

within twenty days after its adjournment or May 31, whichever date is later. No new grounds in addition to those set out in the protest to the board of review as provided in section 441.37 can be pleaded, but additional evidence to sustain ~~said~~ those grounds may be introduced. The assessor shall have the same right to appeal and in the same manner as an individual taxpayer, public body or other public officer as provided in section 441.42. Appeals shall be taken by a written notice to that effect to the chairperson or presiding officer of the board of review and served as an original notice.

Approved June 4, 1987

CHAPTER 199

REVENUE AND FINANCE DEPARTMENT PROCEDURES

H.F. 334

AN ACT relating to the administration of Iowa revenue laws pertaining to cigarette and tobacco tax assessment periods, penalties and appeal periods, offsetting of claims against the state with a person's liabilities to the state, tax return confidentiality, the filing of sales and services tax refund claims, audit periods for sales, services, and use tax returns, use tax penalty, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 98.45, subsection 1, unnumbered paragraph 2, Code 1987, is amended to read as follows:

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, ~~no an~~ invoice of those sales ~~shall be~~ is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least ~~one year~~ two years after the date of the documents, ~~as aforesaid~~, or the date of the entries ~~thereof~~ appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine ~~whether or not~~ if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making ~~such~~ the examination, the license of the distributor at ~~such that~~ premises shall be is subject to revocation by the director.

Sec. 2. Section 98.46, subsection 1, Code 1987, is amended to read as follows:

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product ~~(a)~~ brought, or caused to be brought, into this state for sale; and ~~(b)~~ made, manufactured or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director and shall contain ~~such~~ other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown ~~therein~~ on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within two years after the return is filed or within two years after the return became due, whichever is later, the department

shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency.

Sec. 3. Section 98.46, subsections 2, 3, 4, 5, and 6, Code 1987, are amended by striking the subsections and inserting in lieu thereof the following:

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. The director in issuing an assessment shall add to the amount of tax found due and unpaid a penalty of seven and one-half percent of the tax if less than ninety percent of the tax has been paid, except as provided in section 421.27, except that, if the director finds that the taxpayer has made a false and fraudulent return with intent to evade the tax or failed to file a return with intent to evade the tax imposed by this division, the penalty shall be seventy-five percent of the entire tax as shown by the return as corrected. The penalty imposed under this subsection is not subject to waiver.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination and assessment by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of tax, penalty, and interest or refund owing. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

Sec. 4. Section 421.17, subsection 26, Code 1987, is amended to read as follows:

26. To provide that in the case of multiple claims to ~~refunds or rebates~~ payments filed under subsections 21, 23, ~~and 25, and 29~~ that priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21, next priority shall be given to claims filed by the college aid commission under subsection 23, next priority shall be given to claims filed by the office of investigations under subsection 21, ~~and last next~~ priority shall be given to claims filed by a clerk of the district court under subsection 25, ~~and last~~ priority shall be given to claims filed by other state agencies under subsection 29. In the case of multiple claims under subsection 29, priority shall be determined in accordance with rules to be established by the director.

Sec. 5. Section 421.17, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 29. To establish and maintain a procedure to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency, except the setoff procedures provided for in subsections 21, 23, and 25. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. For purposes of this subsection unless the context requires otherwise:

(1) "State agency" means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa. The term "state agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

(2) "Department" means the department of revenue and finance.

(3) The term "person" does not include a state agency.

b. Before setoff, a person's liability to a state agency and the person's claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

c. Before setoff, the state agency shall obtain and forward to the department the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the department the information concerning the person as the department shall, by rule, require. The department shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the department shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

d. Before setoff, a state agency shall, at least annually, submit to the department the information required by paragraph "c" along with the amount of each person's liability to and the amount of each claim on the state agency. The department may, by rule, require more frequent submissions.

e. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall be at least fifty dollars.

f. Upon submission of an allegation of liability by a state agency, the department shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the department. Section 422.72, subsection 1, does not apply to this paragraph.

g. Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the department. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

h. Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the department of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

i. The department shall, after the state agency has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable.

j. The department's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the department or other state agency by this subsection. This subsection is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

NEW SUBSECTION. 30. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

Sec. 6. Section 422.20, Code 1987, is amended by adding the following new subsections:
NEW SUBSECTION. 3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63, 421.19, 421.28, and 422.72, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

NEW SUBSECTION. 4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

Sec. 7. Section 422.45, subsection 33, Code 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Claims for refund of tax, interest, or penalty which arise under this subsection for the sale or use of automotive fluids occurring between January 1, 1979, and June 30, 1986, shall not be allowed unless filed prior to December 31, 1987, notwithstanding any other provision of law.

Sec. 8. Section 422.54, subsection 1, Code 1987, is amended to read as follows:

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the tax due if the return is found to be incorrect and give notice to the taxpayer of such assessment and determination as provided in subsection 2 hereof. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax, or additional tax, if any is found due, shall be assessed and determined and the ~~aforesaid~~ notice to the taxpayer shall be given by the department within one year after the completion of the examination of ~~said~~ the books and records.

Sec. 9. Section 422.72, subsection 3, Code 1987, is amended by striking the subsection and inserting in lieu thereof the following:

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63, 421.19, 421.28, and 422.20, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, or 3 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

Sec. 10. Section 423.18, subsection 1, Code 1987, is amended to read as follows:

1. If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the monthly deposit form or return on or before the due date, or pays less than

ninety percent of any tax required to be shown on the monthly deposit form or return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of seven and one-half percent of the tax due, except as provided in section 421.27. For tax due under section 423.9, the penalty shall be ~~ten~~ fifteen percent. In case of willful failure to file a monthly deposit form or return, willfully filing a false monthly deposit form or return, or willfully filing a false or fraudulent monthly deposit form or return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the monthly deposit form or return seventy-five percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The penalty imposed under this subsection is not subject to waiver.

Sec. 11. Sections 4 and 5 of this Act are effective July 1, 1988.

Sec. 12. Sections 6 and 9 of this Act are effective July 1, 1987 for requests and subpoenas for returns, schedules, and attachments to returns made on or after that date.

Sec. 13. Section 10 of this Act is retroactive to January 1, 1987 for taxes due on or after that date.

Approved June 4, 1987

CHAPTER 200

BIRTH CENTERS

H.F. 328

AN ACT relating to the licensure and regulation of birth centers and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. **NEW SECTION. 135G.1 LICENSURE AND REGULATION OF BIRTH CENTERS — LEGISLATIVE INTENT.**

It is the intent of the general assembly to provide for the protection of public health and safety in the establishment, construction, maintenance, and operation of birth centers by providing for licensure of birth centers and for the development, establishment, and enforcement of minimum standards with respect to birth centers.

Sec. 2. **NEW SECTION. 135G.2 DEFINITIONS.**

As used in this chapter, unless the context otherwise requires:

1. "Birth center" means any facility, institution, or place, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur away from the mother's usual residence following a normal, uncomplicated, low-risk pregnancy.
2. "Clinical staff" means individuals employed full time or part time by a birth center who are licensed or certified to provide care at childbirth, which includes the clinical director.
3. "Consultant" means a physician licensed under chapter 148, 150, or 150A, who agrees to provide medical and obstetrical advice and services to a birth center and clients of the birth center, and who either: