Sept. 1, 1986). In MaComb, the Iowa Board of Tax Review determined that the rental of a motel room did not constitute two separate sales—one for the room itself and a separate and distinct sale of gas and electric utilities to guests. MaComb, 1986 WL 171618 at *2. The Board reasoned that the consideration paid was for the entire service, lodging and accommodation and not for the individual components of the room because the price of the room did not vary according to the amount of utilities used. Id. Instead, a “guest pays for a package of services, which may be used in part or in total—but the charge is the same.” Id. Consistent with its position in MaComb, in the above-noted letter dated March 31, 1987 (the “March 31 Letter”), the IDOR opined that “where there is no separate charge for the water by the mobile home park, no sales subject to the tax will exist.” See March 31 Letter.

Similar to MaComb, in either of the above examples, the resident pays a fixed price for lot rental. In either example, there is no real difference between the lot rental transactions. The only discernible difference between the examples appears to be an arbitrary distinction, in that one MHC purchases water from a water utility, with that purchase subject to WET, while the other MHC owns and operates its own well. In either example, the lot rental does not vary based on the amount of water used. Rather, were the resident to not use any water at all, the lot rental price would remain the same. Thus, pursuant to MaComb and the IDOR's position in its March 31 Letter, WET should not apply to either transaction and the Rules, in their present form, are unreasonable, arbitrary and capricious.

(3) Third, the inconsistency in the IDOR's Rules violate the Equal Protection Clause of the Iowa Constitution and are, thus, unconstitutional. The Equal Protection Clause is "a direction that all persons similarly situated should be treated alike" under the law. Racing Assn. of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1 (Iowa 2004). Without getting into any great detail, the Equal Protection Clause is violated when the classifications drawn within a statute or regulation are not reasonable in light of their purpose. Id. In other words, the IDOR must have a valid and reasonable basis to treat MHCs with wells that do not charge their residents for water differently from MHCs that purchase water from water utilities that do not charge their residents for water. Here, the IDOR does not have a valid reason for such unequal treatment, and, thus, the Rules are unconstitutional in their unequal treatment of MHCs. See, e.g., Id. (finding that there is no legitimate purpose supported by fact that justifies treating one gambling enterprise differently than another based on where the gambling takes place). Consequently, the Rules should be revised such that WET should not apply to MHCs with wells that do not charge their residents for water to comply with the Equal Protection Clause.

(4) In response to the aforementioned unequal treatment of MHCs argument, the IDOR may attempt to assert that it believes the provision of water to all MHC residents in the state, or the provision of water to all people in the state altogether, must always be subject to WET at some point, regardless of whether a resident is actually charged for water.

In the event the IDOR takes this position, it is flawed. In particular, such a position would contradict other portions of WET and the Rules, which provide that the provision of water is not always subject to WET in certain regards. For example, on the IDOR's WET section of its website, the IDOR provides the following example in which the provision of water is *never* subject to WET.

A: Only sales of water service for compensation are taxable. Any sales of water that may be included in a comprehensive total price in a larger sale are taxable. Water service that is freely available to the public at no cost or compensation, and no requirement that users be customers, is not subject to WET.

EXAMPLE: Campground B charges \$10 per night for its campsites, and on the premises provides access to water service for the public; any member of the public, whether they are a paying customer or not, may use the water service as desired. No portion of Campground B's \$10 per-night campsite fee would be subject to WET

(See <https://tax.iowa.gov/WET>).

Further, under the above-noted principle, if a MHC with its own well (who does not charge its residents for water) makes the water available to the public, then the MHC's provision of water in that situation would never be subject to tax, thereby contradicting the position that the IDOR may attempt to assert that it believes the provision of water to all MHC residents must always be subject to WET at some point.

(5) Finally, the original, and subsequent revised/rewritten, version of the Rules equate to the IDOR attempting to make new law regarding WET within such Rules, which it does not have the authority to do.

