

# Nichols Patrick

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## Iowa Tax Update and Overview

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A site devoted to articles on current developments in federal taxes geared toward CPAs in tax practice.

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**Capital Gain Taxable to US Citizen Despite Clause in Treaty That  
Appeared to Exempt Item From US Tax Due to Being a Resident of**

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## Iowa State Taxes – Lots of Them

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**IOWA TAX / FEE DESCRIPTIONS AND RATES**

<ul style="list-style-type: none"> <li>Automobile Rental Tax</li> <li>Cigarette Tax</li> <li>Consumer's Use Tax</li> <li>Contractor Registration Fee</li> <li>Corporate Income Tax</li> <li>Corporation Registration Fee</li> <li>Drug Stamp Tax</li> <li>Environmental Protection Charge</li> <li>Fiduciary Tax</li> <li>Franchise Tax</li> <li>Fuel Tax</li> <li>Gambling, social and charitable</li> <li>Hazardous Waste Fee</li> <li>Hotel/Motel Tax</li> <li>Household Hazardous Materials Fee</li> <li>Household Hazardous Waste Fee</li> <li>Individual Income Tax</li> <li>Individual Income Tax EMS Surtax</li> <li>Individual Income Tax School District Surtax</li> </ul>	<ul style="list-style-type: none"> <li>Inheritance and Estate Tax</li> <li>Insurance Premium Tax</li> <li>Liquor Taxes</li> <li>Local Option Sales Tax</li> <li>Mobile, Manufactured, and Modular Home Tax</li> <li>Motor Vehicle One-Time Registration Fee</li> <li>Ocean Marine Profit Tax</li> <li>Property Tax</li> <li>Property Tax Credits</li> <li>Real Estate Transfer Tax</li> <li>Retailer's Use Tax</li> <li>School Infrastructure Local Option Tax</li> <li>State Sales Tax</li> <li>Tobacco Products Tax</li> <li>Unemployment Taxes</li> <li>Use Tax</li> <li>Withholding Tax</li> </ul>
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**Iowa Department of Revenue**  
www.iowa.gov/tax

**Marijuana and Controlled Substance  
Tax Stamp Order Form**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_

OFFICE USE ONLY					
	(A) Number of Plants	(B) Tax Rate per Plant	(A X B) Tax Due*	Stamp Sequence	Number of Stamps
Marijuana Plants		\$750.00			

	(A) Weight of Each Package (grams)	(B) Number of Packages	(C) Tax Rate per Gram	(A X B X C) Tax Due*	Stamp Sequence	Number of Stamps
Marijuana			\$5.00			


	(A) Weight of Each Package (grams)	(B) Number of Packages	(C) Tax Rate per Gram	(A X B X C) Tax Due*	Stamp Sequence	Number of Stamps
Controlled Substance By Weight			\$250.00			

	(A) Quantity per Package	(B) Number of Packages	(C) Tax Rate	(A X B X C) Tax Due*	Stamp Sequence	Number of Stamps
Controlled Substance By Dosage			\$400.00 / 10			


Date of Sale: \_\_\_\_\_  
 Total Amount Due: \$ \_\_\_\_\_

\*Payment will be accepted in the form of cash, certified check, or money order. No personal checks will be accepted.  
 \*You are not required to give your name, address, or any other identifying information; however if you are ordering by mail, you must provide a valid mailing address for shipping.  
 \*Stamps ordered by mail will be mailed first class at the risk of the purchaser.  
 \*The minimum purchase price for a single stamp transaction is \$215.00 or more (701 IAC 91.2)

\*Mailing Address:  
 Iowa Department of Revenue-Taxpayer Services  
 PO Box 10457  
 Des Moines, IA 50306-0457



70 510 (8/13)



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## Iowa Legislative Changes

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### Iowa Legislature

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- Session begins each year on second Monday in January each year [Iowa Code Section 2.1]
- 110<sup>th</sup> day of session per diem is cut off
- Can be later called into special session



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### Income Tax Changes

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- Set of five changes
- Impacts both individual and corporate income taxes

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### IRC Conformity Date



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### State Income Taxes and the Internal Revenue Code

- States will, to a greater or lesser extent, bring the IRC into their law by reference
  - Saves a lot of time in having to create a full income tax system
  - Taxpayers are having to compute numbers under the IRC already so actually saves effort by using those calculations
  - Has affect of making sales tax provisions actually have more complex law
- Methods of referencing the IRC
  - Rolling conformity – statute automatically accepts law changes
  - Annual act conformity – statute is updated annually by legislature, chooses which changes to accept/reject
  - Static conformity – state adopts conformity only every few years, does not

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### Conformity Issues

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- Aside from rolling conformity, have uncertainty whenever Congress changes the law
- In 2016 that's not a big deal—but may be in 2017 if we get some form of
  - President Elect's tax proposal (see [www.donaldjtrump.com](http://www.donaldjtrump.com))
  - House GOP proposals
- State revenue departments decide how to react
  - Assume conformity, require amendments if not fixed
  - Assume nonconformity, require amendment if is fixed
  - Taxpayers may simply extend and hope the legislature fixes this before the extended due date
  - Always introduces uncertainty into state tax planning

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### HF 2433-A 2016 Internal Revenue Code Update Bill

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- Like most states, Iowa “borrows” most of its income tax law from the Internal Revenue Code
- However, does not simply reference the law as it is changed by Congress, but rather adopts as of a specific date
  - This bill moved that date to January 1, 2016
  - Any changes after that date are not part of Iowa's individual income tax until the Legislature again
  - Currently only 2016 difference relates to Olympic medalist exclusion
- Legislature decides whether to conform or not to federal changes—did not pick up bonus depreciation from PATH Act, but did conform to most other revisions

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### Checkoffs

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### Checkoff Multiplication

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- State legislatures love to add check off boxes to tax returns for charitable contributions

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### HF 2451-A Income Tax Checkoff Changes

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- Old law had “automatic removal” provision for checkoffs (drop the two least popular of the four on the return)
- New law provides that same checkoffs that were on the 2015 return will be on 2016-2018 returns without regard to amount of contribution:
  - Fish and Game Protection Fund,
  - Iowa State Fair Foundation Fund,
  - Veterans Trust Fund and Volunteer Fire Fighter Preparedness Fund, and
  - Child Abuse Prevention Program Fund
- After January 1, 2019 back to limit of four checkoffs

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### 529 Plans

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### 529 Savings Plans

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- Like many states, Iowa chooses to encourage contributions to its 529 savings plan by offering a deduction
- Since they are state sponsored plans, they have their own terms and conditions
- Iowa looked to modify those terms this year

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### SF 2301 529 Plan Changes

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- Under prior law only following could contribute to Iowa College Savings 529 Plan
  - Individual
  - Individual's legal representative
  - Trust or estate
- New law adds tax exempt, nonprofit organizations to list of entities that can contribute
- Effective retroactive to January 1, 2016, for tax years beginning on or after that date

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### Disaster Response



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### SF 2306 Rapid Response to State Disasters

- Prior law had limited exclusion for nonresidents performing emergency work for electric utility
- New law expands
  - Covers fixing or building critical infrastructure in response to state-declared or presidentially-declared major disasters
  - Expands the list of taxes such individuals and entities are exempted from to include
    - Corporate income taxes
    - Inclusion in a consolidated return
    - Use tax or equipment tax
    - Property taxes
    - Protection from out of state employee being a resident
  - Defines disaster response period

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### Tax Credit Changes

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- Seven credit bills became law
- Most extend credits
- A few modify existing credits
- One new credit

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### Historic Preservation Credit

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### HF 2443-B Historic Preservation Tax Credit Transition

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- Prior law - Department of Cultural Affairs was charged with overseeing Historic Preservation and Cultural Entertainment District Tax Credit Program
- New law
  - Now oversight goes to Economic Development Authority, no change in DOR's role
  - Refundability/transferability
    - Must be an eligible taxpayer
    - Enter into agreement with Department of Cultural Affairs or with the Economic Development Authority on or after July 1, 2014 may be refundable to applicant or a transferee
  - Taxpayer may elect to carry forward 5 years or, if refundable, carry forward as an overpayment

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### Solar Energy

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### HF 2459-C Solar Energy System Tax Credit

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- Prior law – did not specify order in which to review application or how to deal with applications in excess of cap. Department created FIFO rule and wait list
- New Law
  - Applications reviewed on a FIFO basis
  - Applicants denied credit due to cap put on wait list to be at front of the line in later year
  - Retroactive late application relief for systems installed in 2014 and 2015
    - 2014 late applications first eligible in 2016
    - 2015 late applications first eligible in 2017

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### Renewable Energy Credit

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### HF 2468-D Renewable Energy Tax Credit

- Old Law: must be placed in service by 1/1/17, reserved portion for solar, 2 facilities per owner limit, no certificates issued after December 31, 2026
- New Law:
  - Extends placed in service date by one year
  - Clarified solar facility definition for those qualifying as such
  - Allows electrical cooperative to have four facilities
  - Moves certificate date forward one year as well

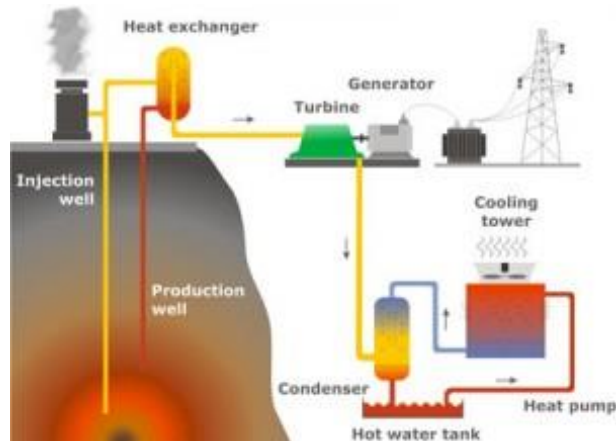
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### Geothermal Energy Credit



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### HF 2468-E Geothermal Tax Credit

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- Old law: credit for geothermal heat pump equal to 20% of federal credit. Federal credit set to expire at end of 2016
- New law:
  - If federal credit not extended, Iowa will switch to its own credit which will be 10% of the taxpayer's qualified expenditures
  - If federal credit is extended or later is brought back by Congress, then old 20% credit (that is, 20% of federal credit) returns and no 10% credit will be allowed while the federal credit is in force

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### Adoption Credit

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### HF 2468-F Adoption Tax Credit Increase

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- Old Law: Maximum \$2,500 per adoption credit for expenses paid during tax year
- New Law:
  - Limit increased to \$5,000 per adoption
  - Effective January 1, 2017

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### Renewable Chemical Production Credit

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### SF 2300 Renewable Chemical Production Tax Credit Program

- Old Law: No prior credit existed
- New Law:
  - Credit equal to \$0.05/lb. of renewable chemicals produced from biomass feedstock in Iowa
  - Must apply to Economic Development Authority before eligible to begin claiming the credit
  - Maximum credit
    - \$1,000,000 for business in state five years or less
    - \$500,000 for business in state more than five years
    - No more than five tax credits under the program
  - Credit only on production in excess of pre-eligibility production threshold
  - Refundable credit

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### Renewable Fuels Production



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### SF 2309 Renewable Fuels Tax Credits

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- Old Law: Credit to retail dealers on gasoline blended with ethanol, set to expire 1/1/18. Biodiesel blended fuel credit set to expire 1/1/18. Ethanol promotion credit set to expire 1/1/21. Biodiesel sales and use tax refund set to expire 1/1/18
- New Law:
  - Ethanol blended fuel credit, biodiesel credit and sales and use tax refund extended to 1/1/2021
  - Changed credit amount of biodiesel blended fuel credit
  - Ethanol promotion tax credit still scheduled to expire 1/1/2021

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### Sales and Use Tax

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- Three bills enacted into law
- Sales and use taxes are simple—right up until it isn't
- General structure of such laws are to
  - First tax everything
  - Then create exemptions from the tax
- Over time the number of exemptions tends to keep growing

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### Replacement Parts



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### HF 2433-B Replacement Parts and Supplies

- Old Law: Specific items exempted from sales tax if used for one of six purposes
- New Law:
  - Expanded to add supplies
  - Three factor test for a replacement part (must meet all three)
  - Four distinct ways to qualify as a supply (meet any of these tests)
  - Repeals prior to its effective date Department's regulation that would have changed definition of what is exempt under old rule (ARC 2349C)
- IDR has released revised regulations to implement the new law (ARC 2768C; Chapters 15; 18; 230, 9/22/16)

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### Reinvestment District Construction Materials



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### HF 2468-C Reinvestment District Clarification

- Existing exemption for amounts used in a construction contract for a “designated exempt entity” which was limited to two classes of educational institutions defined at Iowa Statute 423.4 subsection 1 and 6
- New law
  - Expands list of “designated exempt entity”
  - Now includes “instrumentality of a county or municipal government, including an agent of the entity, if the instrumentality or agent was created for the purpose of owning real property located within a reinvestment district established under Iowa Code Chapter 15J” (Iowa Reinvestment Act)
  - For “new” group material must be completely consumed in contract approved by economic development authority
  - Effective May 27, 2016 for purchases made on or after May 26, 2016

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### Baseball/Softball Complex



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### SF 2312 – Baseball/Softball Complex Rebate

- Old law: baseball/softball facility and movie site with construction begun before 7/1/13 could apply for rebate of sales tax if owned more than 51% by Iowa residents and/or corporations
- Added new provisions
  - Owner must apply for financial assistance under community attraction and tourism program
  - Owner is legal entity where more than 51% of equity or voting interest controlled by Iowa residents/Iowa corporation
  - Iowa corporation – owned more than 51% by Iowa residents
  - Upon completion will be a baseball/softball complex
  - Completed after July 1, 2016
  - Cost at least \$10 million
  - Cap - \$2.5 million per stadium, \$5 million total and rebate must be claimed no more than 10 year after project completion date
  - Effective 7/1/16

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### Replacement Tax



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### Replacement Tax Task Force

- The stated purposes of the Gas & Electric Utility Property Tax Replacement program are to:
  - Replace property taxes imposed on electricity and natural gas providers with a taxation system which removes tax costs as a factor in a competitive environment by imposing like generation, transmission, and delivery taxes on similarly situated competitors.
  - Preserve revenue neutrality and debt capacity for local governments and taxpayers.
  - Preserve neutrality in the allocation and cost impact of any replacement tax among and upon consumers of electricity and natural gas in this state.
  - Provide a system of taxation which reduces existing administrative burdens on state government. (<https://dom.iowa.gov/utility-tax-replacement>)

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### Replacement Tax Task Force

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- “Simply removing local property taxation on gas & electric utilities would have put energy deliverers on a level playing field, but that would not have been fair to local governments. So it was decided to put in place a property tax replacement system, in advance of the impending restructuring, to ensure that the new system of taxation performed as intended.”
- Excise tax imposed on transmission of electricity and delivery of electricity and natural gas to consumers
- New law:
  - Extends task force to study effects of this law through 1/1/19 (had expired 1/1/16)
  - Consideration of all evidence for property tax appeals

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### General Administration

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- Two bills in this area

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### Flood Mitigation Program Changes

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### Flood Mitigation Program Changes

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- Old law: limited funds accruing to sales tax increment fund to lesser of \$30 million or amount needed to fulfill purposes of program. Local entities could only receive funds for 20 years.
- New law:
  - Clarifies limit applies on a fiscal year basis
  - Governments can apply for an extension of the 20 year period
    - Received less during 20 year period than entitled to receive
    - \$15 million/70% limit on funds in extension period
    - Total amount received by all government entities per year not exceed \$30 million
    - Limited during extension period to approved amount less what was received during 20 year period

