Substituted by HF 2419 4-6-94 (p. 1058)

FILED MAR 30 1994

SENATE FILE 2320

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 2218)

(COMPANION TO HF 2419)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to state tax procedures, practices, and penalties
2 and providing effective and applicability date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4

SENATE FILE 2320

S-5488

1 Amend Senate File 2320 as follows:
2 1. Page 7, line 6, by striking the word
3 "limitations" and inserting the following:
4 "limitation".
5 2. Page 17, line 24, by striking the word "a".
6 3. Page 17, line 29, by inserting before the word
7 "January" the following: "or after".

By WILLIAM D. PALMER

S-5488 FILED APRIL 6, 1994
ADOPTED 4-6-94

S.F. 2320

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TLSB 3797SV 75
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1 Section 1. NEW SECTION. 421.60 TAX PROCEDURES AND
2 PRACTICES.
3 1. SHORT TITLE. This section shall be known and may be
4 cited as the "Tax Procedures and Practices Act".
5 2. PROCEDURES AND PRACTICES.
6 a. The department shall prepare a statement which sets
7 forth in simple and nontechnical terms all of the following:
8 (1) The rights of a taxpayer and the obligations of the
9 department during an audit.
10 (2) The procedures by which a taxpayer may appeal an
11 adverse decision of the department, including administrative
12 and judicial appeals.
13 (3) The procedures which the department may use in en-
14 forcing the tax laws, including notices of assessment and
15 jeopardy assessment and the filing and enforcement of liens.
16 The statement prepared in accordance with this paragraph
17 shall be distributed by the department to all taxpayers at the
18 first contact by the department with respect to the
19 determination or collection of any tax, except in the case of
20 simply providing tax forms.
21 b. The department shall furnish to the taxpayer, before or
22 at the time of issuing a notice of assessment or denial of a
23 refund claim, an explanation of the reasons for the assessment
24 or refund denial. An inadequate explanation shall not
25 invalidate the notice. For purposes of this section, an
26 explanation by the department shall be sufficient where the
27 amount of tax, interest, and penalty is stated together with
28 an attachment setting forth the computation of the tax by the
29 department.
30 c. If the notice of assessment or denial of a claim for
31 refund relates to a tax return filed pursuant to section
32 422.14 or chapter 450, 450A, or 451, by the taxpayer which
33 designates an individual as an authorized representative of
34 the taxpayer with respect to that return, or if a power of
35 attorney has been filed with the department by the taxpayer

1 which designates an individual as an authorized representative
2 of the taxpayer with respect to any tax that is included in
3 the notice of assessment or denial of a claim for refund, a
4 copy of the notice together with any additional information
5 required to be sent to the taxpayer shall be sent to the
6 authorized representative as well.
7 If the department fails to mail a notice of assessment to
8 the last known address of a taxpayer or fails to personally
9 deliver such notice to a taxpayer, interest for the month such
10 mailing or personal delivery fails to occur through the month
11 of the correct mailing or personal delivery is waived.
12 If the department fails to mail a notice of assessment or
13 denial of a claim for refund to the taxpayer's last known
14 address or fails to personally deliver such notice to a
15 taxpayer and, if applicable, to the taxpayer's authorized
16 representative, the time period to appeal the notice of
17 assessment or a denial of a claim for refund is suspended
18 until the notice or claim denial is correctly mailed or
19 personally delivered, or in any event, for a period not to
20 exceed one year, whichever is the lesser period.
21 Collection activities, except where a jeopardy situation
22 exists, shall be suspended and the statute of limitations for
23 assessment or collection of the tax shall be tolled during the
24 period in which interest is waived.
25 d. A taxpayer is permitted to designate in writing the
26 type of tax and tax periods to which any voluntary payment
27 relates, provided that separate written instructions accompany
28 the payment. This paragraph does not apply to jeopardy
29 assessments and does not apply if the department has to
30 enforce collection of the payment.
31 e. Unless otherwise provided by law, all Iowa taxes which
32 are administered by the department and which result in a
33 refund shall accrue interest at the rate in effect under sec-
34 tion 421.7 from the first day of the second calendar month
35 following the date of payment or the date the return was due

1 to be filed or was filed, whichever is the latest.
2 f. A taxpayer may appeal a refund claim to the director if
3 a claim for refund has been filed and not denied by the
4 department within six months of the filing of the claim. The
5 filing of an appeal by a taxpayer shall not affect the ability
6 of the department to examine and inspect a taxpayer's records.
7 g. A taxpayer may request in writing that a contested case
8 proceeding be commenced by the department after a period of
9 six months from the filing of a proper appeal by the taxpayer.
10 The department shall file an answer within thirty days of
11 receipt of the request and a contested case proceeding shall
12 be commenced. In the case of an appeal of an assessment,
13 failure to answer within the thirty-day time period and after
14 a request has been made, shall result in the suspension of
15 interest from the time that the department was required to
16 answer until the date that the department files its answer.
17 In the case of an appeal of a denial of a refund, failure to
18 answer within the thirty-day time period, and after a request
19 has been made, shall result in the accrual of interest payable
20 to the taxpayer at double the rate in effect under section
21 421.7 from the time the department was required to answer
22 until the date that the department files its answer.
23 h. A taxpayer who has failed to appeal a notice of assess-
24 ment to the department within the time provided by law may
25 contest the assessment by paying the tax, interest, and
26 penalty, which in the case of divisible taxes might not be the
27 entire liability and by filing a refund claim within the time
28 period provided for filing such claim. The filing of a refund
29 claim allows the time period for which the refund is claimed
30 to be open to examination and to be open to offset, to zero,
31 based upon any issue associated with the type of tax for which
32 the refund is claimed and which has not up to that time been
33 resolved between the taxpayer and the department, irrespective
34 of whether the period of limitations to issue a notice of
35 assessment has expired. The department may make this offset

