

Judiciary and Law Enforcement: Conlon, Chair; Anderson of Audubon and Jesse.

Ways and Means: Thompson, Chair; Shull and Connolly.

Senate File 2327

SENATE FILE 2327

By COMMITTEE ON JUDICIARY

(FORMER SSB 2137)

Approved 2/11 (p. 861)

Passed Senate, Date 3-17-70 (p. 963) Passed House, Date 4/14/70 (p. 2054)

Vote: Ayes 44 Nays 0 Vote: Ayes 85 Nays 9

Approved May 19, 1980

*Repealed Senate 4/25/80 (p. 1761)
124-1*

A BILL FOR

1 An Act to provide or increase the penalty for failure to
2 file or pay the state income, sales and use, or in-
3 heritance and estate taxes.

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

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2137

SENATE FILE 2327

S-5386

1 Amend Senate File 2327 as follows:

2 1. Title page, line 2, by inserting after the
3 word "income," the words "franchise,".

4 2. Title page, line 3, by inserting after the
5 word "taxes" the words "or local hotel and motel tax".

S-5386 FILED

MARCH 14, 1980

Adopted 3/2 (p. 965)

BY LUCAS J. DE KOSTER

1 Section 1. Section four hundred twenty-two point six-
2 teen (422.16), subsection ten (10), paragraph b, Code 1979,
3 is amended to read as follows:

4 b. Any employer or withholding agent required under the
5 provisions of this chapter to withhold taxes on wages or other
6 taxable Iowa income subject to this chapter who fails to file
7 a return for the withholding of tax with the department of
8 revenue on or before the due date, unless it is shown that
9 ~~such~~ the failure was due to reasonable cause, shall be subject
10 to a penalty determined by adding to the amount required to
11 be shown as tax due on the return five percent of the amount
12 of the tax if the failure is for not more than one month,
13 with an additional five percent for each additional month
14 or fraction of a month during which ~~such~~ the failure continues,
15 not exceeding twenty-five percent in the aggregate. If any
16 person or withholding agent fails to remit the tax due with
17 the filing of the return on or before the due date, or fails
18 to pay any amount of any tax required to be shown on the
19 return, unless it is shown that the failure was due to
20 reasonable cause, there shall be added to the tax a penalty
21 of five percent ~~on-the-tax-due-unless-it-is-shown-that-such~~
22 ~~failure-was-due-to-reasonable-cause~~ of the amount of the tax
23 due, if the failure is for not more than one month, with an
24 additional five percent for each additional month or fraction
25 of a month during which the failure continues, not exceeding
26 twenty-five percent in the aggregate. When penalties are
27 applicable for failure to file a return and failure to pay
28 the tax due or required on the return, the penalty provision
29 for failure to file shall be in lieu of the penalty provision
30 for failure to pay the tax due or required on the return.
31 The taxpayer shall also pay interest on the tax or additional
32 tax at the rate of three-fourths of one percent per month
33 counting each fraction of a month as an entire month, computed
34 from the date the return was required to be filed. ~~Such~~ The
35 penalty and interest shall become a part of the tax due from

1 the withholding agent.

2 Sec. 2. Section four hundred twenty-two point twenty-five
3 (422.25), subsection two (2), Code 1979, is amended to read
4 as follows:

5 2. In addition to the tax or additional tax as determined
6 by the department under the provisions of subsection 1 of
7 this section, the taxpayer shall pay interest on the tax or
8 additional tax at the rate of three-fourths of one percent
9 per month counting each fraction of a month as an entire
10 month, computed from the date the return was required to be
11 filed. In case of failure to file a return with the department
12 on or before the due date (determined with regard to any
13 extension of time for filing), unless it is shown that ~~sueh~~
14 the failure was due to reasonable cause and not due to willful
15 neglect, there shall be added to the amount required to be
16 shown as tax on ~~sueh~~ the return five percent of the amount
17 of ~~sueh~~ the tax if the failure is for not more than one month,
18 with an additional five percent for each additional month
19 or fraction thereof during which ~~sueh~~ the failure continues,
20 not exceeding twenty-five percent in the aggregate. If any
21 person fails to remit the tax due with the filing of the
22 return on or before the due date, or fails to pay any amount
23 of any tax required to be shown on the return, unless it is
24 shown that the failure was due to reasonable cause, there
25 shall be added to the tax a penalty of five percent of the
26 tax due ~~unless-it-is-shown-that-sueh-failure-was-due-to~~
27 ~~reasonable-cause,~~ if the failure is for not more than one
28 month, with an additional five percent for each additional
29 month or fraction of a month during which the failure
30 continues, not exceeding twenty-five percent in the aggregate.
31 In case of willful failure to file a return with intent to
32 evade tax, or in case of willfully filing a false return with
33 intent to evade tax, in lieu of the penalty above provided,
34 there shall be added to the amount required to be shown as
35 tax on ~~sueh~~ the return fifty percent of the amount of ~~sueh~~

1 the tax. When penalties are applicable for failure to file
2 a return and failure to pay the tax due or required on the
3 return, the penalty provision for failure to file shall be
4 in lieu of the penalty provision for failure to pay the tax
5 due or required on the return except in the case of willful
6 failure to file a return and willfully filing of a false
7 return with intent to evade tax.

