

Wap. Mean

1905 MAR 25 1897

SENATE FILE 296
BY VARN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to taxpayer rights and privileges in proceedings
2 for the assessment and collection of certain taxes.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 296

1 Section 1. Section 98.29, Code 1991, is amended to read as
2 follows:

3 98.29 NOTICE AND APPEAL.

4 The department shall notify any person assessed pursuant to
5 section 98.28 by sending a written notice of the determination
6 and assessment by certified mail to the principal place of
7 business of the person as shown on the person's application
8 for permit, and if no application was filed by the person, to
9 the person's last known address. A determination by the
10 department of the amount of tax, penalty, and interest due, or
11 the amount of refund for excess tax paid, is final unless the
12 person aggrieved by the determination appeals to the director
13 for a revision of the determination within thirty days from
14 the postmark date of the notice of determination of tax,
15 penalty, and interest or refund owing. The director shall
16 grant a hearing and upon receipt of a request filed within the
17 time limits, and shall notify the person aggrieved of the date
18 and time of the hearing and of the person's rights and
19 procedures to be followed at the hearing. At the hearing, the
20 person aggrieved may be represented by an attorney and shall
21 be informed of their right to appeal any decision in the
22 matter under chapter 17A and section 422.29. The director
23 shall determine the correct tax, penalty, and interest or
24 refund due and notify the appellant of the decision by
25 certified mail. Judicial review of action of the director may
26 be sought in accordance with the Iowa administrative procedure
27 Act and section 422.29.

28 Sec. 2. Section 98.46, subsections 4 and 5, Code 1991, are
29 amended to read as follows:

30 1. The department shall notify any person assessed
31 pursuant to this section by sending a written notice of the
32 determination and assessment by certified mail to the
33 principal place of business of the person as shown on the
34 person's application for permit, and if an application was not
35 filed by the person, to the person's last known address. A

1 determination by the department of the amount of tax, penalty,
2 and interest due, or the amount of refund for excess tax paid,
3 is final unless the person aggrieved by the determination
4 appeals to the director for a revision of the determination
5 within thirty days from the postmark date of the notice of
6 determination of tax, penalty, and interest or refund owing.
7 The director shall grant a hearing and upon receipt of a
8 request filed within the time limits and shall notify the
9 person aggrieved of the date and time of the hearing and of
10 the person's rights and procedures to be followed at the
11 hearing. During the hearing, the person aggrieved may be
12 represented by an attorney and shall be informed of their
13 right to appeal any decision in the matter. The director
14 shall determine the correct tax, penalty, and interest or
15 refund due and notify the appellant of the decision by
16 certified mail. Judicial review of action of the director may
17 be sought in accordance with chapter 17A and section 422.29.

18 5. The director may recover the amount of any tax due and
19 unpaid, interest, and any penalty in a subsequent civil
20 action. The collection of such a tax, interest, or penalty
21 shall not be a bar to any prosecution under this division.

22 Sec. 3. Section 324.64, Code 1991, is amended to read as
23 follows:

24 324.64 FAILURE TO FILE RETURN -- INCORRECT RETURN.

25 If a return required by this chapter is not filed, or if a
26 return when filed is incorrect or insufficient and, the
27 appropriate state agency shall provide written notice by
28 certified mail to the filer that if the filer fails to file a
29 corrected or sufficient return within twenty days after the
30 same return is required by notice from the appropriate state
31 agency, the appropriate state agency shall determine the
32 amount of tax due. The If the return is incorrect or
33 insufficient, the notice shall also list which portions of the
34 return are incorrect or insufficient and indicate the
35 additional or other information needed for a correct or

1 complete return. If the filer fails to file a return or the
2 corrected or added information, the determination of the tax
3 due shall be made from all information that the appropriate
4 state agency may be able to obtain and, if necessary, the
5 agency may estimate the tax on the basis of external indices.
6 The appropriate state agency shall give notice of the
7 determination to the person liable for the tax. The
8 determination shall finally and irrevocably fix the tax unless
9 the person against whom it is assessed shall, within thirty
10 days after the giving of notice of such determination, apply
11 applies to the director of the appropriate state agency for a
12 hearing or unless the director reduces the assessment. At the
13 hearing, the filer of the return may be represented by an
14 attorney and shall be informed of any rights or privileges
15 that the filer has during the hearing, including the right to
16 appeal. During the hearing, evidence may be offered to
17 support the determination or to prove that it is incorrect.
18 After the hearing, the director shall give notice of the
19 decision to the person liable for the tax. The findings of
20 the appropriate state agency as to the amount of fuel taxes,
21 penalties, and interest due from any person shall be presumed
22 to be the correct amount and in any litigation which may
23 follow, the certificate of the agency shall be admitted in
24 evidence, shall constitute a prima-facie case, and shall
25 impose upon the other party the burden of showing any error in
26 the findings and the extent thereof of the error or that the
27 finding was contrary to law.