1 at any time until the department grants or denies the refund.
2 i. The director may, at any time, abate any unpaid portion
3 of assessed tax, interest, or penalties which the director de-
4 termines is erroneous, illegal, or excessive. The director
5 shall prepare quarterly reports summarizing each case in which
6 abatement of tax, interest, or penalties was made. However,
7 the report shall not disclose the identity of the taxpayer.
8 j. The director shall adopt rules for setting times and
9 places for taxpayer interviews and to permit any taxpayer to
10 record the interviews.
11 k. If the determination that a return is incorrect is the
12 result of an audit of the books and records of the taxpayer,
13 the tax or additional tax, if any, shall be assessed and the
14 notice of assessment to the taxpayer shall be given by the
15 department within one year after the completion of the
16 examination of the books and records.
17 l. The department shall annually report to the general
18 assembly all areas of recurrent taxpayer noncompliance with
19 rules or guidelines issued by the department and shall make
20 recommendations concerning the noncompliance in the report.
21 3. INSTALLMENT PAYMENTS. The department may permit the
22 payment of a delinquent tax on a deferred basis where the
23 equities indicate that a deferred payment agreement would be
24 in the interest of the state and that without a deferred
25 payment agreement the taxpayer would experience extreme
26 financial hardship. A deferred payment agreement shall
27 include applicable penalty and interest at the rate in effect
28 under section 421.7 on the unpaid balance of the liability.
29 4. COSTS.
30 a. A prevailing taxpayer in an administrative hearing or a
31 court proceeding related to the determination, collection, or
32 refund of a tax, penalty, or interest may be awarded rea-
33 sonable litigation costs by the department, state board of tax
34 review, or a court, incurred subsequent to the issuance of the
35 notice of assessment or denial of claim for refund in the

1 proceeding, based upon the following:
2 (1) The reasonable expenses of expert witnesses.
3 (2) The reasonable costs of studies, reports, and tests.
4 (3) The reasonable fees of independent attorneys or
5 independent accountants retained by the taxpayer.
6 (4) An award for reasonable litigation costs shall not
7 exceed twenty-five thousand dollars per case.
8 b. An award under paragraph "a" shall not be made with
9 respect to a portion of the proceedings during which the
10 prevailing taxpayer has unreasonably protracted the
11 proceedings.
12 c. For purposes of this section, "prevailing taxpayer"
13 means a taxpayer who establishes that the position of the
14 state was not substantially justified and who has
15 substantially prevailed with respect to the amount in
16 controversy or has substantially prevailed with respect to the
17 most significant issue or set of issues presented. The
18 determination of whether a taxpayer is a prevailing taxpayer
19 is to be determined in accordance with chapter 17A.
20 d. An award for reasonable litigation costs shall be paid
21 to the taxpayer from the general fund of the state. For
22 purposes of this subsection, there is appropriated from the
23 general fund of the state an amount sufficient to pay each
24 taxpayer entitled to an award under this subsection.
25 e. This subsection does not apply to the tax imposed by
26 chapter 453B if the department relied upon information
27 provided or action conducted by federal, state, or local
28 officials or law enforcement agencies.
29 5. DAMAGES. Notwithstanding section 669.14, subsection 2,
30 if the director or an employee of the department recklessly or
31 intentionally disregards any tax law or rule in the collection
32 of any tax, or if the director or an employee of the
33 department knowingly or negligently fails to release a lien
34 against or bond on a taxpayer's property, the taxpayer may
35 file a claim in accordance with the Iowa tort claims Act,

1 chapter 669, for damages against the state. However, the
2 damages shall be limited to the actual direct economic damages
3 suffered by the taxpayer as a proximate result of the actions
4 of the director or employee, plus costs, reduced by the amount
5 of such damages and costs as could reasonably have been
6 mitigated by the taxpayer. The Iowa tort claims Act shall be
7 the exclusive remedy for recovering damages resulting from
8 such actions. This subsection does not apply to the tax
9 imposed by chapter 453B.
10 6. BURDEN OF PROOF. The burden of proof with respect to
11 assessments or denial of refunds in contested case proceedings
12 shall be allocated as follows:
13 a. With respect to the issue of fraud with intent to evade
14 tax, the burden of proof is upon the department. The burden
15 of proof must be carried by clear and convincing evidence.
16 b. In a case where the assessment was not made within six
17 years after the return became due, excluding any extension of
18 time for filing, the burden of proof shall be upon the
19 department. However, the burden of proof shall be upon the
20 taxpayer where the determination of the department is the
21 result of the final disposition of a matter between the
22 taxpayer and the internal revenue service or where the
23 taxpayer and the department have signed a waiver of the
24 statute of limitations.
25 c. In all other cases, the burden of proof shall be upon
26 the taxpayer who challenges the assessment or refund denial,
27 except that, with respect to any new matter or affirmative
28 defense, the burden of proof shall be upon the department.
29 For purposes of this provision, "new matter" means an
30 adjustment not set forth in the computation of the tax in the
31 assessment or refund denial as distinguished from a new reason
32 for the assessment or refund denial. "Affirmative defense" is
33 one resting on facts not necessary to support the taxpayer's
34 case.
35 7. EMPLOYEE EVALUATIONS. It is unlawful to base a per-

1 formance evaluation for an employee of the department on the
2 total amount of assessments issued by that employee.
3 8. REFUND OF UNTIMELY ASSESSED TAXES. Notwithstanding any
4 other refund statute, if it appears that an amount of tax,
5 penalty, or interest has been paid to the department after the
6 expiration of the statute of limitations for the department to
7 determine and assess or collect the amount of such tax due,
8 then the amount paid shall be credited against another tax
9 liability of the taxpayer which is outstanding, if the statute
10 of limitations for assessment or collection of that other tax
11 has not expired or the amount paid shall be refunded to the
12 person or, with the person's approval, credited to tax to
13 become due. An application for refund or credit under this
14 subsection must be filed within one year of payment. This
15 subsection shall not be construed to prohibit the department
16 from offsetting the refund claim against any tax due, if the
17 statute of limitations for that other tax has not expired.
18 9. NO APPLICABILITY TO REAL PROPERTY. The provisions of
19 this section do not apply to the assessment and taxation of
20 real property.
21 Sec. 2. Section 422.4, Code 1993, is amended by adding the
22 following new subsection:
23 NEW SUBSECTION. 10A. "Notice of assessment" means a
24 notice by the department to a taxpayer advising the taxpayer
25 of an assessment of tax due.
26 Sec. 3. Section 422.25, subsection 1, Code 1993, is
27 amended to read as follows:
28 1. a. Within three years after the return is filed or
29 within three years after the return became due, including any
30 extensions of time for filing, whichever time is the later,
31 the department shall examine ~~it~~ the return and determine the
32 ~~correct amount of tax, and the amount determined by the~~
33 ~~department is the~~ tax. However, if the taxpayer omits from
34 income an amount which will, under the Internal Revenue Code,
35 extend the statute of limitations for assessment of federal