8 Sec. 3. Section four hundred twenty-two point fifty-eight
9 (422.58), subsection one (1), Code 1979, as amended by Acts
10 of the Sixty-eighth General Assembly, 1979 Session, chapter
11 ninety-seven (97), section three (3), and as the section is
12 amended by Acts of the Sixty-eighth General Assembly, 1979
13 Session, chapter ninety-seven (97), sections three (3) and
14 four (4), is amended to read as follows:

15 1. If any person fails to file a permit holders monthly
16 tax deposit or a return with the department of revenue on
17 or before the due date, unless it is shown that ~~such~~ the
18 failure was due to reasonable cause, there shall be added
19 to the amount required to be shown as tax on the monthly tax
20 deposit or return five percent of the amount of the tax if
21 the failure is for not more than one month, with an additional
22 five percent for each additional month or fraction of a month
23 during which ~~such~~ the failure continues, not exceeding twenty-
24 five percent in the aggregate. If any person or permit holder
25 fails to remit at least ninety percent of the tax due with
26 the filing of the monthly tax deposit or return on or before
27 the due date, or pays less than ninety percent of any tax
28 required to be shown on the return, excepting the period
29 between the completion of an examination of the books and
30 records of a taxpayer and the giving of notice to the taxpayer
31 that a tax or additional tax is due, there shall be added
32 to the tax a penalty of five percent ~~on~~ of the amount of the
33 tax due, if the failure is for not more than one month, with
34 an additional five percent for each additional month or
35 fraction of a month the failure continues, not exceeding

1 twenty-five percent in the aggregate, unless it is shown that
2 ~~sueh~~ the failure was due to reasonable cause. In case of
3 willful failure to file a return, willful filing of a false
4 return or willful filing of a false or fraudulent return with
5 intent to evade tax, in lieu of the penalty otherwise provided
6 in this subsection, there shall be added to the amount required
7 to be shown as tax on the return fifty percent of the amount
8 of the tax. When penalties are applicable for failure to
9 file a monthly tax deposit or return and failure to pay at
10 least ninety percent of the tax due or required on the monthly
11 tax deposit or return, the penalty provision for failure to
12 file shall be in lieu of the penalty provision for failure
13 to pay at least ninety percent of the tax due or required
14 on the monthly tax deposit or return. The taxpayer shall
15 also pay interest on the tax or additional tax at the rate
16 of three-fourths of one percent per month counting each
17 fraction of a month as an entire month, computed from the
18 date the monthly tax deposit or return was required to be
19 filed. ~~Sueh~~ The penalty and interest shall be paid to the
20 department and disposed of in the same manner as other receipts
21 under this division. Unpaid penalties and interest may be
22 enforced in the same manner as the tax imposed by this
23 division.

24 Sec. 4. Section four hundred twenty-three point eighteen
25 (423.18), subsection one (1), Code 1979, as amended by Acts
26 of the Sixty-eighth General Assembly, 1979 Session, chapter
27 ninety-seven (97), section five (5), is amended to read as
28 follows:

29 1. If a person fails to file a return with the department
30 on or before the due date, unless it is shown that the failure
31 was due to reasonable cause, there shall be added to the
32 amount required to be shown as tax on the monthly tax deposit
33 or return five percent of the amount of the tax if the failure
34 is for not more than one month, with an additional five percent
35 for each additional month or fraction of a month during which

