

TITLE XV
LOCAL OPTION SALES AND SERVICE TAX

CHAPTER 107
LOCAL OPTION SALES AND SERVICE TAX
[Prior to 12/17/86, Revenue Department [730]]

701—107.1(422B) Definitions. The following words and terms are used in the administration of the local option sales and service tax:

The word “city” means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word “department” is used, it means the “Iowa department of revenue and finance.”

The term “unincorporated area of the county” means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

When the meaning of the word “sale” cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

701—107.2(422B) Local option sales and service tax.

107.2(1) Imposition and jurisdiction. Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue and finance is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

Within ten days of the election at which a majority of those voting in favor of the question of imposition, repeal, or change in the rate of tax, the county auditor must give notice of the election results to the director in the form of a copy of the abstract of votes.

107.2(2) Procedures for implementing and repealing the tax.

a. Implementing the tax. The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from the date of the election in which a majority of those voting on the tax favored its imposition. Within ten days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable election to the director of revenue and finance. For the purposes of this rule, the "abstract of ballot" is defined as abstract of votes as provided in 721—21.800(4).

A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. Effective July 1, 2001, a local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

b. Repeal of the tax. A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).

Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.

This rule is intended to implement Iowa Code sections 422B.1 and 422B.8 and 422B.9 as amended by 2001 Iowa Acts, House File 715, section 14.

701—107.3(422B) Transactions subject to and excluded from local option sales tax.

107.3(1) Sales of tangible personal property. The local option sales tax is imposed upon the gross receipts from "sales" of tangible personal property which occur within that portion of a county where a tax is imposed. There is no local option use tax. The taxable event which determines where a sale occurs is "delivery" of the tangible personal property pursuant to contract for sale. If "delivery" occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). Delivery usually occurs when the seller of tangible personal property transfers physical possession of the property to the buyer. In most instances, this transfer takes place at the seller's place of business. However, if the seller transfers the property to the buyer from the seller's own vehicle, then the transfer usually takes place at the buyer's residence or place of business. Finally, if the seller transfers the property to a common carrier or the United States Postal Service for subsequent transport to the buyer, then "delivery" of the property occurs at the time and place where the seller transfers possession of the property to the postal service or the common carrier.

EXAMPLE 1. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Mr. Edwards lives in Polk County and visits Smith's Furniture Storeroom also located in Polk County. Mr. Edwards enters into a contract to purchase furniture. Smith's Furniture Storeroom transports the furniture to a common carrier located in Polk County, who in turn transports it to Mr. Edwards' residence in Polk County. Local option sales tax is imposed since the delivery, and therefore the sale of the tangible personal property, occurred in a taxing jurisdiction. "Delivery" of the furniture occurred when the seller transferred physical possession of the furniture to the common carrier.

EXAMPLE 2. Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith's Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith's Furniture Showroom truck and transported to Mr. Jones' home in Jasper County. "Delivery" of the furniture has occurred in Jasper County at the buyer's residence because that is where Smith's Furniture Showroom (the seller) transferred physical possession of the furniture to Mr. Jones (the buyer) under their contract of sale. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.