1 tax to six years under the federal law, the period for
2 examination and determination is six years. In addition to
3 the applicable period of limitation for examination and
4 determination, the department may make an examination and
5 determination at any time within six months from the date of
6 receipt by the department of written notice from the taxpayer
7 of the final disposition of any matter between the taxpayer
8 and the internal revenue service with respect to the
9 particular tax year. In order to begin the running of the
10 six-month period, the notice shall be in writing in any form
11 sufficient to inform the department of the final disposition
12 with respect to that year, and a copy of the federal document
13 showing the final disposition or final federal adjustments
14 shall be attached to the notice.
15 b. The period for examination and determination of the
16 correct amount of tax is unlimited in the case of a false or
17 fraudulent return made with the intent to evade tax or in the
18 case of a failure to file a return. In lieu of the period of
19 limitation for any prior year for which an overpayment of tax
20 or an elimination or reduction of an underpayment of tax due
21 for that prior year results from the carryback to that prior
22 year of a net operating loss or net capital loss, the period
23 is the period of limitation for the taxable year of the net
24 operating loss or net capital loss which results in the
25 carryback. ~~The burden of proof of additional tax owing under~~
26 ~~the six-year period, or unlimited period, is on the~~
27 ~~department.~~ If the tax found due is greater than the amount
28 paid, the department shall compute the amount due, together
29 with interest and penalties as provided in subsection 2, and
30 shall ~~notify the taxpayer by~~ mail a notice of assessment to
31 the taxpayer and, if applicable, to the taxpayer's authorized
32 representative of the total, which shall be computed as a sum
33 certain if paid on or before the last day of the month in
34 which the notice is postmarked, or on or before the last day
35 of the following month if the notice is postmarked after the

1 twentieth day of any month. The notice shall also inform the
2 taxpayer of the additional interest and penalty which will be
3 added to the total due if not paid on or before the last day
4 of the applicable month.
5 Sec. 4. Section 422.25, subsection 4, Code 1993, is
6 amended to read as follows:
7 4. All payments received must be credited first, to the
8 penalty and interest accrued, and then to the tax due. For
9 purposes of this subsection, the department shall not reapply
10 prior payments made by the taxpayer to penalty or interest
11 determined to be due after the date of those prior payments,
12 except that the taxpayer and the department may agree to apply
13 payments in accordance with rules adopted by the director when
14 there are both agreed and unagreed to items as a result of an
15 examination.
16 Sec. 5. Section 422.28, Code 1993, is amended to read as
17 follows:
18 422.28 REVISION OF TAX.
19 A taxpayer may appeal to the director for revision of the
20 tax, interest, or penalties assessed at any time within sixty
21 days from the date of the notice of the assessment of tax,
22 additional tax, interest, or penalties. The director shall
23 grant a hearing and if, upon the hearing, the director
24 determines that the tax, interest, or penalties are excessive
25 or incorrect, the director shall revise them according to the
26 law and the facts and adjust the computation of the tax,
27 interest, or penalties accordingly. The director shall notify
28 the taxpayer by mail of the result of the hearing and shall
29 refund to the taxpayer the amount, if any, paid in excess of
30 the tax, interest, or penalties found by the director to be
31 due, with interest after sixty days from the date of payment
32 by the taxpayer at the rate in effect under section 421.7 for
33 each month or a fraction of a month. ~~The-director-may,-on-the~~
34 ~~director's-own-motion-at-any-time,-abate-any-portion-of-tax,~~
35 ~~interest-or-penalties-which-the-director-determines-is~~

1 ~~excessive-in-amount,-or-erroneously-or-illegally-assessed.~~
2 ~~The-director-shall-prepare-quarterly-reports,-which-shall-be~~
3 ~~included-in-the-annual-statistical-reports-required-under~~
4 ~~section-422.75,-summarizing-each-case-in-which-an-abatement-of~~
5 ~~tax,-interest-or-penalties-was-made-under-this-section,-but-a~~
6 ~~report-shall-not-disclose-the-identity-of-the-taxpayer.~~
7 Sec. 6. Section 422.29, subsection 2, Code 1993, is
8 amended by striking the subsection and inserting in lieu
9 thereof the following:
10 2. For cause and upon a showing by the director that
11 collection of the tax in dispute is in doubt, the court may
12 order the petitioner to file with the clerk a bond for the use
13 of the respondent, with sureties approved by the clerk, in the
14 amount of tax appealed from, conditioned that the petitioner
15 shall perform the orders of the court.
16 Sec. 7. Section 422.54, subsections 1 and 2, Code 1993,
17 are amended to read as follows:
18 1. As soon as practicable after a return is filed and in
19 any event within five years after the return is filed, the
20 department shall examine it, assess and determine the tax due
21 if the return is found to be incorrect, and give notice to the
22 taxpayer of ~~such~~ the assessment and determination as provided
23 in subsection 2. The period for the examination and
24 determination of the correct amount of tax is unlimited in the
25 case of a false or fraudulent return made with the intent to
26 evade tax or in the case of a failure to file a return. ~~If~~
27 ~~the-determination-that-a-return-is-incorrect-is-the-result-of~~
28 ~~an-audit-of-the-books-and-records-of-the-taxpayer,-the-tax,-or~~
29 ~~additional-tax,-if-any-is-found-due,-shall-be-assessed-and~~
30 ~~determined-and-the-notice-to-the-taxpayer-shall-be-given-by~~
31 ~~the-department-within-one-year-after-the-completion-of-the~~
32 ~~examination-of-the-books-and-records.~~
33 2. If a return required by this division is not filed, or
34 if a return when filed is incorrect or insufficient and the
35 maker fails to file a corrected or sufficient return within

1 twenty days after the same is required by notice from the
2 department, the department shall determine the amount of tax
3 due from ~~such~~ information as the department may be able to
4 obtain and, if necessary, may estimate the tax on the basis of
5 external indices, such as number of employees of the person
6 concerned, rentals paid by the person, stock on hand, or other
7 factors. The department shall give notice of ~~such~~ the
8 determination to the person liable for the tax. ~~Such~~ The
9 determination shall ~~finally-and-irrevocably~~ fix the tax unless
10 the person against whom it is assessed shall, within ~~thirty~~
11 sixty days after the giving of notice of ~~such~~ the
12 determination, apply to the director for a hearing or unless
13 the ~~director-on-the-director's-motion-shall-reduce-the-same~~
14 taxpayer contests the determination by paying the tax,
15 interest, and penalty and timely filing a claim for refund.
16 At ~~such~~ the hearing evidence may be offered to support ~~such~~
17 the determination or to prove that it is incorrect. After
18 ~~such~~ the hearing the director shall give notice of the
19 decision to the person liable for the tax.
20 Sec. 8. Section 424.10, subsection 2, Code 1993, is
21 amended to read as follows:
22 2. If a return required by this chapter is not filed, or
23 if a return when filed is incorrect or insufficient and the
24 maker fails to file a corrected or sufficient return within
25 twenty days after the return is required by notice from the
26 department, the department shall determine the amount of
27 charge due from ~~such~~ information as the department may be able
28 to obtain and, if necessary, may estimate the charge on the
29 basis of external indices or factors. The department shall
30 give notice of ~~such~~ the determination to the person liable for
31 the charge. ~~Such~~ The determination shall ~~finally-and~~
32 ~~irrevocably~~ fix the charge unless the person against whom it
33 is assessed shall, within ~~thirty~~ sixty days after the giving
34 of notice of ~~such~~ the determination, apply to the director for
35 a hearing or unless the ~~director-on-the-director's-motion~~