1 the failure continues, not exceeding twenty-five percent in
2 the aggregate. If a person or permit holder fails to remit
3 at least ninety percent of the tax due with the filing of
4 the monthly tax deposit or return on or before the due date,
5 or pays less than ninety percent of any tax required to be
6 shown on the return, excepting the period between the
7 completion of an examination of the books and records of a
8 taxpayer and the giving of notice to the taxpayer that a tax
9 or additional tax is due, there shall be added to the tax
10 a penalty of five percent of the tax due, if the failure is
11 for not more than one month, with an additional five percent
12 for each additional month or fraction of a month during which
13 the failure continues, not exceeding twenty-five percent in
14 the aggregate, unless it is shown that the failure was due
15 to reasonable cause. In case of willful failure to file a
16 return, willfully filing a false return, or willfully filing
17 a false or fraudulent return with intent to evade tax, in
18 lieu of the penalty otherwise provided in this subsection,
19 there shall be added to the amount required to be shown as
20 tax on the return fifty percent of the amount of the tax.
21 When penalties are applicable for failure to file a monthly
22 tax deposit or return and failure to pay at least ninety
23 percent of the tax due or required on the monthly tax deposit
24 or return, the penalty provision for failure to file is in
25 lieu of the penalty provision for failure to pay at least
26 ninety percent of the tax due or required on the monthly tax
27 deposit or return. The taxpayer shall also pay interest on
28 the tax or additional tax at the rate of three-fourths of
29 one percent per month counting each fraction of a month as
30 an entire month, computed from the date the monthly tax deposit
31 or return was required to be filed. The penalty and interest
32 shall be paid to the department and disposed of in the same
33 manner as other receipts under this chapter. Unpaid penalties
34 and interest may be enforced in the same manner as the tax
35 imposed by this chapter.

1 Sec. 5. Section four hundred fifty point sixty-three
2 (450.63), Code 1979, is amended to read as follows:

3 450.63 MATURITY OF TAX--INTEREST.

4 1. All taxes imposed by this chapter shall be payable
5 to the department of revenue and, except when otherwise
6 provided in this chapter, shall be paid within twelve months
7 from the death of the testator or intestate. All taxes not
8 paid within the time prescribed in this chapter shall be
9 subject to a penalty as provided in subsection two (2) of
10 this section and shall draw interest at the rate of eight
11 percent per annum thereafter until paid.

12 2. If a person liable for the payment of tax as stated
13 in section four hundred fifty point five (450.5) of the Code
14 fails to file a return with the department of revenue on or
15 before the due date, unless it is shown that the failure was
16 due to reasonable cause, there shall be added to the amount
17 of tax required to be shown as tax due on the return five
18 percent of the amount of the tax, if the failure is for not
19 more than one month, with an additional five percent for each
20 additional month or fraction of a month during which the
21 failure continues, not exceeding twenty-five percent in the
22 aggregate. If a person fails to remit the tax due with the
23 filing of the return on or before the due date or fails to
24 pay any amount of tax required to be shown on the return,
25 unless it is shown that the failure was due to reasonable
26 cause, there shall be added to the tax a penalty of five
27 percent of the amount of the tax due, if the failure is for
28 not more than one month, with an additional five percent for
29 each additional month or fraction of a month during which
30 the failure continues, not exceeding twenty-five percent in
31 the aggregate. When penalties are applicable for failure
32 to file a return and failure to pay the tax due or required
33 to be shown on the return, the penalty provision for failure
34 to file shall be in lieu of the penalty provision for failure
35 to pay the tax due or required to be shown on the return.

1 Sec. 6. Section four hundred fifty point ninety-four
2 (450.94), Code 1979, is amended to read as follows:

3 450.94 FINAL RETURN--DETERMINATION--APPEAL.

4 1. "Taxpayer" as used in this section means a person
5 liable for the payment of tax as stated in section 450.5.

6 2. The taxpayer shall file a final inheritance tax return
7 on forms to be prescribed by the director of revenue. When
8 a final inheritance tax return is filed, the department shall
9 examine it and determine the correct amount of tax. If the
10 amount paid is less than the correct amount due, the department
11 shall notify the taxpayer of the total amount due together
12 with any penalty and interest thereon, which shall be a sum
13 certain if paid on or before the last day of the month in
14 which the notice is postmarked, or on or before the last day
15 of the following month if the notice is postmarked after the
16 twentieth day of a month and before the first day of the
17 following month.

18 3. If the amount paid is greater than the correct tax,
19 penalty and interest due, the department shall refund the
20 excess, with interest after sixty days from the date of payment
21 at six percent per annum, under the provisions of rules ~~as~~
22 ~~may-be~~ prescribed by the director. However, the director
23 shall not allow a claim for refund or credit that has not
24 been filed with the department within five years after the
25 tax payment upon which a refund or credit is claimed ~~becomes~~
26 became due, or one year after the tax payment was made,
27 whichever time is the later. A determination by the department
28 of the amount of tax, penalty and interest due, or the amount
29 of refund for excess tax paid, shall be final unless the
30 ~~estate, trust, heir, beneficiary, transferee or other~~ person
31 aggrieved by the determination appeals to the director for
32 a revision of the determination within ninety days from the
33 postmark date of the notice of determination of tax, penalty
34 and interest due or refund owing. The director shall grant
35 a hearing, and upon the hearing the director shall determine

1 the correct tax, penalty and interest or refund due, and
2 notify the appellant of the decision by certified mail. The
3 decision of the director shall be final unless the appellant
4 seeks judicial review of the director's decision under section
5 450.59 within sixty days after the postmark date of the notice
6 of the director's decision.