It is undisputed under Iowa law that the purpose of administrative rules is to *carry out legislative enactments*; administrative rules, in and of themselves, are not the law. Holland v. Iowa, 115 N.W.2d 161, 164 (Iowa 1962); Iowa Dep't of Revenue v. Iowa Merit Employment, 243 N.W.2d 610, 615-16

(Iowa 1976). Thus, administrative rules cannot change the law, or alter the provisions of a statute, and, if they do, courts cannot enforce such invalid administrative rules. Holland, 115 N.W.2d at 164. In Holland, the Iowa Supreme Court held:

But administrative rules cannot go farther than the law permits. An administrative body may not use the device of promulgating rules to change or add to the law; they are not to be taken as law in themselves but must be reasonable and used for the purpose of carrying out the legislative enactments. **An administrative body may not make law or change the legal meaning of the common law or the statutes.** (internal citations omitted)

Id. at 162-165 (emphasis added); City of Ames v. State Tax Commission, 71 N.W.2d 15, 19-20 (Iowa 1955) (noting that an agency “may not make law or by rule change the legal meaning of the common law or the statutes”).

Here, within the above discussed applicability distinctions and provisions of the IDOR’s proposed Rules, the IDOR is attempting to make new law, and change existing law, regarding when the provision of water is subject to WET, while the underlying statute implementing this new tax simply does not set forth any such applicability distinctions or provisions. Thus, the IDOR’s Rules, as currently written, are invalid and unenforceable.

Thank you for your consideration of these comments.

Sincerely,
DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

A handwritten signature in cursive script, appearing to read "Jodie McDougal".

Attorney Jodie McDougal

Complete this form to change information relating to your business's tax permit. You may also change a permit online at tax.iowa.gov.

Legal name: _____

Doing business as: _____

Provide a social security number if the business is registered as a sole proprietor or single member LLC. Provide a Federal Employer Identification Number for all other business types.

Social Security Number (SSN): _____ - _____ - _____

Federal Employer Identification Number (FEIN): _____ - _____

Address: _____

City: _____ State: _____ ZIP: _____

Phone: _____ - _____ - _____

Changes requested, check all that apply:

- ☐ Sales Tax, Automobile Rental, Hotel/Motel Permit: _____ - _____ - _____
- ☐ Consumer's Use Tax Permit: _____ - _____ - _____
- ☐ Retailer's Use Tax Permit: _____ - _____ - _____
- ☐ Water Service Excise Tax Permit: _____ - _____ - _____
- ☐ Withholding Tax Permit: _____ - _____ - _____
- ☐ Fuel Tax Permit or License: _____ - _____ - _____
- ☐ Corporation FEIN: _____ - _____ - _____

1. Change Legal Name

Permits are not transferrable. If ownership is changing, all existing permits must be cancelled, and you must reapply for new permits under the newly named entity. If the new name is not recognizable by the existing name, include supporting documentation such as Articles of Amendment or verification that the IRS has updated your organization including the same name and FEIN.

Reason for change: _____

Current legal name: _____

New legal name: _____

2. Change "Doing Business As" Name

"Doing business as" may vary for each business location.

Reason for change: _____

Prior "doing business as" name: _____

New "doing business as" name: _____

For Office Use Only:



1992033019999

3. Change Partners, Corporate Officers, or Responsible Parties

Check the box to add or inactivate an individual. Provide the name, SSN, personal address, and effective date. Include additional sheets if necessary.

Reason for change: _____

a. Add ☐ Inactivate ☐

Individual last name: _____ First name: _____

SSN: ____ - ____ - ____ Phone: ____ - ____ - ____

Home address: _____

City: _____ State: ____ ZIP: ____

Effective date: ____ / ____ / ____

b. Add ☐ Inactivate ☐

Individual last name: _____ First name: _____

SSN: ____ - ____ - ____ Phone: ____ - ____ - ____

Home address: _____

City: _____ State: ____ ZIP: ____

Effective date: ____ / ____ / ____

c. Add ☐ Inactivate ☐

Individual last name: _____ First name: _____

SSN: ____ - ____ - ____ Phone: ____ - ____ - ____

Home address: _____

City: _____ State: ____ ZIP: ____

Effective date: ____ / ____ / ____

d. Add ☐ Inactivate ☐

Individual last name: _____ First name: _____

SSN: ____ - ____ - ____ Phone: ____ - ____ - ____

Home address: _____

City: _____ State: ____ ZIP: ____

Effective date: ____ / ____ / ____

4. Change Business Location Address

Cancel your sales tax and/or use tax permit(s) and complete a new business tax permit registration form if you are changing:

- Location address from one Iowa county to another
- Location address from Iowa to out of state
- Location address from out of state to Iowa

Reason for change: _____

New location address: _____

City: _____ State: ____ ZIP: ____

County: _____



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5. Change Business Mailing Address

☐ Check if same as business location address in section 4.