1 ~~shall reduce the charge~~ taxpayer contests the determination by
2 paying the tax, interest, and penalty and timely filing a
3 claim for refund. At ~~such~~ the hearing evidence may be offered
4 to support ~~such~~ the determination or to prove that it is
5 incorrect. After ~~such~~ the hearing the director shall give
6 notice of the decision to the person liable for the charge.
7 If a depositor's, receiver's, or other person's challenge
8 relates to the diminution rate, the burden of proof upon the
9 challenger shall only be satisfied by clear and convincing
10 evidence.
11 Sec. 9. Section 429.2, Code 1993, is amended by striking
12 the section and inserting in lieu thereof the following:
13 429.2 APPEAL.
14 1. Notwithstanding the provisions of chapter 17A, the
15 taxpayer shall have thirty days from the date of postmark of
16 the notice of assessment to appeal the assessment to the state
17 board of tax review. Thereafter, the proceedings before the
18 state board of tax review shall conform to the provisions of
19 subsection 2, section 421.1, subsection 4, and chapter 17A.
20 2. The following rules shall apply to the appeal pro-
21 ceedings in addition to those stated in section 421.1,
22 subsection 4, and chapter 17A.
23 a. The department's assessment shall be presumed correct
24 and the burden of proof shall be on the taxpayer with respect
25 to all issues raised on appeal, including any challenge of the
26 director's valuation.
27 b. The burden of proof must be carried by a preponderance
28 of the evidence.
29 c. The board shall consider all evidence and witnesses
30 offered by the taxpayer and the department, including, but not
31 limited to, evidence relating to the proper valuation of the
32 property involved.
33 d. The board shall make an independent determination of
34 the value of the property based solely upon its review of the
35 evidence presented.

1 e. Upon the request of a party the board shall set the
2 case for hearing within one year of the date of the request,
3 unless for good cause shown, by application and ruling thereon
4 after notice and not ex parte, the hearing date is continued
5 by the board.
6 Sec. 10. Section 429.3, Code 1993, is amended to read as
7 follows:
8 429.3 JUDICIAL REVIEW.
9 Judicial review of the action of the state board of tax
10 review may be sought by the taxpayer or the director of
11 revenue and finance in accordance with the terms of chapter
12 17A.
13 Sec. 11. Section 450.94, subsection 3, Code 1993, is
14 amended to read as follows:
15 3. If the amount paid is greater than the correct tax,
16 penalty, and interest due, the department shall refund the
17 excess with interest. Interest shall be computed at the rate
18 in effect under section 421.7, under the rules prescribed by
19 the director counting each fraction of a month as an entire
20 month and the interest shall begin to accrue on the first day
21 of the second calendar month following the date of payment or
22 on the date the return was due to be filed or was filed,
23 whichever is the latest. However, the director shall not
24 allow a claim for refund or credit that has not been filed
25 with the department within three years after the tax payment
26 upon which a refund or credit is claimed became due, or one
27 year after the tax payment was made, whichever time is later.
28 A determination by the department of the amount of tax,
29 penalty, and interest due, or the amount of refund for excess
30 tax paid, is final unless the person aggrieved by the
31 determination appeals to the director for a revision of the
32 determination within ~~thirty~~ sixty days from the postmark date
33 of the notice of determination of tax, penalty, and interest
34 due or refund owing or unless the taxpayer contests the
35 determination by paying the tax, interest, and penalty and

1 timely filing a claim for refund. The director shall grant a
2 hearing, and upon the hearing the director shall determine the
3 correct tax, penalty, and interest or refund due, and notify
4 the appellant of the decision by mail. The decision of the
5 director is final unless the appellant seeks judicial review
6 of the director's decision under section 450.59 within sixty
7 days after the postmark date of the notice of the director's
8 decision.
9 Sec. 12. Section 452A.64, Code 1993, is amended to read as
10 follows:
11 452A.64 FAILURE TO FILE RETURN -- INCORRECT RETURN.
12 If a return required by this chapter is not filed, or if a
13 return when filed is incorrect or insufficient and the filer
14 fails to file a corrected or sufficient return within twenty
15 days after the same is required by notice from the appropriate
16 state agency, the appropriate state agency shall determine the
17 amount of tax due. The determination shall be made from all
18 information that the appropriate state agency may be able to
19 obtain and, if necessary, the agency may estimate the tax on
20 the basis of external indices. The appropriate state agency
21 shall give notice of the determination to the person liable
22 for the tax. The determination shall ~~finally and irrevocably~~
23 fix the tax unless the person against whom it is assessed
24 shall, within ~~thirty~~ sixty days after the giving of notice of
25 ~~such~~ the determination, apply to the director of the
26 appropriate state agency for a hearing or unless the ~~director~~
27 ~~reduces the assessment~~ taxpayer contests the determination by
28 paying the tax, interest, and penalty and timely filing a
29 claim for refund. At the hearing, evidence may be offered to
30 support the determination or to prove that it is incorrect.
31 After the hearing, the director shall give notice of the
32 decision to the person liable for the tax. The findings of
33 the appropriate state agency as to the amount of fuel taxes,
34 penalties and interest due from any person shall be presumed
35 to be the correct amount and in any litigation which may