7 4. Payments received must be credited first to the penalty
8 and interest accrued and then to the tax due.

9 Sec. 7. Section four hundred fifty A point twelve
10 (450A.12), Code 1979, is amended to read as follows:

11 450A.12 APPLICABLE STATUTES. All of the provisions of
12 chapter 450 with respect to the payment and collection of
13 the tax imposed under that chapter, including penalty and
14 interest upon delinquent taxes, are hereby-made applicable
15 to the provisions of this chapter, except as ~~the-same-may~~
16 ~~be~~ they are in conflict hereof with this chapter. The director
17 shall adopt and promulgate ~~all~~ rules necessary for the
18 enforcement of this chapter.

19 Sec. 8. Section four hundred fifty-one point twelve
20 (451.12), Code 1979, is amended to read as follows:

21 451.12 APPLICABLE STATUTES. All the provisions of ~~the~~
22 ~~law-as-it-appears-in~~ chapter 450 with respect to the
23 determination, imposition, payment and collection of the tax
24 ~~thereby~~ imposed under that chapter, including penalty and
25 interest upon delinquent taxes, are hereby-made applicable
26 to the provisions of this chapter, except as ~~the-same-may~~
27 ~~be~~ they are in conflict with the-provisions-hereof this
28 chapter. The director of revenue shall adopt and promulgate
29 ~~all~~ rules necessary for the enforcement of this chapter.

30 Sec. 9. This Act takes effect January first after
31 enactment.

32

EXPLANATION

33 The bill provides a penalty or increases the existing
34 penalty for the failure of a person to file a return for or
35 pay when due the state income or withholding tax, the state

1 sales and use tax or the state inheritance and estate tax.
2 The penalty is five percent of the tax which is owed if the
3 failure to file the return or pay the tax is for only one
4 month with an additional five percent for each additional
5 month or fraction of a month during which the failure continues
6 but not to exceed twenty-five percent in the aggregate.

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House Amendment to Senate File 2327

S 5914

1 Amend Senate File 2327 as passed by the Senate
2 as follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section three hundred twenty-four
6 point sixty-five (324.65), Code 1979, is amended to
7 read as follows:
8 324.65 PENALTY FOR FAILURE TO PROMPTLY REPORT
9 OR PAY FUEL TAXES. If a licensee or other person
10 fails to file a required report with the appropriate
11 state agency on or before the due date, unless it
12 is shown that such the failure was due to reasonable
13 cause there shall be added to the amount required
14 to be shown as tax due on the return five percent
15 of the amount of the tax if the failure is for not
16 more than one month, with an additional five percent
17 for each additional month or fraction of a month
18 during which such the failure continues, not exceeding
19 twenty-five percent in the aggregate. If a licensee
20 or other person fails to remit the tax due with the
21 filing of the return on or before the due date or
22 fails to pay any amount of the tax required to be
23 shown on the return, unless it is shown that the
24 failure was due to reasonable cause, there shall be
25 added to the tax a penalty of five percent of the
26 amount of the tax due, unless-it-is-shown-that-such
27 failure-was-due-to-reasonable-cause if the failure
28 is for not more than one month, with an additional
29 five percent for each additional month or fraction
30 of a month during which the failure continues, not
31 exceeding twenty-five percent in the aggregate. The
32 taxpayer shall also pay interest on the tax or
33 additional tax at the rate of three-fourths of one
34 percent per month counting each fraction of a month
35 as an entire month, computed from the date the return
36 was required to be filed. The appropriate state
37 agency shall not remit any part of a penalty for
38 delinquent payment where the delinquency results from
39 the fact that a check given in payment is not honored
40 because of insufficient funds in the account upon
41 which the check was drawn. ~~Provided, further, that~~
42 However, if it appears as a result of an investigation
43 or from a preponderance of the evidence adduced at
44 a hearing that there has been a deliberate attempt
45 on the part of a licensee or other person to evade
46 payment of fuel taxes there shall be added to the
47 assessment against the offending person and collected
48 a penalty of fifty percent of the tax due. When
49 penalties are applicable for failure to file a return
50 and failure to pay the tax due or required on the

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1 return, the penalty provision for failure to file
2 shall be in lieu of the penalty for failure to pay
3 the tax due or required on the return, except in the
4 case of a deliberate attempt on the part of the
5 licensee or other person to evade payment of fuel
6 taxes. Any report required of licensees or persons
7 operating under divisions I, II and III, upon which
8 no tax may be due, shall be subject to a penalty of
9 ten dollars if such the report is not timely filed
10 with the appropriate state agency."