28 The director may shall, on the director's own motion at any
29 time, abate any portion of tax, interest, or penalties which
30 are determined to be excessive in amount or erroneously or
31 illegally assessed.

32 Sec. 4. NEW SECTION. 421.11 HEARINGS AND APPEALS --
33 NOTICE -- RIGHTS AND PRIVILEGES.

34 Any hearing before the director, or any appeal to the state
35 board, shall be preceded by notice by certified mail to the

1 taxpayer, sent to the taxpayer's last known address, which
2 contains information specifying the date and time of the
3 hearing and appeal and the substance of the issues which are
4 to be heard. The taxpayer shall be permitted to be
5 represented at the hearing by an attorney and shall be
6 informed of any rights or privileges which the taxpayer has
7 during and after the hearing, including the right to appeal
8 and any applicable time limits. The taxpayer shall be
9 provided with, upon request, copies of information or records
10 of the taxpayer obtained by an investigation or any other
11 proceeding about the taxpayer which are initiated and carried
12 out by the department. The director may establish a
13 reasonable fee to defray the cost of copying any materials
14 provided to a taxpayer.

15 Sec. 5. Section 422.22, Code 1991, is amended to read as
16 follows:

17 422.22 SUPPLEMENTARY RETURNS.

18 If the director ~~shall be~~ is of the opinion that any
19 taxpayer required under this division to file a return has
20 failed to file ~~such-a~~ the return or to include in a return
21 filed, either intentionally or through error, items of taxable
22 income, the director may require from ~~such~~ the taxpayer a
23 return or supplementary return in such form as the director
24 shall prescribe, of all the items of income which the taxpayer
25 received during the year for which the return is made, whether
26 or not taxable under ~~the-provisions-of~~ this division. If from
27 a supplementary return, or otherwise, the director finds that
28 any items of income, taxable under this division, have been
29 omitted from the original return, the director may require the
30 items so omitted to be added to the original return. ~~Such~~ The
31 supplementary return and the correction of the original return
32 ~~shall~~ do not relieve the taxpayer from any of the penalties to
33 which the taxpayer may be liable under ~~any-provisions-of~~ this
34 division, whether or not the director required a return or a
35 supplementary return under this section, except that a

1 taxpayer shall not be required to pay penalties or interest
2 upon any penalties for items that were omitted through
3 unintentional error.

4 Sec. 6. Section 422.28, Code 1991, is amended to read as
5 follows:

6 422.28 REVISION OF TAX.

7 A taxpayer may appeal to the director for revision of the
8 tax, interest, or penalties assessed at any time within sixty
9 days from the postmark date of the notice by certified mail of
10 the assessment of tax, additional tax, interest, or penalties.
11 The director shall grant a hearing and if upon receipt of
12 notice of an appeal filed within the time limits, shall notify
13 the taxpayer of the date and time of the hearing, and shall
14 inform the taxpayer that the taxpayer may be represented by
15 counsel at the hearing. If, upon the hearing, the director
16 determines that the tax, interest, or penalties are excessive
17 or incorrect, the director shall revise them according to the
18 law and the facts and adjust the computation of the tax,
19 interest, or penalties accordingly. The director shall notify
20 the taxpayer by certified mail of the result of the hearing
21 and shall refund to the taxpayer the amount, if any, paid in
22 excess of the tax, interest, or penalties found by the
23 director to be due, with interest after sixty days from the
24 date of payment by the taxpayer at the rate in effect under
25 section 421.7 for each month or a fraction of a month. The
26 director ~~may~~ shall, on the director's own motion at any time,
27 abate any portion of tax, interest, or penalties which the
28 director determines is excessive in amount, or erroneously or
29 illegally assessed. The director shall prepare quarterly
30 reports, which shall be included in the annual statistical
31 reports required under section 422.75, summarizing each case
32 in which an abatement of tax, interest, or penalties was made
33 under this section, but a report shall not disclose the
34 identity of the taxpayer.

35 Sec. 7. Section 422.30, Code 1991, is amended to read as

1 follows:

2 422.30 JEOPARDY ASSESSMENTS.

3 If the director believes that the assessment or collection
4 of taxes will be jeopardized by delay, the director may
5 immediately make an assessment of the estimated amount of tax
6 due, together with all interest, additional amounts, or
7 penalties, as provided by law, and demand payment thereof from
8 the taxpayer. If ~~such~~ payment is not made, a distress warrant
9 may be issued or a lien filed against ~~such~~ the taxpayer
10 immediately. If, however, a taxpayer files an appeal from the
11 assessment and demand for payment with the director within
12 thirty days of the issuance of the demand for payment, the
13 property against which the distress warrant is issued or the
14 lien filed shall not be disposed of to satisfy collection
15 until the amount of tax legally due is determined. The
16 property may be retained by the taxpayer if the retention or
17 use of the property is not inconsistent with the department's
18 interest in the property, but the property shall remain
19 subject to the warrant or lien.

