

CHAPTER 150**TAX ADMINISTRATION — ADDITIONAL RELATED MATTERS***H.F. 736*

AN ACT relating to the administration of the tax and related laws by the department of revenue and finance, including administration of state sales and use, real estate transfer, environmental protection charge on petroleum diminution, property, motor fuel, special fuel, and inheritance taxes, and including effective and applicability date provisions.

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

Section 1. Section 422.43, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 16. a. A tax of five percent is imposed upon the gross receipts from sales of bundled services contracts. For purposes of this subsection, a “bundled services contract” means an agreement providing for a retailer’s performance of services, one or more of which is a taxable service enumerated in this section and one or more of which is not, in return for a consumer’s or user’s single payment for the performance of the services, with no separate statement to the consumer or user of what portion of that payment is attributable to any one service which is a part of the contract.

b. For purposes of the administration of the tax on bundled services contracts, the director may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing retailers of bundled services contracts. Such an agreement shall impose the tax rate only upon that portion of the gross receipts from a bundled services contract which is attributable to taxable services provided under the contract.

NEW SUBSECTION. 17. A tax of five percent is imposed upon the gross receipts from any mobile telecommunication service which this state is allowed to tax by the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act that are deemed to be provided by the customer’s home service provider shall be paid to the taxing jurisdiction whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunication service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

Sec. 2. Section 422.45, subsection 3, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

3. The gross receipts from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

a. Educational.

b. Religious.

c. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

This exemption does not apply to the gross receipts from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the gross receipts only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

Sec. 3. Section 422.45, subsection 8, Code 2001, is amended to read as follows:

8. The gross receipts of all sales of goods, wares, ~~or~~ merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. ~~The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise, or services, subject to use tax under the provisions of chapter 423. For the purpose of this subsection, "educational institution" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "Educational institution" includes an institution primarily functioning as a library.~~

Sec. 4. Section 422.45, Code 2001, is amended by adding the following new subsection: NEW SUBSECTION. 60. The gross receipts from sales of goods, wares, or merchandise, or from services performed, rendered, or furnished to a nonprofit private art center to be used in the operation of the art center.

Sec. 5. Section 423.1, subsection 10, Code 2001, is amended to read as follows:

10. "Retailer maintaining a place of business in this state" or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, tangible personal property leased to a lessee of the retailer, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

Sec. 6. Section 423.1, subsection 12, Code 2001, is amended to read as follows:

12. "Tangible personal property" means tangible goods, wares, merchandise, optional service or warranty contracts, except residential service contracts regulated under chapter 523C, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and gas, electricity, ~~and~~ water, and communication service when furnished or delivered to consumers or users within this state.

Sec. 7. Section 423.4, subsection 9, Code 2001, is amended to read as follows:

9. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, ~~or~~ partnership, or limited liability company to a corporation formed by the sole proprietorship, ~~or~~ partnership, or limited liability company for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse, ~~or~~ by all the partners in the case of a partnership, or by all of the members in the case of a limited liability company. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship, ~~or~~ partnership, or limited liability company formed by that corporation for the purpose of continuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

This exemption also applies where the vehicles subject to registration are transferred from a corporation as part of the liquidation of the corporation to its stockholders if within three months of such transfer the stockholders retransfer those vehicles subject to registration to a sole proprietorship, partnership, or limited liability company for the purpose of continuing the business of the corporation when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

Sec. 8. Section 424.10, subsections 1 and 3, Code 2001, are amended to read as follows:

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

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within ~~five~~ three years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

Sec. 9. Section 424.12, Code 2001, is amended to read as follows:

424.12 RECORDS REQUIRED.

It ~~shall be~~ is the duty of every depositor required to make a report and pay any charge under this chapter, to preserve such records as the director may require, and it ~~shall be~~ is the duty of every depositor to preserve for a period of ~~five~~ three years all invoices and other records; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for ~~such~~ examination upon reasonable notice when the director shall so order. When requested to do so by any person from whom a charge payer is seeking credit, or with whom the charge payer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director, upon being satisfied that such a situation exists, shall inform ~~such~~ that person as to the amount of unpaid charges due by the charge payer under ~~the provisions~~ of this chapter. The giving of ~~such~~ information under such circumstances shall not be deemed a violation of section 422.72 as applied to this chapter.

Section 422.72 applies to this chapter as if the environmental protection charge were a tax.

Sec. 10. Section 424.15, unnumbered paragraph 1, Code 2001, is amended to read as follows:

If it appears that, as a result of mistake, an amount of a charge, penalty, or interest has been paid which was not due under ~~the provisions~~ of this chapter, then ~~such~~ that amount shall be refunded to ~~such person~~ the charge payer by the department. A claim for refund that has not been filed with the department within ~~five~~ three years after the charge payment upon which a refund is claimed became due, or one year after ~~such~~ that charge payment was made, whichever time is the later, shall not be allowed by the director.