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### Iowa Department of Revenue Background Check

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### Iowa Department of Revenue Background Check

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- Old Law: Iowa Department of Revenue had been conducting background checks prior to an offer of employment
- New Law
  - Allows use of FBI background/fingerprint checks for employees, contractors and vendors once every 10 years
  - Required to do this to comply with IRS security guidelines
  - Results are not public records in Iowa

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### Environmental Protection Charge Repeal

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### Environmental Protection Charge Repeal

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- Old Law: Environmental Protection Charge imposed on petroleum diminution from certain storage tanks. Imposed on petroleum deposited into non-exempt tanks in Iowa. Was scheduled to be repealed 6/30/16
- New law:
  - “Repeal” effectively extended the tax for six months
  - Now will go away 12/31/16
  - Final return due 1/31/17
  - Licensees must stop collecting the tax 1/1/17

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## Iowa Individual Income Taxes

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## 2017 Inflation Adjusted Numbers

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2017 Inflation Adjusted Numbers

- Iowa Department of Revenue News Release, October 19, 2016
  - Annual interest rates (Iowa Code §421.7):
    - Overdue taxes and refunds – 5%
    - Monthly interest rate – 0.4%
  - Standard deductions (Iowa Code §§422.9 and 422.21):
    - Single/MFS - \$2,000
    - MFJ - \$4,920

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2017 Inflation Adjusted Numbers

- Iowa Department of Revenue News Release, October 19, 2016
  - Tax tables (Iowa Code §422.5)

Taxable Income				
Over	But Not Over		Tax Rate	Of Excess Over
\$0	\$1,573	\$0.00	+ ( 0.36% x	\$0 )
\$1,573	\$3,146	\$5.66	+ ( 0.72% x	\$1,573 )
\$3,146	\$6,292	\$16.99	+ ( 2.43% x	\$3,146 )
\$6,292	\$14,157	\$93.44	+ ( 4.50% x	\$6,292 )
\$14,157	\$23,595	\$447.37	+ ( 6.12% x	\$14,157 )
\$23,595	\$31,460	\$1,024.98	+ ( 6.48% x	\$23,595 )
\$31,460	\$47,190	\$1,534.63	+ ( 6.80% x	\$31,460 )
\$47,190	\$70,785	\$2,604.27	+ ( 7.92% x	\$47,190 )
\$70,785	-----	\$4,472.99	+ ( 8.98% x	\$70,785 )

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### Taxpayer's Domicile

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016
  - What does it mean to be an Iowa resident for income tax purposes?
    - Iowa Rule 701-38.17
    - Will be a resident if either
      - Maintain a permanent place of abode within Iowa or
      - Domiciled in Iowa
  - Individual separated from spouse, lived in South Dakota all year, did not file Iowa income tax return (had no Iowa source income)
  - Merely leaving the state did not change his domicile, nor did being away more than ½ of the year (despite impact if in state that period on test)
  - All income taxable to the state of Iowa

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016

- Regulation 701-38.17 definition of domicile

38.17(2) Domicile. An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016

- Regulation 701-38.17 definition of domicile

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016

- Regulation 701-38.17 definition of domicile

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d, 329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016

- Regulation 701-38.17 definition of domicile

a. There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

- (1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, ***and either***
- (2) Claims a homestead credit or military tax exemption on a home in Iowa, or
- (3) Is registered to vote in Iowa, or
- (4) Maintains an Iowa driver's license, or
- (5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016
  - Regulation 701-38.17 definition of domicile
    - b. There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets ***all of the following factors***:
      - (1) Does not claim a homestead credit or military exemption on a home in Iowa,
      - (2) Is not registered to vote in Iowa,
      - (3) Does not maintain an Iowa driver's license,
      - (4) Is in Iowa less than 183 days of the tax year; and
      - (5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016
  - Regulation 701-38.17 definition of domicile
    - c. In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:
      - (1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.
      - (2) Maintains an Iowa driver's license.
      - (3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.
      - (4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.



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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016

- Regulation 701-38.17 definition of domicile

c. In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

- (5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.
- (6) Vehicles registered in Iowa.
- (7) Location of employment or active participation in a business within Iowa.
- (8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.
- (9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.
- (10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

## Nichols Patrick

*A Division of the Loosledge Institute*

### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016

- Regulation 701-38.17 definition of domicile

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016
  - Tests listed by IDR
    - Registered to vote in Iowa?
    - Voted in Iowa?
    - You or family attend Iowa schools
    - Do you have an Iowa telephone listing and service?
    - Do you receive your mail in Iowa?
    - Do you have an Iowa driver's license?
    - Is your automobile registered in Iowa? Do you have Iowa license plates?
    - Do you own a home in Iowa?

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030; Docket No. 2015-200-1-0213, April 21, 2016
  - Tests listed by IDR
    - Do you claim homestead and/or military credits for property tax?
    - Do you live in any other state for more days of the tax year than in Iowa?
    - Do you receive income from an Iowa source?
    - Do you receive services from doctors, dentists, attorneys, CPAs, or any other professionals located in Iowa?
    - Do you have an active membership in an Iowa church, club, professional or civic organization in Iowa, and participate as a result of the membership?
    - Do you claim a benefit on the federal income tax return based on an Iowa home being the principal place of business?
    - Do you have active checking or savings accounts or use of safe deposit boxes located in Iowa?
    - Do you have a location of employment in Iowa or active participation in a business within Iowa?

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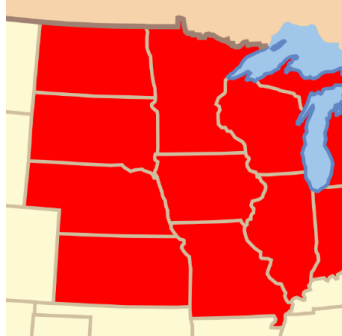
## Nichols Patrick

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030;  
Docket No. 2015-200-1-0213, April 21, 2016
  - Practical test



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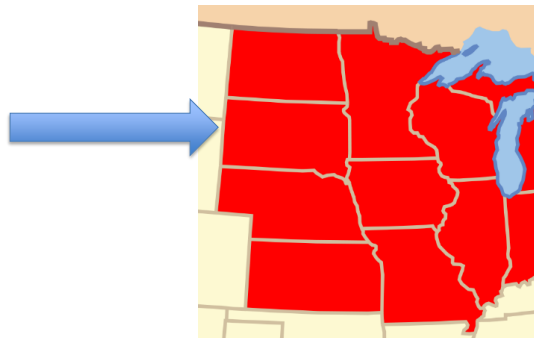
## Nichols Patrick

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### Taxpayer's Domicile

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- Response to Protest Document Reference No. 16201030;  
Docket No. 2015-200-1-0213, April 21, 2016
  - Practical test



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### Iowa Capital Gain Deduction (Simple, Right?)