1 follow, the certificate of the agency shall be admitted in
2 evidence, shall constitute a prima-facie case and shall impose
3 upon the other party the burden of showing any error in the
4 findings and the extent thereof or that the finding was
5 contrary to law.
6 ~~The-director-may,-on-the-director's-own-motion-at-any-time,~~
7 ~~abate-any-portion-of-tax,-interest-or-penalties-which-are~~
8 ~~determined-to-be-excessive-in-amount-or-erroneously-or~~
9 ~~illegally-assessed.~~
10 Sec. 13. Section 453A.29, Code 1993, is amended to read as
11 follows:
12 453A.29 NOTICE AND APPEAL.
13 The department shall notify any person assessed pursuant to
14 section 453A.28 by sending a written notice of the
15 determination ~~and-assessment~~ by mail to the principal place of
16 business of the person as shown on the person's application
17 for permit, and if ~~no~~ an application was not filed by the
18 person, to the person's last known address. A determination
19 by the department of the amount of tax, penalty, and interest
20 due, or the amount of refund for excess tax paid, is final,
21 unless the person aggrieved by the determination appeals to
22 the director for a revision of the determination within ~~thirty~~
23 sixty days from the postmark date of the notice of
24 determination of tax, penalty, and interest or refund owing or
25 unless the taxpayer contests the determination by paying the
26 tax, interest, and penalty and timely filing a claim for
27 refund. The director shall grant a hearing and upon the
28 hearing, the director shall determine the correct tax,
29 penalty, and interest or refund due and notify the appellant
30 of the decision by mail. Judicial review of action of the
31 director may be sought in accordance with the Iowa
32 administrative procedure Act and section 422.29.
33 Sec. 14. Section 453A.46, subsection 4, Code 1993, is
34 amended to read as follows:
35 4. The department shall notify any person assessed

1 pursuant to this section by sending a written notice of the
2 determination ~~and assessment~~ by mail to the principal place of
3 business of the person as shown on the person's application
4 for permit, and if an application was not filed by the person,
5 to the person's last known address. A determination by the
6 department of the amount of tax, penalty, and interest due, or
7 the amount of refund for excess tax paid, is final, unless the
8 person aggrieved by the determination appeals to the director
9 for a revision of the determination within ~~thirty~~ sixty days
10 from the postmark date of the notice of determination of tax,
11 penalty, and interest or refund owing or unless the taxpayer
12 contests the determination by paying the tax, interest, and
13 penalty and timely filing a claim for refund. The director
14 shall grant a hearing and upon the hearing, the director shall
15 determine the correct tax, penalty, and interest or refund due
16 and notify the appellant of the decision by mail. Judicial
17 review of action of the director may be sought in accordance
18 with chapter 17A and section 422.29.
19 Sec. 15. Section 453A.48, subsection 5, Code 1993, is
20 amended to read as follows:
21 5. Any person aggrieved by an order of the director fixing
22 a tax, penalty or interest under section 453A.43 may, within
23 ~~thirty~~ sixty days from the date of notice of the order, appeal
24 to the board of review in the manner provided by law or unless
25 the taxpayer contests the determination by paying the tax,
26 interest, and penalty and timely filing a claim for refund.
27 Judicial review of any other action of the director may be
28 sought in accordance with the terms of the Iowa administrative
29 procedure Act.
30 Sec. 16. EFFECTIVE DATES.
31 1. Section 1, subsection 2, paragraph "a", of this Act is
32 effective for contacts made by the department on or after
33 January 1, 1995.
34 2. Section 1, subsection 2, paragraphs "b" and "c", and
35 section 1, subsections 4 and 6, of this Act are effective for

1 notices of assessment or refund denials issued on or after
2 January 1, 1995.
3 3. Section 1, subsection 2, paragraphs "h", "i", and "k",
4 and subsection 8, and sections 2, 3, 5, and 7 through 15 of
5 this Act are effective for notices of assessment issued on or
6 after January 1, 1995.
7 4. Section 1, subsection 2, paragraph "d", of this Act is
8 effective for designations made on or after January 1, 1995.
9 5. Section 1, subsection 2, paragraph "e", of this Act is
10 effective to accrue interest on or after January 1, 1995.
11 6. Section 1, subsection 2, paragraph "f", of this Act is
12 effective for refund claims filed on or after January 1, 1995.
13 7. Section 1, subsection 2, paragraph "g", of this Act is
14 effective for appeals filed on or after January 1, 1995.
15 8. Section 1, subsection 2, paragraph "j", of this Act is
16 effective for taxpayer interviews conducted on or after
17 January 1, 1995.
18 9. Section 1, subsection 2, paragraph "l", of this Act is
19 effective for annual reports for fiscal years ending June 30,
20 1995, and thereafter.
21 10. Section 1, subsection 3, of this Act is effective for
22 deferred payment agreements made on or after January 1, 1995.
23 11. Section 1, subsection 5, of this Act is effective for
24 actions of the director or a department employee that occur on
25 or after January 1, 1995.
26 12. Section 1, subsection 7, of this Act is effective for
27 evaluations made on or after January 1, 1995.
28 13. Section 1, subsection 9, of this Act is effective on
29 January 1, 1995.
30 14. Section 4 of this Act is effective for payments made
31 on or after January 1, 1995.
32 15. Section 6 of this Act is effective for petitions for
33 judicial review filed on or after January 1, 1995.
34 EXPLANATION
35 The bill sets out the obligations of the department of

1 revenue and finance and the rights of taxpayers and procedures
2 to be followed in regard to state taxes which are, in most
3 cases, in addition to those responsibilities and duties
4 presently existing. These duties require informing the
5 taxpayer of the taxpayer's rights, the obligations of the
6 department with respect to notice of tax owed, denial of
7 claim, or reduction in refunds and the reasons for such, and
8 the taxpayer's right to appeal and the time period when the
9 appeal must be filed. The bill also provides for awarding of
10 costs and damages to a taxpayer as a result of a position
11 taken by the department which is not substantially justified.
12 The bill provides that if a determination of additional tax
13 is made or refund claim denied, the taxpayer has 60 days,
14 which is an increase from the present 30 days, to file an
15 appeal or to contest the action by paying the tax, interest,
16 and penalty and timely filing a claim for refund.
17 The bill has effective and applicability date provisions.
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Palmer - Chair
Rosenberg
Drake

SSB 2218
Ways & Means

SENATE FILE 2320
BY (PROPOSED COMMITTEE ON WAYS AND MEANS BILL BY CHAIRPERSON DIELEMAN)