Sec. 11. Section 427.1, subsection 14, unnumbered paragraph 1, Code 2001, is amended to read as follows:

A society or organization claiming an exemption under subsection 5 or subsection 8 shall

file with the assessor not later than ~~April 15~~ February 1 a statement upon forms to be prescribed by the director of revenue and finance, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

Sec. 12. Section 427.1, subsection 20, Code 2001, is amended to read as follows:

20. IMPOUNDMENT STRUCTURES. The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year ~~before the first of July~~ not later than February 1 for the exemption. The application shall be made on forms prescribed by the department of revenue and finance. The first application shall be accompanied by a copy of the water storage permit approved by the administrator of the environmental protection division of the department of natural resources and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption ~~status~~. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

PARAGRAPH DIVIDED. As used in this subsection, "impoundment" means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; "storage capacity" means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and "impoundment structure" means a dam, earthfill, or other structure used to create an impoundment.

Sec. 13. Section 427.1, subsection 22, unnumbered paragraph 2, Code 2001, is amended to read as follows:

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than ~~April 15~~ February 1 of the assessment year, on forms provided by the department of revenue and finance. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Sec. 14. Section 427.1, subsection 30, Code 2001, is amended to read as follows:

30. **MOBILE HOME PARK STORM SHELTER.** A structure constructed as a storm shelter at a mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than ~~April fifteenth~~ February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure's assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at seventy-five percent of its value as commercial property.

Sec. 15. Section 427.16, subsection 2, Code 2001, is amended to read as follows:

2. Application for the exemption shall be filed with the assessor, not later than ~~March 1~~ February 1 of the assessment year, on forms provided by the department of revenue and finance. The exemption application shall include an approved application for certified substantial rehabilitation from the state historic preservation officer and documentation of additional property tax relief or financial assistance currently allowed for the real property. Upon receipt of the application, the assessor shall certify whether or not the property is eligible to receive the exemption and shall forward the application to the board.

Sec. 16. Section 427C.3, Code 2001, is amended to read as follows:

427C.3 FOREST RESERVATION.

A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under this chapter provided application is made or on file on or before ~~April 15~~ February 1 of the exemption year. If any buildings are standing on an area selected as a forest reservation under this section or a fruit-tree reservation under section 427C.7, one acre of that area shall be excluded from the tax exemption. However, the exclusion of that acre shall not affect the area's meeting the acreage requirement of section 427C.2.

Sec. 17. Section 427C.7, Code 2001, is amended to read as follows:

427C.7 FRUIT-TREE RESERVATION — DURATION OF EXEMPTION.

A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. A reservation may be claimed as a fruit-tree reservation, under this chapter, for a period of eight years after planting provided application is made or on file on or before ~~April 15~~ February 1 of the exemption year.

Sec. 18. Section 428A.8, Code 2001, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Any tax or additional tax found to be due shall be collected by the county recorder. If the county recorder is unable to collect the tax, the director of revenue and finance shall collect the tax in the same manner as taxes are collected in chapter 422, division III. If collected by the director of revenue and finance, the director shall pay the county its proportionate share of the tax. Section 422.25, subsections 1, 2, 3, and 4, and sections 422.26, 422.28 to 422.30, and 422.73, consistent with this chapter, apply with respect to the collection of any tax or additional tax found to be due, in the same manner and with the same effect as if the deed, instrument, or writing were an income tax return within the meaning of those statutes.

Sec. 19. **NEW SECTION.** 428A.9 REFUND OF TAX.

To receive a refund from the state the taxpayer shall petition the state appeal board for a refund of the amount of overpayment of the tax paid to the treasurer of state. To receive a refund from the county the taxpayer shall petition the board of supervisors for a refund of the remaining portion of the overpayment paid to that county.

Sec. 20. Section 450.4, subsection 5, Code 2001, is amended to read as follows:

5. On the value of that portion of any lump sum or installment payments which will be includable as net income as defined in section 422.7 as received by a beneficiary under an annuity which was purchased under an employees pension or retirement plan.

Sec. 21. Section 450.4, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 7. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan where the employee is a nonresident of Iowa at the time of death.

NEW SUBSECTION. 8. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan which was excluded from net income as set forth in section 422.7, subsection 31.

Sec. 22. Section 452A.2, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 4A. "Denatured ethanol" means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American society of testing materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning in this chapter.

NEW SUBSECTION. 18A. "Racing fuel" means leaded gasoline of one hundred ten octane or more that does not meet American society of testing materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

Sec. 23. Section 452A.2, subsection 17, paragraph a, Code 2001, is amended to read as follows:

a. All products commonly or commercially known or sold as gasoline, including ethanol blended gasoline, casinghead, and absorption or natural gasoline, regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

Sec. 24. Section 452A.3, subsection 5, paragraph a, Code 2001, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to an Iowa licensed supplier. The tax shall be paid by the Iowa licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of ethanol blended gasoline is withdrawn from a terminal for delivery in this state.

Sec. 25. Section 452A.17, subsection 1, paragraph a, Code 2001, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (10) Racing fuel.

Sec. 26. EFFECTIVE AND APPLICABILITY DATES.

1. The sections of this Act amending Code section 422.45, subsections 3 and 8, take effect January 1, 2002.

2. The sections of this Act amending Code sections 427.1, 427.16, 427C.3, and 427C.7 take effect January 1, 2002, and apply to claims filed on or after that date.

Approved May 18, 2001