#### Miscellaneous Transactions

(pdf)  
Flow Chart

IRC 40.38(1)  
IRC 40.38(5)  
IRC 40.38(6)  
IRC 40.38(7)  
IRC 40.38(8)  
IRC 40.38(13)  
IRC 40.38(14)

#### Breeding Stock Other Than Cattle and Horses

(pdf)  
Flow Chart

IRC section 1231  
IRC 40.38(3)  
IRC 40.38(10)

#### Cattle and Horses Used For Breeding

Draft, Dairy or Sporting Purposes

(pdf)  
Flow Chart

IRC section 1231  
IRC 40.38(2)  
IRC 40.38(9)

#### Sales of Business Assets

(pdf)  
Flow Chart

IRC section 331  
IRC section 338  
IRC section 469(h)  
IRC section 1223  
IRS Reg. 1.469-5 and 5T  
IRC 40.38(1)  
IRC 40.38(8)  
IRC 40.38(12)  
IRC 40.38(13)  
IRC 54.2 (1)

#### Real Property Used in a

Non-Farm Business

(pdf)  
Flow Chart

IRC section 469(h)  
IRC section 1223  
IRS Reg. 1.469-5 and 5T  
IRC 40.38(1)  
IRC 40.38(7)

#### Real Property Used in a Farming Business

(pdf)  
Flow Chart

IRC section 469(h)  
IRC section 1223  
IRC Section 2032A  
IRS Reg. 1.469-5 and 5T  
IRC 40.38(1)  
IRC 40.38(7)

#### Timber

(pdf)  
Flow Chart

IRC section 1231  
IRC section 1.631-1  
IRC section 1.631-2  
IRC 40.38(4)  
IRC 40.38(11)

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### Iowa Capital Gain Deduction

- Response to Protest Document Reference No. 16201029; Docket No. 2011-200-1-0048, §1245 Recapture on Sale of \$1245 Asset Does Not Qualify for Capital Gain Deduction
  - Iowa allows a deduction for certain qualifying capital gains
    - First, must be in an allowed category
      - Real Property held for 10 years used in a trade or business
      - Cattle or horses used for breeding, draft, dairy or sporting purposes held for 24 months (50% farming income test unless sold to lineal descendent)
      - Breeding livestock other than cattle or horses held for 12 months (50% farming income test unless sold to lineal descendent)
      - Timber held for 12 months
      - ESOP sale/Iowa corporation (50% exclusion)
    - Generally must have materially participated
    - And there is more...

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### Iowa Capital Gain Deduction

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- Response to Protest Document Reference No. 16201029; Docket No. 2011-200-1-0048, §1245 Recapture on Sale of §1245 Asset Does Not Qualify for Capital Gain Deduction
  - Taxpayer attempted to subtract §1245 gain from the sale of farm equipment that was reported on Federal Form 4797
  - Before even worrying about other problems with the claim, this is ordinary income and not a §1231 gain.
  - Thus no deduction was allowed.

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### Reporting Federal Adjustments

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### Reporting Federal Adjustments

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- Decision on Protest Document No. 16201020, Taxpayer's Failure to Notify Iowa of Federal Adjustments Extends Statute of Limitations

- Iowa Code §422.25(1) provides

Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine the return and determine the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years.

- But that is not all..

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### Reporting Federal Adjustments

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- Decision on Protest Document No. 16201020, Taxpayer's Failure to Notify Iowa of Federal Adjustments Extends Statute of Limitations

- Iowa Code §422.25(1) provides

In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

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### Reporting Federal Adjustments

- Decision on Protest Document No. 16201020, Taxpayer's Failure to Notify Iowa of Federal Adjustments Extends Statute of Limitations
  - The issue involved 2010 return
    - Filed April 2011
    - So Iowa's ability to assess normally would end in April 2014
  - Iowa assessed tax on August 17, 2015—taxpayer cried foul!
  - IRS exam had taken place and IRS adjusted taxes in July 2015
  - Taxpayer did not notify the state—but August 17, 2015 would have been within six months anyway
  - Bigger danger is if taxpayer believes he/she "got away" with not reporting change to Iowa

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### Taxpayer Could Not Inherit Material Participation



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### Taxpayer Could Not Inherit Material Participation

- ***Weis v. Iowa Department of Revenue*, DIA Docket No. 15IDR013; Rev. Docket No. 2011-200-1-0183**
  - Back to the Iowa capital gain exclusion yet again
  - Material participation rule from Iowa statute:
 

a(1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 423.1, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

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### Taxpayer Could Not Inherit Material Participation

- ***Weis v. Iowa Department of Revenue*, DIA Docket No. 15IDR013; Rev. Docket No. 2011-200-1-0183**
  - Facts
    - The Farmland was acquired by Mr. Weis's parents in 1968; they farmed it continuously through 1976.
    - From 1977 through 1979, Mr. Weis personally farmed the Farmland.
    - From 1980 through 2008, the Farmland was farmed by Robert Weis - one of Mr. Weis's brothers -- who was renting it from his parents.
    - Mr. Weis's father passed away in 1986, survived by his wife, Mr. Weis's mother. She passed away on February 1, 2008.
    - The Farmland was sold in September 2008 and generated a gain, \$75,087.00 of which was distributed to Protestors.



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### Taxpayer Could Not Inherit Material Participation

- *Weis v. Iowa Department of Revenue*, DIA Docket No. 15IDR013; Rev. Docket No. 2011-200-1-0183
  - Taxpayer argued that Iowa's reference to provisions in §469(h)(3) allowed for inheriting material participation
 

A taxpayer shall be treated as materially participating in any farming activity for a taxable if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.
  - Claimed this brought all of §2032A into play
  - But opinion notes only brought in two parts and he was not either:
    - Decedents who are retired or disabled
    - Surviving spouse

## Nichols Patrick

*A Division of the Loscalzo Institute*

### Transfer of §529 Plan



## Nichols Patrick

*A Division of the Lowry Institute*

### Transfer of §529 Plan

- Response to Email Document No. 15201045, Transfer of Iowa 529 Plan to Beneficiary Does Not Trigger Iowa Recapture Taxes or Penalties
  - Iowa allows deduction for contribution to Iowa 529 plan. 2016 amounts
    - \$3,188 per beneficiary for individual
    - \$6,376 per beneficiary for married couple filing joint (each making own contribution)
    - Beginning with 2015 return can make through unextended due date
  - Iowa §529 plan website warns of rolling into another state
 

Rollover penalty. If you're an Iowa state income taxpayer, a rollover of assets from your College Savings Iowa account to a qualified 529 plan in another state is subject to the recapture of all previous Iowa state tax income deductions made during the life of the account.
  - Taxpayer wondered if there would be a consequence if he transferred ownership of the account to his out of state granddaughter

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*A Division of the Lowry Institute*

### Transfer of §529 Plan

- Response to Email Document No. 15201045, Transfer of Iowa 529 Plan to Beneficiary Does Not Trigger Iowa Recapture Taxes or Penalties
  - His facts
 

You have a client that is a grandparent and has an Iowa 529 plan that he is the owner of for his granddaughter. He has had the account for about 20 years and contributes annually to the account and has received the tax deduction on the state of Iowa returns. The granddaughter is going to start college next fall and will need to start taking distributions from the plan. The daughter and granddaughter are residents of Texas and she will be attending a university in Texas. Your client would like to change the ownership of the IA 529 plan to his daughter in Texas so that she can access and disperse funds as needed for college and your client does not have to worry about handling that from Iowa. You state that it appears that changing ownership can be done per the plan and that may actually help for FAFSA purposes. But you are unclear on if there are any tax ramifications for your client in doing this.

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### Transfer of §529 Plan

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- Response to Email Document No. 15201045, Transfer of Iowa 529 Plan to Beneficiary Does Not Trigger Iowa Recapture Taxes or Penalties

- IDR's comments

Neither the Department's code nor rules impose any recapture fees or penalties for transferring ownership for Iowa tax purposes, and the code section which implements the IA 529 plan makes a distinction between transferring ownership, canceling the account, or withdrawing money from the account for ineligible purposes, the last two situations which are covered by the Department's code and rule. Therefore, using the facts you provided, there are no income tax consequences for Iowa purposes for transferring the account to another eligible individual or a minor beneficiary, as long as the transfer is the type of transfer contemplated by Iowa Code section 12D.65) and Iowa Admin. Code r. 781-16.9.