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

A BILL FOR

1 An Act relating to state tax procedures, practices, and penalties
2 and providing effective and applicability date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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TLSB 3797SC 75
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1 Section 1. NEW SECTION. 421.60 TAX PROCEDURES AND
2 PRACTICES.
3 1. SHORT TITLE. This section shall be known and may be
4 cited as the "Tax Procedures and Practices Act".
5 2. PROCEDURES AND PRACTICES.
6 a. The department shall prepare a statement which sets
7 forth in simple and nontechnical terms all of the following:
8 (1) The rights of a taxpayer and the obligations of the
9 department during an audit.
10 (2) The procedures by which a taxpayer may appeal an
11 adverse decision of the department, including administrative
12 and judicial appeals.
13 (3) The procedures which the department may use in en-
14 forcing the tax laws, including notices of assessment and
15 jeopardy assessment and the filing and enforcement of liens.
16 The statement prepared in accordance with this paragraph
17 shall be distributed by the department to all taxpayers at the
18 first contact by the department with respect to the
19 determination or collection of any tax, except in the case of
20 simply providing tax forms.
21 b. The department shall furnish to the taxpayer, before or
22 at the time of issuing a notice of assessment or denial of a
23 refund claim, an explanation of the reasons for the assessment
24 or refund denial. An inadequate explanation shall not
25 invalidate the notice. For purposes of this section, an
26 explanation by the department shall be sufficient where the
27 amount of tax, interest, and penalty is stated together with
28 an attachment setting forth the computation of the tax by the
29 department.
30 c. If the notice of assessment or denial of a claim for
31 refund relates to a tax return filed pursuant to section
32 422.14 or chapter 450, 450A, or 451, by the taxpayer which
33 designates an individual as an authorized representative of
34 the taxpayer with respect to that return, or if a power of
35 attorney has been filed with the department by the taxpayer

1 which designates an individual as an authorized representative
2 of the taxpayer with respect to any tax that is included in
3 the notice of assessment or denial of a claim for refund, a
4 copy of the notice together with any additional information
5 required to be sent to the taxpayer shall be sent to the
6 authorized representative as well.
7 If the department fails to mail a notice of assessment to
8 the last known address of a taxpayer or fails to personally
9 deliver such notice to a taxpayer, interest for the month such
10 mailing or personal delivery fails to occur through the month
11 of the correct mailing or personal delivery is waived.
12 If the department fails to mail a notice of assessment or
13 denial of a claim for refund to the taxpayer's last known
14 address or fails to personally deliver such notice to a
15 taxpayer and, if applicable, to the taxpayer's authorized
16 representative, the time period to appeal the notice of
17 assessment or a denial of a claim for refund is suspended
18 until the notice or claim denial is correctly mailed or
19 personally delivered, or in any event, for a period not to
20 exceed one year, whichever is the lesser period.
21 Collection activities, except where a jeopardy situation
22 exists, shall be suspended and the statute of limitations for
23 assessment or collection of the tax shall be tolled during the
24 period in which interest is waived.
25 d. A taxpayer is permitted to designate in writing the
26 type of tax and tax periods to which any voluntary payment
27 relates, provided that separate written instructions accompany
28 the payment. This paragraph does not apply to jeopardy
29 assessments and does not apply if the department has to
30 enforce collection of the payment.
31 e. Unless otherwise provided by law, all Iowa taxes which
32 are administered by the department and which result in a
33 refund shall accrue interest at the rate in effect under sec-
34 tion 421.7 from the first day of the second calendar month
35 following the date of payment or the date the return was due

1 to be filed or was filed, whichever is the latest.
2 f. A taxpayer may appeal a refund claim to the director if
3 a claim for refund has been filed and not denied by the
4 department within six months of the filing of the claim. The
5 filing of an appeal by a taxpayer shall not affect the ability
6 of the department to examine and inspect a taxpayer's records.
7 g. A taxpayer may request in writing that a contested case
8 proceeding be commenced by the department after a period of
9 six months from the filing of a proper appeal by the taxpayer.
10 The department shall file an answer within thirty days of
11 receipt of the request and a contested case proceeding shall
12 be commenced. In the case of an appeal of an assessment,
13 failure to answer within the thirty-day time period and after
14 a request has been made, shall result in the suspension of
15 interest from the time that the department was required to
16 answer until the date that the department files its answer.
17 In the case of an appeal of a denial of a refund, failure to
18 answer within the thirty-day time period, and after a request
19 has been made, shall result in the accrual of interest payable
20 to the taxpayer at double the rate in effect under section
21 421.7 from the time the department was required to answer
22 until the date that the department files its answer.
23 h. A taxpayer who has failed to appeal a notice of assess-
24 ment to the department within the time provided by law may
25 contest the assessment by paying the tax, interest, and
26 penalty, which in the case of divisible taxes might not be the
27 entire liability and by filing a refund claim within the time
28 period provided for filing such claim. The filing of a refund
29 claim allows the time period for which the refund is claimed
30 to be open to examination and to be open to offset, to zero,
31 based upon any issue associated with the type of tax for which
32 the refund is claimed and which has not up to that time been
33 resolved between the taxpayer and the department, irrespective
34 of whether the period of limitations to issue a notice of
35 assessment has expired. The department may make this offset

1 at any time until the department grants or denies the refund.
2 i. The director may, at any time, abate any unpaid portion
3 of assessed tax, interest, or penalties which the director de-
4 termines is erroneous, illegal, or excessive. The director
5 shall prepare quarterly reports summarizing each case in which
6 abatement of tax, interest, or penalties was made. However,
7 the report shall not disclose the identity of the taxpayer.
8 j. The director shall adopt rules for setting times and
9 places for taxpayer interviews and to permit any taxpayer to
10 record the interviews.
11 k. If the determination that a return is incorrect is the
12 result of an audit of the books and records of the taxpayer,
13 the tax or additional tax, if any, shall be assessed and the
14 notice of assessment to the taxpayer shall be given by the
15 department within one year after the completion of the
16 examination of the books and records.
17 l. The department shall annually report to the general
18 assembly all areas of recurrent taxpayer noncompliance with
19 rules or guidelines issued by the department and shall make
20 recommendations concerning the noncompliance in the report.
21 3. INSTALLMENT PAYMENTS. The department may permit the
22 payment of a delinquent tax on a deferred basis where the
23 equities indicate that a deferred payment agreement would be
24 in the interest of the state and that without a deferred
25 payment agreement the taxpayer would experience extreme
26 financial hardship. A deferred payment agreement shall
27 include applicable penalty and interest at the rate in effect
28 under section 421.7 on the unpaid balance of the liability.
29 4. COSTS.
30 a. A prevailing taxpayer in an administrative hearing or a
31 court proceeding related to the determination, collection, or
32 refund of a tax, penalty, or interest may be awarded rea-
33 sonable litigation costs by the department, state board of tax
34 review, or a court, incurred subsequent to the issuance of the
35 notice of assessment or denial of claim for refund in the