20 The director ~~shall-be-permitted-to~~ may accept a bond or
21 other surety from the taxpayer to satisfy collection until the
22 amount of tax legally due ~~shall-be~~ is determined. ~~Such~~ The
23 ~~bond to~~ or other surety shall be in an amount deemed
24 necessary, but not more than double the amount of the tax
25 involved, and ~~with,~~ if bond is posted, it shall include
26 securities satisfactory to the director.

27 Sec. 8. Section 422.54, subsection 2, Code 1991, is
28 amended to read as follows:

29 2. If a return required by this division is not filed, or
30 if a return when filed is incorrect or insufficient and, the
31 department shall send written notice by certified mail to the
32 maker ~~fails-to~~ of the return which requires the person to file
33 a return or to file a corrected or sufficient return within
34 twenty days after ~~the-same-is-required-by~~ receipt of the
35 written notice from the department, ~~the.~~ If a return is

1 incorrect or insufficient, the notice shall list the
2 information which is missing or incorrect on the return. If
3 the maker fails to file a return after notice, or fails to
4 provide the corrected or missing information, the department
5 shall determine the amount of tax due from such information as
6 the department ~~may-be~~ is able to obtain and, if necessary, may
7 estimate the tax on the basis of external indices, such as
8 number of employees of the person concerned, rentals paid by
9 the person, stock on hand, or other factors. The department
10 shall give notice of ~~such the~~ the determination to the person
11 liable for the tax. ~~Such~~ The determination shall finally and
12 irrevocably fix the tax unless the person against whom it is
13 assessed ~~shall~~, within thirty days after the giving of notice
14 of ~~such the~~ the determination, ~~apply~~ applies to the director for a
15 hearing or unless the director on the director's motion ~~shall~~
16 ~~reduce~~ reduces the ~~same~~ amount ~~determined~~. At ~~such the~~
17 hearing the maker of the return may be represented by an
18 attorney and shall be informed of any rights or privileges
19 that the maker has during the hearing, including the right to
20 appeal. During the hearing, evidence may be offered to
21 support ~~such the~~ the determination or to prove that it is
22 incorrect. After ~~such the~~ the hearing the director shall give
23 notice of the decision to the person liable for the tax.

24 Sec. 9. Section 422.72, Code 1991, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 7. The department shall provide to a
27 taxpayer or the taxpayer's attorney upon request copies of
28 information or records of the taxpayer obtained by an
29 investigation or any other proceedings under this chapter by
30 the department.

31 EXPLANATION

32 This bill provides that if an individual properly appeals
33 the assessment of certain taxes, the individual shall be
34 informed of the date and time of the appeal hearing and the
35 procedures to be followed at the hearing, including any of the

1 person's rights. The bill also provides that a person may be
2 represented by counsel during those hearings and shall be
3 informed of the person's right to appeal the hearing outcome.

4 With respect to insufficient or incorrect returns, the bill
5 provides that notice sent to a filer shall also include
6 information on what materials are missing or are mistaken in
7 the prior return.

8 If a taxpayer unintentionally omits information on a return
9 the taxpayer shall not be required to pay interest on any
10 penalties assessed for the failure to include the information.
11 With respect to jeopardy assessments, the department shall not
12 satisfy collection of the assessment and demand for payment
13 against the taxpayer's property until such time as the amount
14 of the tax has been legally determined, and the taxpayer may,
15 under certain circumstances, retain the use of the property.
16 The provisions relating to confidentiality of taxpayer
17 information are clarified to include a requirement that the
18 department release information obtained about a taxpayer, as a
19 result of departmental investigation or proceeding, to the
20 taxpayer or the taxpayer's attorney upon the taxpayer or the
21 taxpayer's attorney's request.

22
23
24
25
26
27
28
29
30
31
32
33
34
35

**SENATE FILE 296
FISCAL NOTE**

A fiscal note for Senate File 296 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 296 provides that if an individual properly appeals the assessment of certain taxes, the individual shall be informed of the date and time of the appeal hearing and the procedures to be followed at the hearing, including any of the person's rights. The bill also provides that a person may be represented by counsel during those hearings and shall be informed of the person's right to appeal the hearing outcome. If a taxpayer unintentionally omits information on a return, the taxpayer shall not be required to pay interest on any penalties assessed for the failure to include the information. The bill requires the Department to send written notice by certified mail if a return is incorrect or insufficient when the return filed.

Fiscal Effect:

1. **Penalty/Interest Waiver:** The Department of Revenue and Finance assessed approximately \$19 million in penalty and interest on income taxes over a recent 12 month period. While the Department is unable to provide an exact estimate, it expects that a sizable portion of the \$19 million would not be received if the unintentional omission language was adopted.
2. **Certified Mail Requirement:** The Department estimates that requiring certified mail for mailing notices would increase mailing and personnel costs by at least \$250,000.

Source: Department of Revenue and Finance

(LSB 2013ss, LCS)

FILED MARCH 20, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR