# CHAPTER 41

INTERNAL REVENUE CODE, INCOME TAX PROVISIONS, AND OTHER FINANCIAL MATTERS

*S.F. 512*

**AN ACT** relating to public funding matters by updating the Code references to the Internal Revenue Code and by decoupling from certain federal bonus depreciation provisions, authorizing appropriation transfers, and including effective date and retroactive applicability provisions.

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

## DIVISION I
## INTERNAL REVENUE CODE REFERENCES

Section 1. Section 422.3, subsection 5, Code 2011, is amended to read as follows:

5. *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, ~~2008~~ 2011.

Sec. 2. Section 422.7, subsection 29A, Code 2011, is amended by striking the subsection.

Sec. 3. Section 422.9, subsection 2, paragraph i, Code 2011, is amended to read as follows:

*i.* The deduction for state sales and use taxes is allowable only if the taxpayer elected to deduct the state sales and use taxes in lieu of state income taxes under section 164 of the Internal Revenue Code. A deduction for state sales and use taxes is not allowed if the taxpayer has taken the deduction for state income taxes or claimed the standard deduction under section 63 of the Internal Revenue Code. This paragraph applies to taxable years beginning after December 31, 2003, and before January 1, ~~2006~~ 2008, and to taxable years beginning after December 31, 2009, and before January 1, 2012.

Sec. 4. Section 422.32, subsection 7, Code 2011, is amended to read as follows:

7. *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, ~~2008~~ 2011.

Sec. 5. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 6. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to January 1, 2010, for tax years beginning on or after that date:

1. The section of this Act amending section 422.3.
2. The section of this Act amending section 422.32.

Sec. 7. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to January 1, 2011, for tax years beginning on or after that date:

1. The section of this Act amending section 422.7, subsection 29A.

## DIVISION II
## RESEARCH ACTIVITIES CREDIT

Sec. 8. Section 15.335, subsection 4, Code 2011, is amended to read as follows:

4. *a.* In lieu of the credit amount computed in subsection 2, an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative ~~incremental~~ simplified credit described in section ~~41(c)(4)~~ 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election

regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

*b.* For purposes of the alternate credit computation method in paragraph *"a"*, the credit percentages applicable to qualified research expenses described in ~~clauses (i), (ii), and (iii) of~~ section ~~41(c)(4)(A)~~ 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are as follows:

(1) In the case of an eligible business whose gross revenues do not exceed twenty million dollars per year, the credit percentages are ~~two and fifty-four hundredths percent, three and thirty-eight hundredths percent, and four and twenty-three hundredths~~ seven percent and three percent, respectively.

(2) In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit percentages are ~~seventy-six hundredths percent, one and two hundredths percent, and one and twenty-seven hundredths~~ two and one-tenth percent and nine-tenths percent, respectively.

Sec. 9. Section 15.335, subsection 7, Code 2011, is amended to read as follows:

7. *a.* For purposes of this section, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative ~~incremental~~ simplified credit such amounts are for research conducted within this state.

*b.* For purposes of this section, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

Sec. 10. Section 15A.9, subsection 8, paragraphs b, c, and e, Code 2011, are amended to read as follows:

*b.* In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), subparagraph division (a), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative ~~incremental~~ simplified credit described in section ~~41(c)(4)~~ 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

*c.* For purposes of the alternate credit computation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in ~~clauses (i), (ii), and (iii) of~~ section ~~41(c)(4)(A)~~ 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are ~~three and thirty hundredths percent, four and forty hundredths percent, and five and fifty hundredths percent, respectively~~ as follows:

(1) In the case of an eligible business whose gross revenues do not exceed twenty million dollars per year, the credit percentages are seven percent and three percent, respectively.

(2) In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit percentages are two and one-tenths percent and nine-tenths percent, respectively.

*e.* (1) For the purposes of this subsection, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative ~~incremental~~ simplified credit such amounts are for research conducted within this state within the zone.

(2) For purposes of this subsection, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

Sec. 11. Section 422.10, subsection 1, paragraphs b and c, Code 2011, are amended to read as follows:

*b.* In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), subparagraph division (a), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative ~~incremental~~ simplified credit described in section ~~41(c)(4)~~ 41(c)(5) of the Internal Revenue Code. The

taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

*c.* For purposes of the alternate credit computation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in ~~clauses (i), (ii), and (iii) of~~ section ~~41(c)(4)(A)~~ 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are ~~one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths~~ four and fifty-five hundredths percent and one and ninety-five hundredths percent, respectively.