11 2. Page 4, lines 32 and 33, by striking the words
12 "monthly tax deposit or" and inserting in lieu thereof
13 the words "monthly-tax-deposit-or".

14 3. Page 5, line 4, by striking the words "monthly
15 tax deposit or" and inserting in lieu thereof the
16 words "monthly-tax-deposit-or".

17 4. Page 5, lines 21 and 22, by striking the words
18 "monthly tax deposit or" and inserting in lieu thereof
19 the words "monthly-tax-deposit-or".

20 5. Page 5, lines 23 and 24, by striking the words
21 "monthly tax deposit or" and inserting in lieu thereof
22 the words "monthly-tax-deposit-or".

23 6. Page 5, lines 26 and 27, by striking the words
24 "monthly tax deposit or" and inserting in lieu thereof
25 the words "monthly-tax-deposit-or".

26 7. Page 5, lines 30 and 31, by striking the words
27 "monthly tax deposit or" and inserting in lieu thereof
28 the words "monthly-tax-deposit-or".

29 8. Page 5, by inserting after line 35 the
30 following:

31 "Sec. _____. Section four hundred thirty-five point
32 five (435.5), Code 1979, is amended to read as follows:

33 435.5 PENALTY. In case of failure to file a
34 return with the department on or before the due date,
35 unless it is shown that such the failure was due to
36 reasonable cause and not due to willful neglect, there
37 shall be added to the amount required to be shown
38 as tax on such the return five percent of the amount
39 of such tax if the failure is for not more than one
40 month, with an additional five percent for each
41 additional month or fraction thereof during which
42 such the failure continues, not exceeding twenty-five
43 percent in the aggregate. If any person fails to
44 remit the tax due with the filing of the return on
45 or before the due date, or fails to pay the total
46 amount of the tax due as shown on the return, unless
47 it is shown that the failure was due to reasonable
48 cause, there shall be added to the tax a penalty of
49 five percent of the tax due unless-it-is-shown-that
50 such-failure-was-due-to-reasenable-cause, if the

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1 failure is for not more than one month, with an
2 additional five percent for each additional month
3 or fraction of a month during which the failure
4 continues, not exceeding twenty-five percent in the
5 aggregate. In case of willful failure to file a
6 return with intent to evade tax, or in case of
7 willfully filing a false return with intent to evade
8 tax, in lieu of the penalty above provided, there
9 shall be added to the amount required to be shown
10 as tax on such the return fifty percent of the amount
11 of such tax. When penalties are applicable for failure
12 to file a return and failure to pay the tax due or
13 required on the return, the penalty provision for
14 failure to file shall be in lieu of the penalty
15 provision for failure to pay the tax due or required
16 on the return except in the case of willful failure
17 to file a return and willfully filing of a false
18 return with intent to evade tax."

19 9. Title page, line 2, by inserting after the
20 word "state" the words "motor vehicle fuel, freight
21 line and equipment car mileage,".

22 10. By numbering and renumbering as required by
23 this amendment.

S-5914 FILED
APRIL 24, 1980

RECEIVED FROM THE HOUSE

Senate received 4/25 (p. 1742)

SENATE FILE 2327

294

1 Amend Senate File 2327 as passed by the Senate
2 as follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section three hundred twenty-four
6 point sixty-five (324.65), Code 1970, is amended to
7 read as follows:
8 324.65 PENALTY FOR FAILURE TO PROMPTLY REPORT
9 OR PAY FUEL TAXES. If a licensee or other person
10 fails to file a required report with the appropriate
11 state agency on or before the due date, unless it
12 is shown that such the failure was due to reasonable
13 cause there shall be added to the amount required
14 to be shown as tax due on the return five percent
15 of the amount of the tax if the failure is for not
16 more than one month, with an additional five percent
17 for each additional month or fraction of a month
18 during which such the failure continues, not exceeding
19 twenty-five percent in the aggregate. If a licensee
20 or other person fails to remit the tax due with the
21 filing of the return on or before the due date or
22 fails to pay any amount of the tax required to be
23 shown on the return, unless it is shown that the
24 failure was due to reasonable cause, there shall be
25 added to the tax a penalty of five percent of the
26 amount of the tax due, unless-it-is-shown-that-such
27 failure-was-due-to-reasonable-cause if the failure
28 is for not more than one month, with an additional
29 five percent for each additional month or fraction
30 of a month during which the failure continues, not
31 exceeding twenty-five percent in the aggregate. The
32 taxpayer shall also pay interest on the tax or
33 additional tax at the rate of three-fourths of one
34 percent per month counting each fraction of a month
35 as an entire month, computed from the date the return
36 was required to be filed. The appropriate state
37 agency shall not remit any part of a penalty for
38 delinquent payment where the delinquency results from
39 the fact that a check given in payment is not honored
40 because of insufficient funds in the account upon
41 which the check was drawn. ~~Provided, further, that~~
42 However, if it appears as a result of an investigation
43 or from a preponderance of the evidence adduced at
44 a hearing that there has been a deliberate attempt
45 on the part of a licensee or other person to evade
46 payment of fuel taxes there shall be added to the
47 assessment against the offending person and collected
48 a penalty of fifty percent of the tax due. When
49 penalties are applicable for failure to file a return
50 and failure to pay the tax due or required on the

