SENATE FILE 1197

By COMMITTEE ON WAYS AND MEANS

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Ways and Means 3/-
Senate File 1197
Hill, Chairman
Bittle
Monroe

Passed Senate, Date 2-28-74 (577) Passed House, Date 4-15-74 (1728)

Vote: Ayes 30 Nays 19 Vote: Ayes 88 Nays 6

Approved 4-25-74

A BILL FOR

An Act revising penalties imposed on additional taxes due, failure to file reports, and filing of fraudulent reports under the income, sales and use, chain store, and motor vehicle fuel tax laws.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section three hundred twenty-four point fifteen (324.15), subsection three (3), Code 1973, is amended to read as follows:

3. The reports required in this section shall be for information purposes only and the department of revenue may in its discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the department of revenue within the time allowed for filing of distributors' reports of motor fuel received. ~~Any report not filed within the time allowed by the department of revenue will be subject to a penalty of ten dollars.~~

Sec. 2. Section three hundred twenty-four point sixty-five (324.65), Code 1973, is amended to read as follows:

324.65 PENALTY FOR FAILURE TO PROMPTLY REPORT OR PAY FUEL TAXES. If a licensee or other person fails to file a required report with the department of revenue on or before the ~~time fixed for the filing thereof or if a licensee or other person fails to pay to the department of revenue an amount of fuel taxes when due, a penalty of two percent of the tax unpaid and due to twelve o'clock a.m. of the third day after due date and an additional three percent of the tax unpaid and due from twelve o'clock a.m. of the third day to twelve o'clock a.m. of the tenth day after due date, and an additional five percent of the tax unpaid and due after twelve o'clock a.m. of the tenth day after due date shall be added, the unpaid tax and penalty shall immediately accrue and thereafter shall bear interest at the rate of one-half of one percent per month until paid~~ due date, unless it is shown that such failure was due to reasonable cause there shall be added to the amount required to be shown as tax due on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which

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1 such failure continues, not exceeding twenty-five percent
2 in the aggregate. If a licensee or other person fails to
3 remit the tax due with the filing of the return on or before
4 the due date or fails to pay any amount of the tax required
5 to be shown on the return, there shall be added to the tax
6 a penalty of five percent of the amount of the tax due, unless
7 it is shown that such failure was due to reasonable cause.
8 The taxpayer shall also pay interest on the tax or additional
9 tax at the rate of three-fourths of one percent per month
10 counting each fraction of a month as an entire month, computed
11 from the date the return was required to be filed. The
12 department of revenue shall not remit any part of a penalty
13 for delinquent payment where the delinquency results from
14 the fact that a check given in payment is not honored because
15 of insufficient funds in the account upon which the check
16 was drawn. Provided, further, that if it appears as a result
17 of investigation by the department of revenue or from a pre-
18 ponderance of the evidence adduced at a hearing before the
19 department of revenue that there has been a deliberate attempt
20 on the part of a licensee or other person to evade payment
21 of fuel taxes there shall be added to the assessment against
22 the offending person and collected a penalty of ~~one-hundred~~
23 ~~percent-of-the-tax,-the-evasion-of-which-was-attempted,-and~~
24 ~~the-tax-and-penalty-shall-immediately-accrue-and-shall-there-~~
25 ~~after-bear-interest-at-the-rate-of-one-half-of-one-percent~~
26 ~~per-month-until-paid~~ fifty percent of the tax due. When
27 penalties are applicable for failure to file a return and
28 failure to pay the tax due or required on the return, the
29 penalty provision for failure to file shall be in lieu of
30 the penalty for failure to pay the tax due or required on
31 the return, except in the case of a deliberate attempt on
32 the part of the licensee or other person to evade payment
33 of fuel taxes. Any report required of licensees or persons
34 operating under divisions one (1), two (2) and three (3) of
35 this chapter, upon which no tax may be due, shall be subject

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to a penalty of ten dollars if such report is not timely filed.

Sec. 3. Section four hundred twenty-two point sixteen (422.16), subsection ten (10), paragraph b, Code 1973, is amended to read as follows:

b. Any employer or withholding agent required under the provisions of this chapter to withhold taxes on wages or other taxable Iowa income subject to this chapter who fails to ~~withhold such taxes, or to make the required returns or who fails to timely remit to the department the amounts withheld, shall be liable for the amount of such taxes which should have been withheld and paid, and in addition shall be subject to a civil penalty, equal to five percent of the amount which should have been withheld and paid over to the department, for each month or fraction thereof during which such failure continues, not to exceed twenty five percent in the aggregate; interest at the rate of six percent per annum, shall be added to the tax required to be transmitted beginning with the first day of the second month following the end of the calendar quarter for which the tax was not transmitted, and such interest and such~~ file a return for the withholding of tax with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause, shall be subject to a penalty determined by adding to the amount required to be shown as tax due on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person or withholding agent fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent on the tax due unless it is shown that such failure was due to reasonable cause. When penalties are

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applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. Such penalty and interest shall become a part of the tax due from the withholding agent.