Sec. 12. Section 422.10, subsection 3, Code 2011, is amended to read as follows:

3. *a.* For purposes of this section, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative ~~incremental~~ simplified credit such amounts are for research conducted within this state.

*b.* For purposes of this section, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

Sec. 13. Section 422.33, subsection 5, paragraphs b, c, and d, Code 2011, are amended to read as follows:

*b.* In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), a corporation may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative ~~incremental~~ simplified credit described in section ~~41(c)(4)~~ 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

*c.* For purposes of the alternate credit computation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in ~~clauses (i), (ii), and (iii) of~~ section ~~41(c)(4)(A)~~ 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are ~~one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths~~ four and fifty-five hundredths percent and one and ninety-five hundredths percent, respectively.

*d.* (1) For purposes of this subsection, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative ~~incremental~~ simplified credit such amounts are for research conducted within this state.

(2) For purposes of this subsection, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

Sec. 14. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 15. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to July 1, 2010, for tax credits awarded on or after that date:

1. The section of this Act amending section 15.335, subsection 4.
2. The section of this Act amending section 15A.9.

Sec. 16. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to January 1, 2010, for tax years beginning on or after that date:

1. The section of this Act amending section 15.335, subsection 7.
2. The section of this Act amending section 422.10, subsection 1.
3. The section of this Act amending section 422.10, subsection 3.
4. The section of this Act amending section 422.33.

DIVISION III
BONUS DEPRECIATION

Sec. 17. Section 422.5, subsection 2, paragraph b, subparagraph (1), Code 2011, is amended to read as follows:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. To the extent that any preference or adjustment is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, ~~subsection~~ subsections 39, 39A, 39B, and 53. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

Sec. 18. Section 422.7, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 39A. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 110-185, section 103, Pub. L. No. 111-5, section 1201, Pub. L. No. 111-240, section 2022, and Pub. L. No. 111-312, section 401, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal adjusted gross income, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

*a.* Add the total amount of depreciation taken under section 168(k) of the Internal Revenue Code for the tax year.

*b.* Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(k).

*c.* Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "*a*" and "*b*". The director shall adopt rules for the administration of this paragraph.

NEW SUBSECTION. 39B. The additional first-year depreciation allowance authorized in section 168(n) of the Internal Revenue Code, as enacted by Pub. L. No. 110-343, section 710, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal adjusted gross income, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

*a.* Add the total amount of depreciation taken under section 168(n) of the Internal Revenue Code for the tax year.

*b.* Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(n).

*c.* Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "*a*" and "*b*". The director shall adopt rules for the administration of this paragraph.

Sec. 19. Section 422.7, subsection 53, Code 2011, is amended to read as follows:

53. A taxpayer is not allowed to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. ~~110-185~~ 111-5, section 1202, in computing adjusted gross income for state tax purposes.

Sec. 20. Section 422.9, subsection 2, paragraph h, Code 2011, is amended to read as follows:

*h.* For purposes of calculating the deductions in this subsection that are authorized under the Internal Revenue Code, and to the extent that any of such deductions is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, ~~subsection~~ subsections 39, 39A, 39B, and 53.

Sec. 21. Section 422.35, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 19A. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 110-185, section 103, Pub. L. No. 111-5, section 1201, Pub. L. No. 111-240, section 2022, and Pub. L. No. 111-312, section 401, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal taxable income, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

*a.* Add the total amount of depreciation taken under section 168(k) of the Internal Revenue Code for the tax year.

*b.* Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(k).

*c.* Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs *"a"* and *"b"*. The director shall adopt rules for the administration of this paragraph.

NEW SUBSECTION. 19B. The additional first-year depreciation allowance authorized in section 168(n) of the Internal Revenue Code, as enacted by Pub. L. No. 110-343, section 710, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal taxable income, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

*a.* Add the total amount of depreciation taken under section 168(n) of the Internal Revenue Code for the tax year.

*b.* Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(n).

*c.* Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs *"a"* and *"b"*. The director shall adopt rules for the administration of this paragraph.

Sec. 22. Section 422.35, subsection 24, Code 2011, is amended to read as follows:

24. A taxpayer is not allowed to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. ~~110-185~~ 111-5, section 1202, in computing taxable income for state tax purposes.