H. 6294

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1 return, the penalty provision for failure to file
2 shall be in lieu of the penalty for failure to pay
3 the tax due or required on the return, except in the
4 case of a deliberate attempt on the part of the
5 licensee or other person to evade payment of fuel
6 taxes. Any report required of licensees or persons
7 operating under divisions I, II and III, upon which
8 no tax may be due, shall be subject to a penalty of
9 ten dollars if ~~such~~ the report is not timely filed
10 with the appropriate state agency."

11 2. Page 4, lines 32 and 33, by striking the words
12 "monthly tax deposit or" and inserting in lieu thereof
13 the words "~~monthly-tax-deposit-or~~".

14 3. Page 5, line 4, by striking the words "monthly
15 tax deposit or" and inserting in lieu thereof the
16 words "~~monthly-tax-deposit-or~~".

17 4. Page 5, lines 21 and 22, by striking the words
18 "monthly tax deposit or" and inserting in lieu thereof
19 the words "~~monthly-tax-deposit-or~~".

20 5. Page 5, lines 23 and 24, by striking the words
21 "monthly tax deposit or" and inserting in lieu thereof
22 the words "~~monthly-tax-deposit-or~~".

23 6. Page 5, lines 26 and 27, by striking the words
24 "monthly tax deposit or" and inserting in lieu thereof
25 the words "~~monthly-tax-deposit-or~~".

26 7. Page 5, lines 30 and 31, by striking the words
27 "monthly tax deposit or" and inserting in lieu thereof
28 the words "~~monthly-tax-deposit-or~~".

29 8. Page 5, by inserting after line 35 the
30 following:

31 "Sec. _____. Section four hundred thirty-five point
32 five (435.5), Code 1979, is amended to read as follows:

33 435.5 PENALTY. In case of failure to file a
34 return with the department on or before the due date,
35 unless it is shown that ~~such~~ the failure was due to
36 reasonable cause and not due to willful neglect, there
37 shall be added to the amount required to be shown
38 as tax on ~~such~~ the return five percent of the amount
39 of ~~such~~ tax if the failure is for not more than one
40 month, with an additional five percent for each
41 additional month or fraction thereof during which
42 ~~such~~ the failure continues, not exceeding twenty-five
43 percent in the aggregate. If any person fails to
44 remit the tax due with the filing of the return on
45 or before the due date, or fails to pay the total
46 amount of the tax due as shown on the return, unless
47 it is shown that the failure was due to reasonable
48 cause, there shall be added to the tax a penalty of
49 five percent of the tax due ~~unless-it-is-shown-that~~
50 ~~such-failure-was-due-to-reasonable-cause,~~ if the

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1 failure is for not more than one month, with an
2 additional five percent for each additional month
3 or fraction of a month during which the failure
4 continues, not exceeding twenty-five percent in the
5 aggregate. In case of willful failure to file a
6 return with intent to evade tax, or in case of
7 willfully filing a false return with intent to evade
8 tax, in lieu of the penalty above provided, there
9 shall be added to the amount required to be shown
10 as tax on ~~such~~ the return fifty percent of the amount
11 of ~~such~~ tax. When penalties are applicable for failure
12 to file a return and failure to pay the tax due or
13 required on the return, the penalty provision for
14 failure to file shall be in lieu of the penalty
15 provision for failure to pay the tax due or required
16 on the return except in the case of willful failure
17 to file a return and willfully filing of a false
18 return with intent to evade tax."

19 9. Title page, line 2, by inserting after the
20 word "state" the words "motor vehicle fuel, freight
21 line and equipment car mileage,".

22 10. By numbering and renumbering as required by
23 this amendment.

H-6294 FILED APRIL 22, 1980 By COMMITTEE ON WAYS AND MEANS
Adopted 4/24 (p. 2053) WEST, Chair

SENATE FILE 2327

H-6341

1 Amend Senate File 2327 as follows:

2 1. Page 1, line 32, by striking the words
3 "three-fourths of one" and inserting in lieu thereof
4 the words "three-fourths-of-one one and one-tenth".