## Nichols Patrick

*A Division of the Loosdige Institute*

### Transfer of §529 Plan

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- Response to Email Document No. 15201045, Transfer of Iowa 529 Plan to Beneficiary Does Not Trigger Iowa Recapture Taxes or Penalties

- Not directly dealt with would be question of what would happen if granddaughter now rolls the money on her own to another state's plan

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### Iowa Capital Gain Material Participation Regulation Upheld by Court of Appeals



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*A Division of the Vantage Institute*

### Iowa Capital Gain Material Participation Regulation Upheld by Court of Appeals

- *Lance v. State Bd. of Tax Review*, No. 14-1144, Court of Appeals
  - Iowa Code §422.7(21)(a)(1) restricts capital gain deduction
    - “...the taxpayer was employed or in which the taxpayer materially participated for ten years.”
  - Do those ten years need to include the date of sale? Or can it be any ten years?
  - Iowa Department of Revenue has interpreted that via regulation to require the taxpayer to be materially participating at the time of sale
  - Taxpayer, who had participated in prior years, but not at the time of the sale, argued the regulation was contrary to the statute and, thus, invalid

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*A Division of the Vantage Institute*

### Iowa Capital Gain Material Participation Regulation Upheld by Court of Appeals

- **Lance v. State Bd. of Tax Review, No. 14-1144, Court of Appeals**

- Court of Appeals upheld the regulation, noting:

We conclude the agency's interpretation of the statute is not irrational, illogical, or wholly unjustifiable. We begin our analysis with the language of the statute. The goal when construing a statute is to determine legislative intent. *NextEra Energy Res. L.L.C.*, 815 N.W.2d at 39. If the statutory language is plain and unambiguous, no construction is necessary. See *Sierra Club v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 644 (Iowa 2013). "A statute is ambiguous when reasonable persons could disagree as to its meaning." *Naumann v. Iowa Prop. Assessment Appeal Bd.*, 791 N.W.2d 258, 261 (Iowa 2010). Section 422.7(21) allows for a deduction for the "[n]et capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years." While there is nothing in the statutory text requiring the taxpayer materially participate in the business for the ten-year period preceding the sale, there is also nothing in the statute precluding such an interpretation. There is also nothing in other sections of the code precluding the agency's interpretation. The phrase "for ten years" appears in thirteen sections of the Iowa Code.<sup>2</sup> In none of those sections is the agency's interpretation precluded. In short, there is no contra definition in the text of the statute or other provisions of the code that disallows the agency's interpretation.

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### Iowa Capital Gain Material Participation Regulation Upheld by Court of Appeals

- **Lance v. State Bd. of Tax Review, No. 14-1144, Court of Appeals**

- Court of Appeals goes on to invoke the concept of strictly restricting such exclusions, finding:

Second, tax exemptions are strictly construed against taxpayers and liberally in favor of the department. See *Ranniger*, 746 N.W.2d at 269 (affirming the department's construction of the phrase "sale of a business" in section 422.7(21)). Third, the legislature has acquiesced to the agency's interpretation for the statute for a long time. See *City of Sioux City*, 666 N.W.2d at 592 (considering the legislature's inaction as tacit approval of the department's interpretation). Here, the agency's interpretation of the statute set forth in rule 701-40.38 was adopted in 1990. The legislature has not countermanded the agency's interpretation for twenty-five years. See *Marion v. Iowa Dep't of Revenue & Fin.*, 643 N.W.2d 205, 207-08 (Iowa 2002) ("Our views as to the meaning of the statute are strengthened by the fact that the agency rule has existed for nearly seventeen years.").

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## Iowa Corporate Income Taxes

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## Iowa Partnership Income Taxes

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*A Division of the Loscage Institute*

### Not Really a Development, But...



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### BBA Partnership Audits and Iowa

- **Bipartisan Budget Act of 2015, Revised Partnership Audits**
  - BBA 2015 repealed TEFRA audits, replaced with new audit regime
  - Default is to have partnership pay tax on adjustment at highest individual rate
  - But there will not be adjustments issued to partners that would trigger state amendment—so what will states do?
  - Currently only one (Arizona) has enacted a “BBA” compatible system
    - If partnership pays, then has to pay top Arizona individual rate on adjustments to Arizona income
    - If elects to push out adjustments, must compute Arizona adjustments for each partner
  - Iowa has until tax years beginning in 2018 to decide what to do

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## Iowa Sales Taxes

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## Iowa Streamlined Sales and Use Tax Act

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- Found in Iowa Code Chapter 423
- Imposes broad tax on sale of tangible personal property (§423.2(1))
- Then defines four services as sales of property (§423.2(2))
- As well, treats building materials as personal property despite intent to include in real property (§423.2(3))
- Adds additional taxes on various other types of transactions
- Followed up with exemptions provisions (§423.3)



## Nichols Patrick

*A Division of the Loydige Institute*

### Streamlined Sales and Use Tax Project

- Organized in March 2000, dissolved in October 2005
- Was a response to attempt to get Congress to allow imposition of tax on online sales from out of state vendors
  - The Supreme Court indicated in *Quill* that Congress could authorize the states to do this
  - Objections had been complexity, so sought to come up with a simpler system that Congress could “latch onto”
  - Congress has not yet taken the bait
- We now have the states striking back—with potential issues for your clients
- Iowa is a participating state in the Streamlined Sales and Use Tax Agreement along with 23 other states and the District of Columbia

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### Streamlined Sales and Use Tax Project

- Explanation from *Bass v. J. C. Penney*, Iowa Supreme Court 2016
 

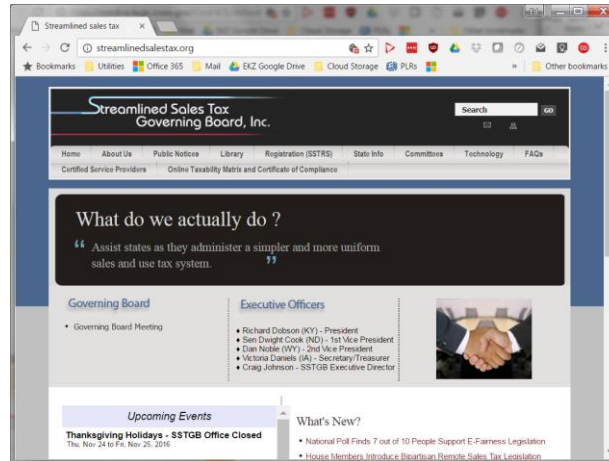
In 1999, the Streamlined Sales Tax Project began to explore ways to assist states in the collection and administration of state sales tax. Streamlined Sales Tax Governing Board, *Why Was the Streamlined Sales Tax Created?*, [http://www.streamlinedsalestax.org/index.php?page=gen\\_2](http://www.streamlinedsalestax.org/index.php?page=gen_2) (last visited June 1, 2016). Three years later, the SSUTA was developed. John A. Swain & Walter Hellerstein, *The Political Economy of the Streamlined Sales and Use Tax Agreement*, 58 Nat'l Tax J. 605, 610 (2005). The Iowa SSUTA is Iowa's enactment of this multistate effort to standardize and streamline the administration of sales tax to reduce the burden of compliance and to provide equal treatment to local brick-and-mortar businesses and out-of-state, online businesses. Streamlined Sales Tax Governing Board, *What is the Streamlined Sales and Use Tax Agreement?*, [http://www.streamlinedsalestax.org/index.php?page=gen\\_1](http://www.streamlinedsalestax.org/index.php?page=gen_1) (last visited June 1, 2016). Once states fully enact the SSUTA, they become “member states” of the Streamlined Sales Tax Governing Board. As member states, they gain access to a host of resources to enable the state to tax online purchases effectively. Twenty-four states have fully enacted the SSUTA. Streamlined Sales Tax Governing Board, *How Many States Have Passed Legislation Conforming to the Agreement?*, [http://www.streamlinedsalestax.org/index.php?page=gen\\_3](http://www.streamlinedsalestax.org/index.php?page=gen_3) (last visited June 1, 2016).