Sec. 23. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 24. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to January 1, 2008, for tax years ending on or after that date:

1. The section of this Act amending section 422.5.
2. The section of this Act enacting section 422.7, new subsections 39A and 39B.
3. The section of this Act amending section 422.9.
4. The section of this Act enacting section 422.35, new subsections 19A and 19B.

Sec. 25. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to January 1, 2009, for tax years beginning on or after that date, and before January 1, 2010:

1. The section of this Act amending section 422.7, subsection 53.
2. The section of this Act amending section 422.35, subsection 24.

DIVISION IV
STATE PUBLIC DEFENDER TRANSFER

**Sec. 26. TRANSFER AUTHORIZATION — STATE PUBLIC DEFENDER.*

*1. Notwithstanding section 8.39, subsection 2, while the general assembly is in regular session, the director of the department of management, with the approval of the governor, may make an interdepartmental transfer from any other department, institution, or agency of the state having an appropriation in excess of its needs, of sufficient funds to supplement the following appropriations made to the office of the public defender of the department of inspections and appeals, in order to meet the obligations incurred under the appropriations:*

*a. For the office of the state public defender, in 2010 Iowa Acts, chapter 1190, section 10, subsection 1.*

*b. For the fees of court-appointed attorneys for indigent adults and juveniles, in accordance with section 232.141 and chapter 815, in 2010 Iowa Acts, chapter 1190, section 10, subsection 2.*

*2. A transfer made under this section is subject to the notice and reporting requirements applicable to transfers made under section 8.39. However, the chairpersons' review and comment period under section 8.39, subsection 3, is not applicable.**

**Sec. 27. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.**

*Approved April 12, 2011, with exceptions noted.*

TERRY E. BRANSTAD, *Governor*

Dear Mr. President:

I hereby transmit Senate File 512, an Act relating to public funding matters by updating the code references to the internal revenue code and by decoupling from certain federal bonus depreciation provisions, authorizing appropriation transfers, and including effective date and retroactive applicability provisions.

Senate File 512 is, therefore, signed on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the item designated as Division IV, which includes Sections 26 and 27. This language would have provided the Governor with the specific authority to transfer funds to the office of the public defender for payment of court-appointed attorneys for indigent defense purposes. As I have made clear, I strongly support an appropriate supplemental appropriation to pay these court-appointed indigent defense attorneys the money that is owed to them and will continue to work with the General Assembly to resolve this matter.

The language I disapprove attempts to end the current legislative stalemate over supplemental appropriations for the provision of indigent defense services administered though the State Public Defender's office.

This current shortfall in the funds available to pay the state's indigent defense bills is the result of actions taken during the 2010 Session of the General Assembly wherein the Governor and General Assembly approved a budget for indigent defense that purposely underfunded this program by nearly $20 million. This decision was made with the full knowledge the 2011 General Assembly would be forced to take action to provide supplemental funds to the State Public Defender's office for this purpose.

* Item veto; see message at end of the Act

The method provided in Senate File 512 provides the Governor with the specific authority to transfer funds to the State Public Defender for payment of court-appointed attorneys for indigent defense purposes. The funds transferred must come from any department, institution, or agency of the state and will reduce the funds available to those entities by a like amount.

In other words, in order to comply with the provisions of Senate File 512 I would be asked to reduce by nearly $20 million the current appropriations in other state agencies to secure the resources necessary to transfer to the State Public Defender's office. As there remain less than three months in the current fiscal year, any spending reduction in any agency has an effect nearly four times greater than if the reduction were made at the beginning of a fiscal year.

In Senate File 512 the General Assembly provides the Governor with no guidance regarding which state agencies must be reduced to make this transfer possible.

This method is totally unacceptable and is a continuation of the numerous bad budgeting practices that has created the fiscal mess our state currently faces. It is this fiscal mess that I am committed to correct and I will not participate in a process that both continues those practices and undermines the constitutional responsibility of the General Assembly to make appropriations.

A Governor's transfer authority should be extremely limited during those time periods when the General Assembly is in session. The Iowa Constitution provides a clear method for the appropriation of state funds and I intend to honor that process and the General Assembly's role in spending state funds.

I specifically call on the members of the General Assembly to resume negotiations on legislation to provide a supplemental appropriation for indigent defense and other critical areas of state government that have been left critically short due to past bad budgeting practices.

I strongly support an appropriate supplemental appropriation to pay our indigent defense costs and will continue to work with the General Assembly to resolve this matter.

For the above reasons, I respectfully disapprove this item in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 512 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*