

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.