Mailing address will be effective for all tax types listed. If you want a different mailing address for each tax type checked on page one include a separate sheet.

New mailing address: _____

City: _____ State: _____ ZIP: _____

6. Change Filing Frequency (if qualified)

For each permit being changed, check the frequency requested and effective date. Note that filing history must meet the filing threshold. For more information about filing frequencies, visit tax.iowa.gov. Changes to and from annual filing are effective January 1. Requests received after April 30 will take effect on January 1 of the following year. All other filing frequencies may be changed at the start of a future calendar quarter. Check the quarter of the effective date.

Reason for change: _____

Effective date: ____ / ____ / ____

Check one filing frequency per permit:

Sales Tax: Annually ☐ Quarterly ☐ Monthly ☐ Semimonthly ☐

- Note: Sales tax permits that have Automobile Rental, Hotel/Motel, or are consolidated may not be filed annually.

Consumer's Use Tax: Annually ☐ Quarterly ☐

Retailer's Use Tax: Annually ☐ Quarterly ☐ Monthly ☐

Water Service Excise Tax: Annually ☐ Quarterly ☐ Monthly ☐ Semimonthly ☐

Withholding Tax: Quarterly ☐ Monthly ☐ Semimonthly ☐

7. Reinstate Permit

Complete this section only if you are seeking to reinstate a previously canceled permit.

Effective date (first date of business activity): ____ / ____ / ____

Reason for reinstatement: _____

Location address: _____

City: _____ State: _____ ZIP: _____

Mailing address: ☐ Check if same as business location address above.

Mailing address: _____

City: _____ State: _____ ZIP: _____

8. Signature

This application must be signed by the owner, partner, or corporate officer.

I, the undersigned, declare under penalties of perjury or false certificate, that I have examined this form, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature: _____ Date: ____ / ____ / ____

Print name: _____ Phone: ____ - ____ - ____

Contact name: _____ Contact email: _____

Questions?

Contact Taxpayer Services

Phone: 515-281-3114 or 800-367-3388

Email: idr@iowa.gov

Submit this form by: Fax: 515-281-3906

Mail to: Registration Services

Iowa Department of Revenue

PO Box 10470, Des Moines IA 50306-0470



REVENUE DEPARTMENT[701]

Amended Notice of Intended Action

Proposing rule making related to water service excise tax and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 97, “State-Imposed Water Service Excise Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 512.

Purpose and Summary

Item 2 proposes to adopt new Chapter 97 within Title XIII, which establishes rules to administer the water service excise tax passed by the General Assembly in 2018. Specifically, these rules implement sections 10 through 17 of 2018 Iowa Acts, Senate File 512, which exempts certain sales of water from sales tax and enacts Iowa Code chapter 423G, which establishes a water service excise tax.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 18, 2018, as **ARC 3896C**. No public comments were received. In addition to providing for a public hearing to receive oral and written comment on Chapter 97, this Amended Notice of Intended Action proposes new Chapter 97 with revisions as described below.

The definition of “facilities” has been revised to remove the exclusion of interior plumbing, and new rule 701—97.5(87GA,SF512) has been added to more clearly define when a sale of water service for compensation occurs. Purchasers of water service make taxable sales of water service for compensation if the purchaser separately itemizes the sale of water service or provides water service for an identifiable price, including where the addition of water service increases the overall price of a sale. Water service is not sold for compensation where the sale of water service is incidental to the rental of real property.

Proposed rule 701—97.6(87GA,SF512), Apportionment of bundled water service sales—rebuttal presumption, was deleted, and the content of that rule was placed in new subrule 97.5(2).

In addition, nonsubstantive edits have been applied to other rules.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 512. That estimate predicts that in FY 2019, Senate File 512 will have no impact on the General Fund, will reduce Secure an Advanced Vision for Education (SAVE) revenues by \$3.9 million, and will reduce local option sales tax (LOST) revenues by \$3 million. The estimate further predicts that by FY 2030, Senate File 512 will reduce General Fund revenues by \$26.1 million, will reduce SAVE revenues by \$5.2 million, and will reduce LOST revenues by \$4 million.