1 proceeding, based upon the following:
2 (1) The reasonable expenses of expert witnesses.
3 (2) The reasonable costs of studies, reports, and tests.
4 (3) The reasonable fees of independent attorneys or
5 independent accountants retained by the taxpayer.
6 (4) An award for reasonable litigation costs shall not
7 exceed twenty-five thousand dollars per case.
8 b. An award under paragraph "a" shall not be made with
9 respect to a portion of the proceedings during which the
10 prevailing taxpayer has unreasonably protracted the
11 proceedings.
12 c. For purposes of this section, "prevailing taxpayer"
13 means a taxpayer who establishes that the position of the
14 state was not substantially justified and who has
15 substantially prevailed with respect to the amount in
16 controversy or has substantially prevailed with respect to the
17 most significant issue or set of issues presented. The
18 determination of whether a taxpayer is a prevailing taxpayer
19 is to be determined in accordance with chapter 17A.
20 d. An award for reasonable litigation costs shall be paid
21 to the taxpayer from the general fund of the state. For
22 purposes of this subsection, there is appropriated from the
23 general fund of the state an amount sufficient to pay each
24 taxpayer entitled to an award under this subsection.
25 e. This subsection does not apply to the drug dealer tax
26 imposed by chapter 453B if the department relied upon
27 information provided or action conducted by federal, state, or
28 local officials or law enforcement agencies.
29 5. DAMAGES. Notwithstanding section 669.14, subsection 2,
30 if the director or an employee of the department recklessly or
31 intentionally disregards any tax law or rule in the collection
32 of any tax, or if the director or an employee of the
33 department knowingly or negligently fails to release a lien
34 against or bond on a taxpayer's property, the taxpayer may
35 file a claim in accordance with the Iowa tort claims Act,

1 chapter 669, for damages against the state. However, the
2 damages shall be limited to the actual direct economic damages
3 suffered by the taxpayer as a proximate result of the actions
4 of the director or employee, plus costs, reduced by the amount
5 of such damages and costs as could reasonably have been
6 mitigated by the taxpayer. The Iowa tort claims Act shall be
7 the exclusive remedy for recovering damages resulting from
8 such actions. This subsection does not apply to the drug
9 dealer tax imposed by chapter 453B.
10 6. BURDEN OF PROOF. The burden of proof with respect to
11 assessments or denial of refunds in contested case proceedings
12 shall be allocated as follows:
13 a. With respect to the issue of fraud with intent to evade
14 tax, the burden of proof is upon the department. The burden
15 of proof must be carried by clear and convincing evidence.
16 b. In a case where the assessment was not made within six
17 years after the return became due, excluding any extension of
18 time for filing, the burden of proof shall be upon the
19 department. However, the burden of proof shall be upon the
20 taxpayer where the determination of the department is the
21 result of the final disposition of a matter between the
22 taxpayer and the internal revenue service or where the
23 taxpayer and the department have signed a waiver of the
24 statute of limitations.
25 c. In all other cases, the burden of proof shall be upon
26 the taxpayer who challenges the assessment or refund denial,
27 except that, with respect to any new matter or affirmative
28 defense, the burden of proof shall be upon the department.
29 For purposes of this provision, "new matter" means an
30 adjustment not set forth in the computation of the tax in the
31 assessment or refund denial as distinguished from a new reason
32 for the assessment or refund denial. "Affirmative defense" is
33 one resting on facts not necessary to support the taxpayer's
34 case.
35 7. EMPLOYEE EVALUATIONS. It is unlawful to base a per-

1 formance evaluation for an employee of the department on the
2 total amount of assessments issued by that employee.
3 8. REFUND OF UNTIMELY ASSESSED TAXES. Notwithstanding any
4 other refund statute, if it appears that an amount of tax,
5 penalty, or interest has been paid to the department after the
6 expiration of the statute of limitation for the department to
7 determine and assess or collect the amount of such tax due,
8 then the amount paid shall be credited against another tax
9 liability of the taxpayer which is outstanding, if the statute
10 of limitations for assessment or collection of that other tax
11 has not expired or the amount paid shall be refunded to the
12 person or, with the person's approval, credited to tax to
13 become due. An application for refund or credit under this
14 subsection must be filed within one year of payment. This
15 subsection shall not be construed to prohibit the department
16 from offsetting the refund claim against any tax due, if the
17 statute of limitations for that other tax has not expired.
18 9. NO APPLICABILITY TO REAL PROPERTY. The provisions of
19 this section do not apply to the assessment and taxation of
20 real property.
21 Sec. 2. Section 422.4, Code 1993, is amended by adding the
22 following new subsection:
23 NEW SUBSECTION. 10A. "Notice of assessment" means a
24 notice by the department to a taxpayer advising the taxpayer
25 of an assessment of tax due.
26 Sec. 3. Section 422.25, subsection 1, Code 1993, is
27 amended to read as follows:
28 1. a. Within three years after the return is filed or
29 within three years after the return became due, including any
30 extensions of time for filing, whichever time is the later,
31 the department shall examine ~~it~~ the return and determine the
32 ~~correct-amount-of~~ tax~~,-and-the-amount-determined-by-the~~
33 ~~department-is-the~~ tax. However, if the taxpayer omits from
34 income an amount which will, under the Internal Revenue Code,
35 extend the statute of limitations for assessment of federal

1 tax to six years under the federal law, the period for
2 examination and determination is six years. In addition to
3 the applicable period of limitation for examination and
4 determination, the department may make an examination and
5 determination at any time within six months from the date of
6 receipt by the department of written notice from the taxpayer
7 of the final disposition of any matter between the taxpayer
8 and the internal revenue service with respect to the
9 particular tax year. In order to begin the running of the
10 six-month period, the notice shall be in writing in any form
11 sufficient to inform the department of the final disposition
12 with respect to that year, and a copy of the federal document
13 showing the final disposition or final federal adjustments
14 shall be attached to the notice.
15 b. The period for examination and determination of the
16 correct amount of tax is unlimited in the case of a false or
17 fraudulent return made with the intent to evade tax or in the
18 case of a failure to file a return. In lieu of the period of
19 limitation for any prior year for which an overpayment of tax
20 or an elimination or reduction of an underpayment of tax due
21 for that prior year results from the carryback to that prior
22 year of a net operating loss or net capital loss, the period
23 is the period of limitation for the taxable year of the net
24 operating loss or net capital loss which results in the
25 carryback. ~~The-burden-of-proof-of-additional-tax-owing-under~~
26 ~~the-six-year-period,-or-unlimited-period,-is-on-the~~
27 ~~department.~~ If the tax found due is greater than the amount
28 paid, the department shall compute the amount due, together
29 with interest and penalties as provided in subsection 2, and
30 shall ~~notify-the-taxpayer-by~~ mail a notice of assessment to
31 the taxpayer and, if applicable, to the taxpayer's authorized
32 representative of the total, which shall be computed as a sum
33 certain if paid on or before the last day of the month in
34 which the notice is postmarked, or on or before the last day
35 of the following month if the notice is postmarked after the