Sec. 4. Section four hundred twenty-two point sixteen (422.16), Code 1973, is amended by striking subsection thirteen (13).

Sec. 5. Section four hundred twenty-two point twenty-four (422.24), subsection two (2), Code 1973, is amended to read as follows:

2. When, at the request of the taxpayer, the time for filing the return is extended, interest at the rate of ~~six percent per annum~~ three-fourths of one percent per month counting each fraction of a month as an entire month, on the total tax due, from the time when the return was ~~originally~~ required to be filed to the time of payment, shall be added and paid.

Sec. 6. Section four hundred twenty-two point twenty-five (422.25), subsection two (2), Code 1973, is amended to read as follows:

2. In addition to the tax or additional tax as determined by the department under the provisions of subsection 1 of this section, the taxpayer shall pay interest on ~~such~~ the tax or additional tax ~~so determined~~ at the rate of ~~six percent per annum~~ three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required ~~by law~~ to be filed~~, and computed on a calendar month basis, considering each fraction of a month as an entire month~~. In case of failure to file

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a return, ~~or to pay the tax required to be paid with the filing of the return, on the date prescribed therefor~~ with the department on or before the due date (determined with regard to any extension of time for filing), unless it is shown that such failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent of the tax due unless it is shown that such failure was due to reasonable cause. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the ~~five percent monthly~~ penalty above provided, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax~~, and in case of willful filing of a false return with intent to evade tax, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax~~. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.

Sec. 7. Section four hundred twenty-two point twenty-five (422.25), subsection three (3), Code 1973, is amended to read as follows:

3. If the amount of the tax as determined by the depart-

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ment shall be less than the amount theretofore paid, the excess shall be refunded with interest after sixty days from the date of payment at ~~six-percent-per-annum~~ three-fourths of one percent per month counting each fraction of a month as an entire month under the provisions of such regulations as may be prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment shall be considered as having been made at the close of the taxable year in which the net operating loss or net capital loss occurred or sixty days from the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carry back to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

Sec. 8. Section four hundred twenty-two point fifty-eight (422.58), subsection one (1), Code 1973, is amended to read as follows:

1. ~~Any~~ If any person ~~failing~~ fails to file a permit holders monthly tax deposit~~,~~ or a return ~~or corrected return or to pay any tax within the time required by this division, shall be subject to an interest penalty of five percent of the amount of tax due, plus one-half of one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due, and 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, but the director, if satisfied that the delay was excusable, may remit all or any part of such~~

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~~interest-penalty~~ with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person or permit holder fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the 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 five percent on the tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. Such ~~interest~~ penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid ~~interest~~ penalties and interest may be enforced in the same manner as the tax imposed by this division.

Sec. 9. Section four hundred twenty-three point eighteen (423.18), Code 1973, is amended to read as follows:

423.18 FAILURE TO PAY--PENALTIES. ~~Any~~ If any person ~~failing~~ fails to file a return ~~or-corrected-return-or-to-pay any-tax-and/or-amount-required-to-be-paid-by-this-chapter~~

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1 ~~within-the-time-required-by-this-chapter,-shall-be-subject~~
2 ~~to-an-interest-penalty-of-five-percent-of-the-amount-due,~~
3 ~~plus-one-half-of-one-percent-of-such-amount-for-each-month~~
4 ~~of-delay-or-fraction-thereof,-excepting-the-first-month-after~~
5 ~~such-return-was-required-to-be-filed-or-such-tax-or-amount~~
6 ~~became-due,-and-excepting-the-period-between-the-completion~~
7 ~~of-an-examination-of-the-books-and-records-of-a-taxpayer-and~~
8 ~~the-giving-of-notice-to-the-taxpayer-that-a-tax-or-additional~~
9 ~~tax-is-due,-but-the-director,-if-satisfied-that-the-delay~~
10 ~~was-excusable,-may-remit-all-or-any-part-of-such-interest~~
11 ~~penalty~~ with the department of revenue on or before the due
12 date, unless it is shown that such failure was due to
13 reasonable cause, there shall be added to the amount required
14 to be shown as tax on the return five percent of the amount
15 of the tax if the failure is for not more than one month,
16 with an additional five percent for each additional month
17 or fraction of a month during which such failure continues,
18 not exceeding twenty-five percent in the aggregate. If any
19 person fails to remit the tax due with the filing of the
20 return on or before the due date, or fails to pay any amount
21 of any tax required to be shown on the return, excepting the
22 period between the completion of an examination of the books
23 and records of a taxpayer and the giving of notice to the
24 taxpayer that a tax or additional tax is due, there shall
25 be added to the tax a penalty of five percent on such tax
26 due, unless it is shown that such failure was due to reasonable
27 cause. When penalties are applicable for failure to file
28 a return and failure to pay the tax due or required on the
29 return, the penalty provision for failure to file shall be
30 in lieu of the penalty provision for failure to pay the tax
31 due or required on the return. The taxpayer shall also pay
32 interest on the tax or additional tax at the rate of three-
33 fourths of one percent per month counting each fraction of
34 a month as an entire month, computed from the date the return
35 was required to be filed. Such ~~interest~~ penalty and interest