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 November 13, 2018. Comments should be directed to:

Joe Fraioli
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.4057
Email: joe.fraioli@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2018
1 to 2 p.m.

Room 430, Fourth Floor
Hoover State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

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. Adopt the following **new** Title XIII:

TITLE XIII WATER SERVICE EXCISE TAX

ITEM 2. Adopt the following **new** 701—Chapter 97:

CHAPTER 97 STATE-IMPOSED WATER SERVICE EXCISE TAX

701—97.1(87GA,SF512) Definitions.

97.1(1) Incorporation of definitions. To the extent they are consistent with 2018 Iowa Acts, Senate File 512, all words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and rule 701—211.1(423).

97.1(2) Chapter-specific definitions. For the purposes of this chapter, unless the context otherwise requires:

“*Facilities*” means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, pipes, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water.

“*State-imposed tax*” or “*tax*,” unless otherwise indicated, means the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, section 13.

“*Water utility*” means the same as defined in 2018 Iowa Acts, Senate File 512, section 10. “*Corporation*” as used in Iowa Code section 476.1(3) and as incorporated by 2018 Iowa Acts, Senate File 512, section 10, includes municipal corporations. See 1968 Iowa Op. Atty. Gen. 1-21, 1968 WL 172465.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 12 and 13.

701—97.2(87GA,SF512) Imposition. A state-imposed tax of 6 percent is imposed upon the sales price of water service furnished by a water utility to a purchaser.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.3(87GA,SF512) Administration.

97.3(1) Generally. The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the Iowa Code which implements the streamlined sales and use tax agreement.

97.3(2) Application of 701—Chapter 11. The requirements of 701—Chapter 11 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 10, 13, and 15.

701—97.4(87GA,SF512) Charges and fees included in the provision of water service.

97.4(1) Sales integral to the ability to furnish water service. The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if the water service and accompanying services are billed separately.

97.4(2) Examples of sales integral to the provision of water service. Sales of services to customers or users that are considered integral to the furnishing of water by piped distribution include, but are not limited to, the following:

- a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4) “a”(2).
- b. The sales price of water sold, regardless of whether the water is metered.
- c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.
- d. Fees for connection, disconnection, or reconnection to or from a water utility’s facilities, including tap fees.
- e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.
- f. Fees for using or checking water meters.
- g. Water distribution system infrastructure and improvement fees.

97.4(3) Examples of sales that are not water service or are not integral to the provision of water service. Sales of services that are not integral to the furnishing of water by piped distribution include, but are not limited to, the following:

- a. Residential service contracts regulated under Iowa Code chapter 523C.

b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. See subparagraph 97.4(4) “a”(1).

c. Returned check fees.

d. Deposits, including but not limited to check and meter deposits.

e. Fees for printed bills, statements, labels, and other documents.

f. Fees for late charges and nonpayment penalties.

g. Leak detection fees.

97.4(4) Sales generally not subject to water service excise tax. Water utilities may make sales that may or may not be integral to the sale of water service but that are not subject to water service excise tax because those nonintegral sales are subject to sales tax under Iowa Code section 423.2 as the sale of tangible personal property or as enumerated non-water services.

a. *Sales of tangible personal property.* Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether the tangible personal property is sold to the consumer or user for a separately itemized price.

(1) Itemized tangible personal property. Sales or rentals of tangible personal property by a water utility for a separately itemized price are not subject to the water service excise tax but may be subject to sales and use tax.

(2) Nonitemized tangible personal property. If the sale of tangible personal property is not itemized but is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(2), then the entire sales price is subject to the water service excise tax.

b. *Painting of hydrants.* The painting of hydrants constitutes painting services under Iowa Code section 423.2(6) “a.” Painting is subject to sales tax and is not subject to water service excise tax.

c. *Plumbing and pipefitting.* Some repairs of a water distribution system may constitute plumbing and pipefitting under Iowa Code section 423.2(6) “a.” Plumbing and pipefitting services are subject to sales tax and are not subject to water service excise tax.

97.4(5) Exemptions. The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax. For example, a water utility that purchases water service from a different water utility may be eligible to claim the sale for resale exemption pursuant to Iowa Code section 423.3(2).

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 14 and 15.

701—97.5(87GA,SF512) When water service is furnished for compensation.

97.5(1) Itemized sales of water service. Water service is furnished for compensation when water service is sold for a separately itemized price.