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Streamlined Sales and Use Tax Project



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Veterinarian's Injection Sales



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### Veterinarian's Injection Sales

- Email Ruling in Document Reference No. 16300038, July 14, 2016
  - Iowa Code §423.2(1)'s broad tax net:
    1. There is imposed a tax of six percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter
  - But there are always exemptions, one of which is (at 423.3(2))
    2. The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for sales, other than leases or rentals, which are sales of machinery, equipment, attachments, and replacement parts specifically enumerated in subsection 37 and used in the manner described in subsection 37 or the purchase of tangible personal property, the leasing or rental of which is exempted from tax by subsection 49.

## Nichols Patrick

*A Division of the Lowndes Institute*

### Veterinarian's Injection Sales

- Quick aside –§423.3 contains **95** separate exemption sections
- Gives a sort of chronological view of when certain industries became “of interest” in Iowa (see lots of agricultural exemptions right at the beginning of the provision)
- Almost every state has a similarly long (and growing) exemption provision in its sales tax (some states don't have a sales tax, so...)
- Note that these long (and unique) special treatment lists are part of the reason why the argument is that allowing the states to force collection by out of state vendors is too burdensome on those businesses

## Nichols Patrick

*A Division of the Lowry Institute*

### Veterinarian's Injection Sales

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- Email Ruling in Document Reference No. 16300038, July 14, 2016
  - Concern was over this (very normal) fact pattern

According to your email, the entire veterinary industry conforms to the following process when conducting veterinary services. Veterinary clinics purchase non-dispensed injections, such as rabies vaccinations, anesthesia, and antibiotics, and pay sales tax on the medicines at that time. When these injections are administered during the course of a procedure, the administering veterinarian or technician records the product on the invoice by noting two things: 1) the name of the drug and 2) the net price of the product used, calculated by estimating the general cost of the drug. The "1" under the quantity column indicates that one injection was administered, but does not represent the amount of the injection. The administering veterinarian or technician does not record the amount of the injected product in the invoice, but does include it in the client's records.

The client is not charged for the amount of sales tax attributable to the injected products. The client is charged for the amount of sales tax attributable to the ingested products (e.g., tablets that can be easily noted on the invoice).

## Nichols Patrick

*A Division of the Lowry Institute*

### Veterinarian's Injection Sales

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- Email Ruling in Document Reference No. 16300038, July 14, 2016

- Iowa Administrative Code r. 701-18.31(1)(a) provides the following three part test:

On or after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if 1) the provider and user of the service intend that a sale of the property will occur, 2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and 3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

- If don't meet test
  - Vet wouldn't collect sales tax from customer
  - Vet must pay sales tax on purchase

## Nichols Patrick

*A Division of the Louisiana Institute*

### Veterinarian's Injection Sales

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- Email Ruling in Document Reference No. 16300038, July 14, 2016
  - Regulation goes on to provide detailed example of what does and doesn't meet the test:

A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemical . . . 31 Gal . . . \$60", "Fertilizer . . . 50lbs . . . \$100", and "Materials applied to lawn . . . 4 bushel . . . \$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals . . . \$30" or "Fifty pounds of fertilizer was applied to this lawn."

## Nichols Patrick

*A Division of the Louisiana Institute*

### Veterinarian's Injection Sales

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- Email Ruling in Document Reference No. 16300038, July 14, 2016
  - IDR's conclusion in this case:

Although the first and second elements are met in your case, the third element is not, as the invoices you provided do not include an identifiable quantity of the injection transferred to the client. See the latter category in the above example. Since the third element is not met, the injections in your case are not purchased for resale and the client is not required to pay sales tax when they are administered in the course of a veterinary service.

## Nichols Patrick

*A Division of the Knowledge Institute*

### No Right of Action for Individual to Move Against a Retailer



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*A Division of the Knowledge Institute*

### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016
  - Looking at Iowa's version of the Streamlined Sales and Use Tax Act found in Iowa Code Chapter 423
  - Key question—if a customer disputes a retailer's collection of a sales tax for Iowa, does the individual have a right to sue the retailer?
  - Not surprisingly, was a class action case (an individual purchaser rarely would have enough at issue to justify going to court)
  - The matter at direct issue in this case involved whether sales tax should have been charged on freight charges.

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*A Division of The Knowledge Institute*

### No Right of Action for Individual to Move Against a Retailer

- *Bass v. J.C. Penney Co. Inc*, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- Facts

- Following adoption of SSUTA by Iowa, JC Penney asked about taxation of "transportation and handling charges"
- Direct IDR reply
  - Freight charges are exempt if separately invoiced or separately stated on the bill. If stated as a single item, and mandatory to obtain the merchandise, "shipping and handling" charges (or as you state: "transportation and handling") are considered part of the purchase price of the merchandise and are subject to sales tax.
- Similarly, IDR summary stated:
  - Delivery charges are exempt from sales tax, so long as they are separately stated, reasonable in amount and related to the cost of transportation

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### No Right of Action for Individual to Move Against a Retailer

- *Bass v. J.C. Penney Co. Inc*, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- Facts

- First customer complaint facts:
  - On June 2, 2011, Kathleen Bottaro mailed a letter to J.C. Penney in which she stated that she had been improperly charged sales tax on shipping, handling, and delivery charges on an order and demanded reimbursement. The matter came to Danforth's attention. She researched her records and located records related to her June 2005 communication with the IDOR and the September 2005 Iowa Tax e-Newsletter. Danforth concluded that because J.C. Penney's delivery charges were "a flat fee, based on the cost of the merchandise," it did not qualify for exemption under the newsletter which seemed to require that the tax be "related to the cost of transportation."
  - Nonetheless, Danforth contacted IDOR once again. She seemed to get uncertain, if not contradictory advice. One IDOR employee stated that "interstate separately stated transportation handling was not taxable," but another employee indicated that because J.C. Penney's charges were related to the cost of the item, they were taxable.

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### No Right of Action for Individual to Move Against a Retailer

- *Bass v. J.C. Penney Co. Inc*, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- Facts

- First customer complaint facts:

After the internal review and the external communication with IDOR, Danforth replied to Bottaro. In a letter dated July 15, she stated that J.C. Penney had been advised that transportation and handling charges are subject to tax, but that she was reevaluating the issue with the state. In any event, however, Danforth refunded the tax on Bottaro's shipping and additionally gave her a \$25 gift card to thank her for bringing the matter to the company's attention.

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### No Right of Action for Individual to Move Against a Retailer

- *Bass v. J.C. Penney Co. Inc*, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- Facts

- Second customer complaint facts:

Almost two years later on April 24, 2013, Emily Bass placed an order with J.C. Penney on its website. J.C. Penney charged her sales tax on the shipping and handling charge. On May 14, Bass wrote to J.C. Penney requesting a refund and demanding that J.C. Penney cease collecting taxes on shipping and handling for Iowa transactions. J.C. Penney refunded the tax.

On August 31, Bass placed another order on the J.C. Penney website and was again charged tax on shipping and handling. On September 6, Bass filed a class action petition against J.C. Penney. In Count I, Bass sought an injunction to restrain J.C. Penney from collecting the tax. In Count II, she asserted a claim against J.C. Penney under the SSUTA. Finally, in Count III, Bass brought a negligence claim against the company. Bass served notice of the petition on J.C. Penney on September 17. After receipt of service, the company remitted all its taxes collected in the month of August 2013 to the IDOR.

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016
  - Key question – can a customer sue the business when it collects an Iowa sales tax the customer believes is in error?
  - District Court found no
    - The district court held that because J.C. Penney remitted the sales tax to the state Bass's only remedy for allegedly improperly collected tax was with the IDOR. In addition, the district court found no false statement or false representation from J.C. Penney regarding its method of calculating shipping and handling and, as a result, no recovery could be had on the plaintiff's remaining claims.

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016
  - Appealed decision
  - Key law provision - §423.8 for intent behind provision
    - The general assembly finds that Iowa should enter into an agreement with one or more states *to simplify and modernize* sales and use tax administration in order to substantially *reduce the burden of tax compliance for all sellers and for all types of commerce*. It is the intent of the general assembly that entering into this agreement will lead to *simplification and modernization* of the sales and use tax law and not to the imposition of new taxes or an increase or decrease in the existing number of exemptions. . . .