5 2. Page 2, line 8, by striking the words
6 "three-fourths of one" and inserting in lieu thereof
7 the words "three-fourths-of-one one and one-tenth".

8 3. Page 4, line 16, by striking the words
9 "three-fourths of one" and inserting in lieu thereof
10 the words "three-fourths-of-one one and one-tenth".

11 4. Page 5, lines 28 and 29, by striking the words
12 "three-fourths of one" and inserting in lieu thereof
13 the words "three-fourths-of-one one and one-tenth".

14 5. Page 6, lines 10 and 11, by striking the words
15 "eight percent per annum" and inserting in lieu thereof
16 the words "eight-percent-per-annum one and one-tenth
17 percent per month".

H-6341 FILED APRIL 24, 1980 By BRUNER of Story
LOST (p. 2053)

SENATE FILE 2327

AN ACT

TO PROVIDE OR INCREASE THE PENALTY FOR FAILURE TO FILE OR PAY THE STATE MOTOR VEHICLE FUEL, FREIGHT LINE AND EQUIPMENT CAR MILEAGE, INCOME, FRANCHISE, SALES AND USE, OR INHERITANCE AND ESTATE TAXES OR LOCAL HOTEL AND MOTEL TAX.

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

Section 1. Section three hundred twenty-four point sixty-five (324.65), Code 1979, 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 appropriate state agency on or before the due date, unless it is shown that ~~such~~ the 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 ~~such~~ the failure continues, not exceeding twenty-five percent in the aggregate. If a licensee or other 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 the tax required to be shown on the return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent of the amount of the tax due, ~~unless it is shown that such failure was due to reasonable cause~~ 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 the failure continues, not exceeding twenty-five percent in the aggregate. 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. The appropriate state agency shall not remit any part of a penalty for delinquent payment where the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon which the check was drawn. ~~Provided, further,~~ that ~~however,~~ if it appears as a result of an investigation or from a preponderance of the evidence adduced at a hearing that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of fifty percent of the tax due. 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 for failure to pay the tax due or required on the return, except in the case of a deliberate attempt on the part of the licensee or other person to evade payment of fuel taxes. Any report required of licensees or persons operating under divisions I, II and III, upon which no tax may be due, shall be subject to a penalty of ten dollars if ~~such~~ the report is not timely filed with the appropriate state agency.

Sec. 2. Section four hundred twenty-two point sixteen (422.16), subsection ten (10), paragraph b, Code 1979, 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 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~~ the 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~~ the 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, unless it is shown that the failure was due to reasonable cause, 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~~ of the amount of the tax due, 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 the failure continues, not exceeding twenty-five percent in the aggregate. 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~~ The penalty and interest shall become a part of the tax due from the withholding agent.

Sec. 3. Section four hundred twenty-two point twenty-five (422.25), subsection two (2), Code 1979, 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 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. In case of failure to file a return 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~~

the 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~~ the return five percent of the amount of ~~such~~ the 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~~ the 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, unless it is shown that the failure was due to reasonable cause, 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~~, 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 the failure continues, not exceeding twenty-five percent in the aggregate. 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 penalty above provided, there shall be added to the amount required to be shown as tax on ~~such~~ the return fifty percent of the amount of ~~such~~ the 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. 4. Section four hundred twenty-two point fifty-eight (422.58), subsection one (1), Code 1979, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter ninety-seven (97), section three (3), and as the section is amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter ninety-seven (97), sections three (3) and four (4), is amended to read as follows:

1. If any person fails to file a permit holders monthly tax deposit or a return with the department of revenue on or before the due date, unless it is shown that ~~such the~~ failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the monthly tax deposit or 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 the~~ failure continues, not exceeding twenty-five percent in the aggregate. If any person or permit holder fails to remit at least ninety percent of the tax due with the filing of the monthly tax deposit or return on or before the due date, or pays less than ninety percent 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~~ of the amount of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month the failure continues, not exceeding twenty-five percent in the aggregate, unless it is shown that ~~such the~~ failure was due to reasonable cause. In case of willful failure to file a return, willful filing of a false return or willful filing of a false or fraudulent 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 return fifty percent of the amount of the tax. When penalties are applicable for failure to file a monthly tax deposit or return and failure to pay at least ninety percent of the tax due or required on the monthly tax deposit or return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay at least ninety percent of the tax due or required on the monthly tax deposit or 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 monthly tax deposit or return was required to be filed. ~~such The~~ penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division.