EXAMPLE: Itemized sale of water service. Z is an entity that provides water from a well by piped distribution to various homes in the community. Each home that is connected to the well pays \$20 per month, which is used by Z for maintaining the water distribution system. Z is a water utility making sales of water service and must collect and remit water service excise tax on the \$20 monthly fee charged to each of Z’s members. See *In the Matter of Lakewood Utils.*, Iowa Dep’t of Revenue, Docket No. 78-161-6A-RC (Feb. 8, 1980).

EXAMPLE: Sale for resale. An apartment owner purchases water from a city water utility and distributes the water to each unit through a system of pipes. The city meters the apartment owner’s use of water each month and charges the apartment owner for the water service. The apartment owner separately bills each of the tenants \$40 per month for water service, including the cost of water and maintenance on the water distribution system. The apartment owner is a water utility and must collect and remit water service excise tax on the \$40 monthly charge for water service. The apartment owner may purchase the water from the city tax exempt as a sale for resale.

97.5(2) Water service sold for an identifiable price. Water service is furnished for compensation when the price of the water service is identifiable from an invoice, bill, catalogue, price list, rate card, receipt, agreement, or other similar document, including where the total sales price increases when water service is included in the sale.

EXAMPLE: Cost varies with inclusion of water service. A campground provides three campsite packages to its customers:

Package A includes only campsite access for \$10 per night.

Package B includes campsite access and an electrical hookup for \$20 per night.

Package C includes campsite access, an electrical hookup, and water service for \$30 per night.

Sales of package C by the campground include sales of water service. The campground must collect and remit water service excise tax on \$10—the identifiable sales price of water service.

97.5(3) *Water service not furnished for compensation; incidental sales.* No sale of water service for compensation occurs where water service is not sold for a separately itemized or identifiable price and is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) owner owns a well and pipes water to the lots. The MHC owner charges tenants \$500 per month for each lot rental. Water from the well is included in the \$500 rental charge. The MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) purchases water from a city water utility and distributes the water to each lot in the community through a system of pipes. The city meters the MHC's use of water each month and charges the MHC for the water service and the applicable water service excise tax. The MHC charges its tenants \$500 for lot rental. As in the previous example, the MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.6(87GA,SF512) Itemization of tax required. A water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item on any bill, receipt, agreement, or other similar document. The tax shall be identified as the water service excise tax, and the amount of tax paid shall be displayed clearly on the bill, receipt, agreement, or other similar document provided to the purchaser. This rule shall take effect on January 1, 2019.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.7(87GA,SF512) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings which span across the 2018 Iowa Acts, Senate File 512, effective date of July 1, 2018, and the future repeal date as described in 2018 Iowa Acts, Senate File 512, section 17, the provisions of 701—subrule 14.3(9) shall apply.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.8(87GA,SF512) Filing returns; payment of tax; penalty and interest.

97.8(1) *Application of 701—Chapter 12.* The requirements of 701—Chapter 12 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.8(2) *Frequency of deposit filing based on combined water service excise tax and sales tax.* With respect to the tax thresholds used for determining whether a retailer must remit sales tax semimonthly, monthly, quarterly, or annually, as described in rule 701—12.13(422), the threshold for determining how frequently a water utility must remit the water service excise tax shall be based on the sum of the total amount of sales tax collected and the total amount of water service excise tax collected.

EXAMPLE: Prior to the imposition of the water service excise tax, a water utility collected \$70,000 in sales tax per year. Pursuant to 701—subrule 12.13(2), the water utility filed its sales tax deposits with the

department on a semimonthly basis. Following the imposition of the water service excise tax, the water utility now collects \$35,000 in sales tax per year and \$35,000 in water service excise tax per year. The combined sum of the water utility's monthly collected sales tax and water service excise tax is \$70,000. Therefore, the water utility will continue to make semimonthly deposits.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.9(87GA,SF512) Permits.

97.9(1) *Application of 701—Chapter 13.* The requirements of 701—Chapter 13 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.9(2) *Separate water service excise tax permit required.* All water utilities must register for a water service excise tax permit, and the water service excise tax shall be remitted under that permit. Water utilities that make water service sales subject to water service excise tax and other sales subject to sales tax shall obtain a water service excise tax permit in addition to their current sales tax permit and shall remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.