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- **Key law provision - §423.45(2) refunds to consumers**

If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon a sales price that is not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon proper notification to the retailer by the consumer or user that an excess payment exists. . . . No cause of action shall accrue against a retailer for excess tax paid until sixty days after proper notice has been given the retailer by the consumer or user.

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- **Key law provision - §423.45(3) seller option to send to IDR**

In the circumstances described in subsection . . . 2, a retailer has the option to either return any excess amount of tax paid to a consumer or user, or to remit the amount which a consumer or user has paid to the retailer to the department.

- **Key law provision - §423.47 consumer refund from IDR**

If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department.

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- **Taxpayer argument:**

Bass argues that Iowa Code chapter 423 creates a private statutory right of action that may be enforced by the plaintiff. Bass points to language in Iowa Code section 423.45(2), which provides, "No cause of action shall accrue against a retailer for excess tax paid" until "proper notice has been given the retailer by the consumer or user." According to Bass, the fact that the legislature expressly referenced "cause of action" in the statute is an explicit provision creating a private statutory cause of action under the statute. Bass asks: Why would the legislature provide a notice requirement before a cause of action accrues if there was no cause of action?

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- **Opinion contrary finding:**

We must view the "no cause of action" language of Iowa Code section 423.45(2) through the prism of the statute's stated legislative purpose. In light of the purpose of simplifying, modernizing, and easing the burdens and administration of collection of sales tax, we do not believe the "no cause of action" language was designed to create a private cause of action under the statute. Further, we note that the "no cause of action" language is part of a uniform statute that participating member states are required to enact. The uniform provision is best understood as being designed to ensure that in all participating member states retailers are entitled to a sixty-day notice period before a cause of action, if any otherwise exists under local law, may be brought against the retailer. See *Georgia Power Co.*, 740 S.E.2d at 462; *Kawa*, 24 N.J. Tax at 452.

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- **Opinion continues:**

The SSUTA was not enacted to benefit taxpayers, but instead to streamline the tax collection process for retailers. The legislative intent behind the statute is not furthered by requiring retailers to answer to consumers or users for collection of sales taxes which are not collected to the benefit of the retailer but are collected on behalf of the state and remitted to taxing authorities. Further, we think the structure of the statute is clear -- a retailer faced with a claim of excess collection of sales tax by a consumer or user faces a choice; it can refund the amount to the consumer or user or it can remit the funds to the IDOR and allow the taxpayer to pursue administrative remedies with the IDOR. Implying a private right of action would complicate, rather than simplify, the tax collection process under the SSUTA.

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### No Right of Action for Individual to Move Against a Retailer

- ***Bass v. J.C. Penney Co. Inc***, Iowa Supreme Court Case No. 15-0334, June 10, 2016

- **And administrative claim at IDR is exclusive remedy under Iowa law:**

In sum, our decision today is a narrow one. Given the structure of SSUTA and the unique regime for tax collection generally, we conclude the best reading of Iowa Code section 423.47 is that it provides the exclusive remedy for a party seeking a refund of sales tax claims where the retailer has forwarded the funds to the IDOR pursuant to Iowa Code section 423.45(3).

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### No Right of Action for Individual to Move Against a Retailer

- *Bass v. J.C. Penney Co. Inc*, Iowa Supreme Court Case No. 15-0334, June 10, 2016
  - Decision is important first because it is a state high court interpretation that held the SSUTA does not create a unique cause of action—and that likely will be persuasive in the other 23 states and the District of Columbia (the other SSUTA adopters)
  - Second makes clear that the safe route for an Iowa retailer challenged by a customer is to send the money to IDR
    - If refund it, IDR could still examine seller and demand payment
    - If send it on, the battle is between the IDR and the customer

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### Issued (for a while) Rules for Manufacturing Equipment



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### Issued (for a while) Rules for Manufacturing Equipment

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- Regulation ARC 2349C, January 6, 2016
  - Originally implemented revision in manufacturing equipment
  - Overridden before effective date by new changes in law passed this session

## Nichols Patrick

*A Division of the Loscalzo Institute*

### Installation of In-ground Pet Fencing

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*A Division of the Loosdige Institute*

### Installation of In-ground Pet Fencing

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- Email Ruling in Document Reference 16300024

- Installs and repairs in-ground pet fencing
- Isn't this new construction, reconstruction, alteration, expansion or remodeling—and thus exempt from Iowa's sales tax per Iowa Code §423.3(37)?
- Facts of the case:

You own a business that installs and repairs in-ground pet fences. The installation involves digging a trench around the perimeter of the property, and possibly digging under or going through any driveways that the fence may need to cross. You then lay a wire into the trench and bury it. The wire is routed to a power source, typically a garage or basement and a transmitter is mounted and connected to the buried wire. You then set flags around the perimeter and train the dog(s).

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### Installation of In-ground Pet Fencing

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- Email Ruling in Document Reference 16300024

- First finding
- Then quotes from *Dial Corp. v. Iowa Dep't of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001)

The installation of an in-ground fence that you described would be the taxable service of "electrical and electronic repair and installation." Iowa Code § 423.2(6).

Services are exempt from sales tax "when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a *building or structure*." Iowa Admin. Code r. 701-219.1. Specifically, [the] service tax shall not apply on electrical installation or repair when the service is on or connected with a structural change to a building or similar structure, whether the structural change be internal or external to the building or structure. The electrical repair or installation on or connected with new construction on buildings or structures would not be subject to service tax.

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*A Division of the Loscalzo Institute*

### Installation of In-ground Pet Fencing

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- Email Ruling in Document Reference 16300024
  - Finds this isn't exempt

While the type of fence you are installing does usually connect to a house or garage to receive power, your installation process does not ordinarily involve any structural changes to those buildings. The fence seems to be separate from any actual structure apart from the fact the garage or basement is typically the most convenient power source for the fence. Installation of the fence does not involve construction or structural change to a building or structure, therefore it does not qualify for the exemption. You should charge sales tax on the sales price of installing the in-ground pet fence under the circumstances you described.

## Nichols Patrick

*A Division of the Loscalzo Institute*

### Purchase of Medical Meters

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*A Division of the Lowndes Institute*

### Purchase of Medical Meters

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- Opinion Letter No. 16300023,
  - “Close only counts in horseshoes and hand grenades...”
  - Facts:
 

Your client is a for-profit medical clinic located in Iowa. Some of your client's patients are on an anti-coagulant medication and must be monitored for the medication's effectiveness. Your client purchases meters and disposable test strips from a supplier and sends these items home with the patients who need them. The patients use the meters and test strips to monitor their anti-coagulant medication at home. Your client does not actually sell or rent the meters or test strips to the patients. The patients return the meters when they are no longer using them.
  - There are potential exemptions, but this situation will not meet them

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### Purchase of Medical Meters

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- Opinion Letter No. 16300023,
  - First near miss—wrong buyer:
 

Iowa Code § 423.3(60) exempts from sales and use tax “[t]he sales price from the sale or rental of prescription drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, and other medical devices intended for human use or consumption.” However, prescription drugs, durable medical equipment, and mobility enhancing equipment are only exempt if they are prescribed by a practitioner. Id. While your client may be prescribing the devices to its patients, the clinic itself is not purchasing the devices pursuant to a prescription. In the past the department has consistently held that items that would otherwise be exempt as mobility enhancing equipment or durable medical devices were not exempt when they were purchased by someone without a prescription. See e.g. Policy Letter, Medical Devices, Doc. Ref. No. 09300001 (Feb. 2, 2009) (finding that a motorized scooter was exempt as mobility enhancing equipment if the purchaser had a prescription for it, but not exempt otherwise).

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### Purchase of Medical Meters

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- Opinion Letter No. 16300023,
  - Second near miss—again wrong buyer:

There are some medical devices that may be exempt even if they are purchased without a prescription. However these devices must still be sold to an "ultimate user" in order to qualify for an exemption. An "ultimate user" is "an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed." Iowa Code § 423.3(60)"i". A clinic cannot be an ultimate user within this definition. Therefore medical devices sold to a clinic do not qualify for this exemption.

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### Purchase of Medical Meters

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- Opinion Letter No. 16300023,
  - Illustrates standard interpretation rules for taxes
    - Provisions subjecting something to tax are interpreted broadly
    - Those creating an exemption are to be interpreted narrowly
  - Must meet specific conditions imposed by the law in order to obtain an exemption from tax—even if it appears there's little or no real difference

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### Home Sharing



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### Home Sharing

- Policy Letter Document No. 15510049
  - Facts
 

A resident of Iowa City owns a home, which is the homeowner's primary residence. On the weekends of homecoming and graduation at the University of Iowa -- four nights total each year -- the homeowner stays with family members and rents the home to visitors. You asked if the charges for renting the home are subject to hotel and motel tax.
  - Remember the "Master's rule" for federal income taxes (residence rented out for less than 14 days)—does the same apply for Iowa's taxes on lodging?
  - Alas, no.

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### Home Sharing

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- Policy Letter Document No. 15510049

- Ruling

Iowa imposes a hotel and motel tax "upon the sales price for the renting of any lodging" in Iowa. Iowa Code § 423A.3. A city or county may also impose a local hotel and motel tax "upon the sales price from the renting of lodging." *Id.* § 423A.4. "Sales price" is "the consideration for renting of lodging." *Id.* § 423A.2(1)(f).

"Lodging" means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. Lodging does not include rooms that are not used for sleeping accommodations. *Id.* § 423A.2(1)(c).

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### Home Sharing

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- Policy Letter Document No. 15510049

- Ruling

The homeowner's home is clearly a "place where sleeping accommodations are furnished to transient guests for rent." *See id.* The statute does not place a minimum number of nights a place must be rented for it to qualify as "lodging." *See id.* Accordingly, the rental of the homeowner's home is subject to hotel and motel tax. Iowa provides a limited number of exemptions from hotel and motel tax, none of which apply to the facts you provided. *See id.* § 423A.5. Therefore, the homeowner must collect and remit hotel and motel tax for renting the home.

- Department does go on to confirm the "Master's" rule applies to this for income taxes (well, kind of)

## Iowa Fiduciary Income Taxes

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## Administrative Expenses of a Trust/Estate

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## Administrative Expenses of an Estate

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- ARC 2661C; Chapter 89

- Reflects change in Iowa law passed in 2015
- Decouples Iowa from federal prohibition on deducting administrative expenses taken on Form 706
- New rule:

For tax years ending on or after July 1, 2015, estates or trusts required to file a federal estate tax return can claim administrative expenses as a deduction on the Iowa fiduciary income tax return, regardless of whether the item or a portion of the item was claimed on the federal estate tax return.

This paragraph applies both to estates and trusts with a situs within and without Iowa.

## Iowa Inheritance Taxes

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### Heir Dies with Inherited IRA

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### Heir Dies with Inherited IRA

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- **Policy Memo Document Number 16700036**
  - Decedent dies with inherited IRA with remaining balance—is it subject to Iowa's inheritance tax?
  - **Facts of letter:**

A opens an IRA and designates B as the beneficiary of the account. B is not A's spouse. A dies and B decides against taking the lump sum payment of the funds in the IRA. Instead, B keeps the funds in an account called an "inherited" IRA. B dies before all of the proceeds of the inherited IRA are distributed. C inherits the inherited IRA through B's will. C does not have a personal exemption from inheritance tax.

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### Heir Dies with Inherited IRA

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- Policy Memo Document Number 16700036

- Iowa law on excluding IRAs from inheritance tax:

The inheritance tax is not collected:

On that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary. This exemption shall apply regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

Iowa Code § 450.4(5)(a) (2016).

- Good so far, but IDOR says this is no longer the same thing

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### Heir Dies with Inherited IRA

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- Policy Memo Document Number 16700036

- IDOR explains:

An "individual retirement account" is "a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries" that meets certain requirements. IRC § 408(a). An "inherited" IRA is an account where the beneficiary receives the funds for the account by reason of the death of another individual who was not the beneficiary's spouse. IRC § 408(d)(3)(C)(ii).

Beneficiaries of inherited IRAs cannot treat the IRA as their own if they did not inherit the IRA from their spouse. *Distributions from Individual Retirement Arrangements (IRAs)*, IRS Publication 590B (2015). If the beneficiary chooses not to have the account distributed upon the death of the owner, the beneficiary may set up an inherited IRA. However, the inherited IRA for a non-spouse must be set up in the name of the original owner for the benefit of the original beneficiary. *Id.*



## Heir Dies with Inherited IRA

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- Policy Memo Document Number 16700036
  - IDOR concludes:

No inheritance tax is due on the portion of a *decedent's* IRA that will be subject to federal income tax when paid to the beneficiary. Iowa Code § 450.4(5)(a) (emphasis added). Distributions from IRAs are subject to income tax when paid. IRC § 470(d)(1). Using the example above, at the time of B's death, the account is not B's IRA, it is his inherited IRA set up with A as the owner. Because the inherited IRA devised by B to C is not B's (the decedent) IRA, there is no exemption for the portion of the IRA that will be subject to federal income tax. Therefore, the inherited IRA is subject to inheritance tax when it passes to C.

## State and Local Tax Issues in General

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## SALT Issues

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## More than Iowa to Worry About

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### Expanding Challenges to *Quill*

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- Congress has not taken up the Supreme Court's invitation to solve out of state sales tax matter that was provided in *Quill*
- *Quill* opinion itself suggests it may not be the proper answer and future changes could render it no longer relevant
- States have run out of patience, especially due to pressure to
  - Raise revenue but
  - Don't raise taxes
- As well, brick and mortar retailers feel current system gives an effective subsidy to online sellers

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### Colorado's Big Win

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### Colorado's Big Win

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- 10th Circuit Court of Appeals dismissed lower court's permanent injunction
  - Had enjoined Colorado from enforcing its Amazon law
  - 3 principal obligations on non-collecting retailers whose gross sales in Colorado exceed \$100,000: they must
    - (1) provide transactional notices to Colorado purchasers
    - (2) send annual purchase summaries to Colorado customers
    - (3) annually report Colorado purchaser information to the Department
  - Alternatively, retailers may choose to collect and remit sales tax from Colorado purchasers to forgo notice and reporting obligations

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### Colorado's Big Win

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- CA held that the Tax Injunction Act (TIA) precludes federal jurisdiction over claim that Colorado's law violates the Commerce Clause of the US Constitution (*Direct Marketing Ass'n v. Brohl*, No. 12-1175 (10th Cir. 8/20/13)).
- Case remanded to district court to
  - Dismiss Commerce Clause claims and
  - Lift permanent injunction the lower court had imposed
- (*Direct Marketing Ass'n v. Huber*, No. 1:10-CV-01546-REB-CBS (D. Colo. 3/30/12)).
- Any further proceedings in the case must begin in Colorado's courts or administrative agencies.

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### South Dakota as Dirty Harry

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### South Dakota as Dirty Harry

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- “Go ahead, make my day (take me to court)”
- South Dakota direct challenge to *Quill*
  - New law requires sellers to collect tax if market into South Dakota even if have no presence there
    - Won’t enforce until have win in court—but will go back and pick it up from noncompliant sellers then
    - Can volunteer to collect now, but have to agree not to file petition for refund if South Dakota loses
    - Law recognizes it violates *Quill*, but references *Brohl* decision for proposition that *Quill* should no longer be the law
  - Fight now is where “pre-Supreme Court” petition decision will come from
    - Sellers want federal court fight
    - State of South Dakota pushing to keep it in state courts

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## Questions

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