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shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid ~~interest penalties~~ penalty and interest may be enforced in the same manner as the tax imposed by this chapter. The certificate of the director to the effect that a tax and/or amount required to be paid by this chapter has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima-facie evidence thereof.

Sec. 10. Section four hundred twenty-four point thirteen (424.13), subsection one (1), Code 1973, is amended to read as follows:

1. ~~Any~~ If any person ~~failing~~ fails to file a return ~~or corrected-return-or-to-pay-any-tax-within-the-time-required shall-be-subject-to-a-penalty-of-five-percent-of-the-amount of-tax-due,-plus-one-percent-of-such-tax-for-each-month-of delay-or-fraction-thereof,-excepting-the-first-month-after such-return-was-required-to-be-filed-or-such-tax-became-due, but-the-director,-if-satisfied-that-the-delay-was-excusable, may-remit-all-or-any-part-of-such-penalty~~ with the department of revenue on or before the due time, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the return five percent of the amount of tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on the due date, or fails to pay any amount in respect of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent on such tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision

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1 for failure to file shall be in lieu of the penalty provision
2 for failure to pay the tax due or required on the return.
3 The taxpayer shall also pay interest on the tax or additional
4 tax at the rate of three-fourths of one percent per month
5 counting each fraction of a month as an entire month, com-
6 puted from the date the return was required to be filed.
7 Such penalty and interest shall be paid to the department
8 and disposed of in the same manner as other receipts under
9 this chapter. Unpaid penalties and interest may be enforced
10 in the same manner as the tax imposed.
11 Sec. 11. The provisions of this Act, except section seven
12 (7), shall be effective for tax periods beginning on or after
13 July 1, 1974. The net operating loss and net capital loss
14 provisions of section seven (7) shall be effective for tax
15 loss years or periods beginning on or after January 1, 1974,
16 except that interest on refunds or credits for periods prior
17 to January 1, 1974, which were created by tax loss years or
18 periods beginning on or after January 1, 1974, shall be limited
19 to six percent per annum.
20 EXPLANATION
21 This bill provides uniform assessment of penalties and
22 interest of individual, corporate, franchise, sales, use,
23 chain store and motor vehicle fuel taxes. The penalty and
24 interest changes are intended to remove the state from being
25 in the position of being a prime lender and place it in the
26 position to enforce more productive collection procedures.
27 The bill provides separate penalty provisions for a person
28 who fails to file a return and a person who fails to pay the
29 tax in order to create an incentive for a person to timely
30 file his return. This approach is similar to that taken by
31 the Internal Revenue Code.
32 One provision of this bill limits the payment of interest
33 on a refund created by a net operating loss deduction which
34 is in conformity with the Internal Revenue Code.
35

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1 Amend Senate File 1197 as follows:

2 1. Page 11, by adding after line 10 the follow-
3 ing new sections:

4 Sec.____. Section four hundred forty-five point
5 thirty-nine (445.39), Code 1973, is amended to read
6 as follows:

7 445.39 INTEREST AS PENALTY. If the first in-
8 stallment of taxes shall not be paid by April ~~1~~ first,
9 said installment shall become due and draw interest,
10 as a penalty, ~~of three-fourths~~ of one percent per
11 month until paid, from the first day of April follow-
12 ing the levy; and if the last half shall not be paid
13 by October ~~1~~ first, following such levy, then a like
14 interest shall be charged from the date such last half
15 became delinquent.

16 Sec.____. Section four hundred forty-five point
17 forty (445.40), Code 1973, is amended to read as fol-
18 lows:

19 445.40 PENALTY ON PERSONAL TAXES. On all per-
20 sonal taxes not paid on or before the first Monday
21 in December a penalty of five percent shall be added
22 and collected in addition to the ~~three-fourths of~~
23 one percent per month penalty herein provided; and
24 the tax with all penalties shall be collected at the
25 same time and in the same manner.

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1 2. Page one, line 4, by inserting after the
2 word "laws" the following:

3 "and increasing the interest penalty on delin-
4 quent property taxes."

S—2291 Filed and withdrawn February 28, 1974

By WILLITS, PLYMAT and CURTIS