Sec. 5. Section four hundred twenty-three point eighteen (423.18), subsection one (1), Code 1979, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter ninety-seven (97), section five (5), is amended to read as follows:

1. If a person fails to file a return with the department on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the ~~monthly-tax-deposit or~~ 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 the failure continues, not exceeding twenty-five percent in the aggregate. If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the ~~monthly-tax-deposit-or~~ return on or before the due date, or pays less than ninety percent 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 of the tax due, 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 the failure continues, not exceeding twenty-five percent in the aggregate, unless it is shown that the failure was due to reasonable cause. In case of willful failure to file a return, willfully filing a false return, or willfully filing

a false or fraudulent 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 return fifty percent of the amount of the tax. When penalties are applicable for failure to file a ~~monthly tax-deposit-or~~ return and failure to pay at least ninety percent of the tax due or required on the ~~monthly-tax-deposit-or~~ return, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay at least ninety percent of the tax due or required on the ~~monthly-tax-deposit-or~~ 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 ~~monthly-tax-deposit-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 enforced in the same manner as the tax imposed by this chapter.

Sec. 6. Section four hundred thirty-five point five (435.5), Code 1979, is amended to read as follows:

435.5 PENALTY. In case of failure to file a return with the department on or before the due date, unless it is shown that such the 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 the 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 the 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 the total amount of the tax due as shown on the return, unless it is shown that the failure was due to reasonable cause, 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, 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 the failure continues, not exceeding twenty-five percent in the aggregate. 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 penalty above provided, there shall be added to the amount required to be shown as tax on such the 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 fifty point sixty-three (450.63), Code 1979, is amended to read as follows:

450.63 MATURITY OF TAX--INTEREST.

1. All taxes imposed by this chapter shall be payable to the department of revenue and, except when otherwise provided in this chapter, shall be paid within twelve months from the death of the testator or intestate. All taxes not paid within the time prescribed in this chapter shall be subject to a penalty as provided in subsection two (2) of this section and shall draw interest at the rate of eight percent per annum thereafter until paid.

2. If a person liable for the payment of tax as stated in section four hundred fifty point five (450.5) of the Code fails to file a return with the department of revenue on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount of tax 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 the

failure continues, not exceeding twenty-five percent in the aggregate. If a 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 tax required to be shown on the return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent of the amount of the tax due, 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 the failure continues, not exceeding twenty-five percent in the aggregate. When penalties are applicable for failure to file a return and failure to pay the tax due or required to be shown 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 to be shown on the return.

Sec. 8. Section four hundred fifty point ninety-four (450.94), Code 1979, is amended to read as follows:

450.94 FINAL RETURN--DETERMINATION--APPEAL.

1. "Taxpayer" as used in this section means a person liable for the payment of tax as stated in section 450.5.
2. The taxpayer shall file a final inheritance tax return on forms to be prescribed by the director of revenue. When a final inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest thereon, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the first day of the following month.
3. If the amount paid is greater than the correct tax, penalty and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at six percent per annum, under the provisions of rules as

may be prescribed by the director. However, the director shall not allow a claim for refund or credit that has not been filed with the department within five years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is the later. A determination by the department of the amount of tax, penalty and interest due, or the amount of refund for excess tax paid, shall be final unless the ~~estate, trust, heir, beneficiary, transferee or other~~ person aggrieved by the determination appeals to the director for a revision of the determination within ninety days from the postmark date of the notice of determination of tax, penalty and interest due 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 certified mail. The decision of the director shall be final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the postmark date of the notice of the director's decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

Sec. 9. Section four hundred fifty A point twelve (450A.12), Code 1979, is amended to read as follows:

450A.12 APPLICABLE STATUTES. All of the provisions of chapter 450 with respect to the payment and collection of the tax imposed under that chapter, including penalty and interest upon delinquent taxes, are hereby made applicable to the provisions of this chapter, except as ~~the same may be they are~~ in conflict hereof with this chapter. The director shall adopt and promulgate ~~all~~ rules necessary for the enforcement of this chapter.

Sec. 10. Section four hundred fifty-one point twelve (451.12), Code 1979, is amended to read as follows:

451.12 APPLICABLE STATUTES. All the provisions of the ~~law as it appears in~~ chapter 450 with respect to the

determination, imposition, payment and collection of the tax ~~thereby~~ imposed under that chapter, including penalty and interest upon delinquent taxes, are ~~hereby-made~~ applicable to the provisions of this chapter, except as ~~the-same-may~~ be they are in conflict with ~~the-provisions-hereof~~ this chapter. The director of revenue shall adopt and promulgate ~~all~~ rules necessary for the enforcement of this chapter.

Sec. 11. This Act takes effect January first after enactment.

TERRY E. BRANSTAD
President of the Senate

WILLIAM H. HARBOR
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2327, Sixty-eighth General Assembly.

FRANK J. STORK
Secretary of the Senate

Approved 5/19, 1980

ROBERT D. RAY
Governor