

## **Policy Letter; Renting Commercial Kitchen; July 19, 2016**

**Topic Code: R174 Rental of Tangible Personal Property**

**Document Reference: 16300040**

*Sent via email*

July 19, 2016

[REDACTED]

**Re: Renting Commercial Kitchen**

[REDACTED]

The Iowa Department of Revenue (“Department”) has received your questions regarding whether fees for the rental of a commercial kitchen are subject to Iowa sales tax.

### **Facts you provided the Department**

You own a commercial kitchen which contains various baking equipment, such as ovens and mixers. You rent out the kitchen, along with the use of all of the equipment, for short periods of time (three hours to one week). You charge a fee for this rental to cover the electricity costs and the use of the space for a period of time. People who rent your kitchen might be caterers, or anyone who wants to prepare food in bulk for a party or other large group. You want to know whether this rental fee would be subject to Iowa sales tax. You also question whether the initial purchase of equipment for your kitchen would qualify for the sales tax exemption for machinery and equipment.

### **Analysis**

#### **Rental Fee**

The kitchen equipment that you describe is tangible personal property, the sale or rental of which is subject to sales tax. According to the information that you provided, you rent out this equipment, along with the space in which it is kept, to your customers. The rental of physical space is the rental of real property and would not be subject to sales tax, unless it fell within a taxable service. Because you appear to be renting out both taxable tangible personal property and non-taxable real property, the question of whether you should charge sales tax on the rental fee depends on the primary purpose for the rental.

If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved; reference rule 701—18.40(422,423).

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

Iowa Admin. Code r. 701—225.6(3). The rental that you describe appears to be the rental of tangible personal property (the baking equipment), with an incidental rental of the space in which to use that property (the kitchen). Based on the facts you provided, your customers are caterers and others who rent out your kitchen in order to prepare large quantities of food in a short period of time. It seems as though the baking equipment is what they need to accomplish this, not the space where the equipment is located. The space may be necessary to house the equipment, and it may be useful to your customers to have the larger space in which to work. However, it seems as though there would be no reason for your customers to rent the kitchen if it were just an empty space, and they were required to bring in their own equipment. Based on the information that you provided, the rental service that you provide appears to be for the rental of tangible personal property (the baking equipment) with the incidental use of space (the kitchen). This qualifies as a rental of tangible personal property, and is subject to Iowa sales tax.

### **Machinery and Equipment**

The kitchen equipment that you describe is tangible personal property that is subject to sales tax. As you are aware, Iowa does provide an exemption from sales tax for

The sales price from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

- (1) Directly and primarily used in processing by a manufacturer.
- (2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.
- (3) Directly and primarily used in research and development of new products or processes of processing.
- (4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.
- (5) Directly and primarily used in recycling or reprocessing of waste products.

Iowa Code § 423.3(47). This exemption turns, not just on the nature of the item being purchased, but also on the nature of the person or entity buying it and the use to which the purchaser will put the item. Nothing in the facts that you provided suggests that equipment you describe would be either computers

used in processing or storing of data or information, or items directly and primarily used in recycling or reprocessing of waste products. Therefore, in order to qualify for the exemption, your kitchen equipment must be directly and primarily used in processing by a manufacturer, or directly used in research and development of new products or processes.

Tax exemption statutes are strictly construed with all doubts resolved in favor of taxation. *Iowa Ag. Constr. Co. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 174 (Iowa 2006). The party claiming an exemption bears the burden of proving entitlement to the exemption. *Id.* According to the facts that you provided, the equipment in your kitchen will be used primarily for short-term rental to caterers and others who wish to prepare large amounts of food. Nothing in the facts that you have provided suggests that you are a manufacturer, or that you will be using this equipment for processing or for research and development of new products or processes. Based on the facts that you have provided, it appears that you have purchased this kitchen equipment for the purposes of renting it out to others, not for the purposes of processing materials into tangible personal property. The purchase of this equipment, under the circumstances that you have described, does not qualify for the exemption for machinery and equipment used in processing.

I hope this information has been helpful to you. Please remember that this letter is an informal opinion based only on the facts you provided and on the current law. In the future, the Department could take a position contrary to that stated in this letter. Any written advice or opinion rendered to members of the public by Department personnel that is not pursuant to a Petition for Declaratory Order under 701 IAC 7.24 is not binding upon the Department. If you have any additional questions regarding this matter please do not hesitate to contact me.

Sincerely,

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