1 twentieth day of any month. The notice shall also inform the
2 taxpayer of the additional interest and penalty which will be
3 added to the total due if not paid on or before the last day
4 of the applicable month.
5 Sec. 4. Section 422.25, subsection 4, Code 1993, is
6 amended to read as follows:
7 4. All payments received must be credited first, to the
8 penalty and interest accrued, and then to the tax due. For
9 purposes of this subsection, the department shall not reapply
10 prior payments made by the taxpayer to penalty or interest
11 determined to be due after the date of those prior payments,
12 except that the taxpayer and the department may agree to apply
13 payments in accordance with rules adopted by the director when
14 there are both agreed and unagreed to items as a result of an
15 examination.
16 Sec. 5. Section 422.28, Code 1993, is amended to read as
17 follows:
18 422.28 REVISION OF TAX.
19 A taxpayer may appeal to the director for revision of the
20 tax, interest, or penalties assessed at any time within sixty
21 days from the date of the notice of the assessment of tax,
22 additional tax, interest, or penalties. The director shall
23 grant a hearing and if, upon the hearing, the director
24 determines that the tax, interest, or penalties are excessive
25 or incorrect, the director shall revise them according to the
26 law and the facts and adjust the computation of the tax,
27 interest, or penalties accordingly. The director shall notify
28 the taxpayer by mail of the result of the hearing and shall
29 refund to the taxpayer the amount, if any, paid in excess of
30 the tax, interest, or penalties found by the director to be
31 due, with interest after sixty days from the date of payment
32 by the taxpayer at the rate in effect under section 421.7 for
33 each month or a fraction of a month. ~~The director may, on the~~
34 ~~director's own motion at any time, abate any portion of tax,~~
35 ~~interest or penalties which the director determines is~~

1 ~~excessive-in-amount,-or-erroneously-or-illegally-assessed.~~
2 ~~The-director-shall-prepare-quarterly-reports,-which-shall-be~~
3 ~~included-in-the-annual-statistical-reports-required-under~~
4 ~~section-422.75,-summarizing-each-case-in-which-an-abatement-of~~
5 ~~tax,-interest-or-penalties-was-made-under-this-section,-but-a~~
6 ~~report-shall-not-disclose-the-identity-of-the-taxpayer.~~
7 Sec. 6. Section 422.29, subsection 2, Code 1993, is
8 amended by striking the subsection and inserting in lieu
9 thereof the following:
10 2. For cause and upon a showing by the director that
11 collection of the tax in dispute is in doubt, the court may
12 order the petitioner to file with the clerk a bond for the use
13 of the respondent, with sureties approved by the clerk, in the
14 amount of tax appealed from, conditioned that the petitioner
15 shall perform the orders of the court.
16 Sec. 7. Section 422.54, subsections 1 and 2, Code 1993,
17 are amended to read as follows:
18 1. As soon as practicable after a return is filed and in
19 any event within five years after the return is filed, the
20 department shall examine it, assess and determine the tax due
21 if the return is found to be incorrect, and give notice to the
22 taxpayer of ~~such~~ the assessment and determination as provided
23 in subsection 2. The period for the examination and
24 determination of the correct amount of tax is unlimited in the
25 case of a false or fraudulent return made with the intent to
26 evade tax or in the case of a failure to file a return. ~~If~~
27 ~~the-determination-that-a-return-is-incorrect-is-the-result-of~~
28 ~~an-audit-of-the-books-and-records-of-the-taxpayer,-the-tax,-or~~
29 ~~additional-tax,-if-any-is-found-due,-shall-be-assessed-and~~
30 ~~determined-and-the-notice-to-the-taxpayer-shall-be-given-by~~
31 ~~the-department-within-one-year-after-the-completion-of-the~~
32 ~~examination-of-the-books-and-records.~~
33 2. If a return required by this division is not filed, or
34 if a return when filed is incorrect or insufficient and the
35 maker fails to file a corrected or sufficient return within

1 twenty days after the same is required by notice from the
2 department, the department shall determine the amount of tax
3 due from ~~such~~ information as the department may be able to
4 obtain and, if necessary, may estimate the tax on the basis of
5 external indices, such as number of employees of the person
6 concerned, rentals paid by the person, stock on hand, or other
7 factors. The department shall give notice of ~~such~~ the
8 determination to the person liable for the tax. ~~Such~~ The
9 determination shall ~~finally-and-irrevocably~~ fix the tax unless
10 the person against whom it is assessed shall, within ~~thirty~~
11 sixty days after the giving of notice of ~~such~~ the
12 determination, apply to the director for a hearing or unless
13 the ~~director-on-the-director's-motion-shall-reduce-the-same~~
14 taxpayer contests the determination by paying the tax,
15 interest, and penalty and timely filing a claim for refund.
16 At ~~such~~ the hearing evidence may be offered to support ~~such~~
17 the determination or to prove that it is incorrect. After
18 ~~such~~ the hearing the director shall give notice of the
19 decision to the person liable for the tax.
20 Sec. 8. Section 424.10, subsection 2, Code 1993, is
21 amended to read as follows:
22 2. If a return required by this chapter is not filed, or
23 if a return when filed is incorrect or insufficient and the
24 maker fails to file a corrected or sufficient return within
25 twenty days after the return is required by notice from the
26 department, the department shall determine the amount of
27 charge due from ~~such~~ information as the department may be able
28 to obtain and, if necessary, may estimate the charge on the
29 basis of external indices or factors. The department shall
30 give notice of ~~such~~ the determination to the person liable for
31 the charge. ~~Such~~ The determination shall ~~finally-and~~
32 ~~irrevocably~~ fix the charge unless the person against whom it
33 is assessed shall, within ~~thirty~~ sixty days after the giving
34 of notice of ~~such~~ the determination, apply to the director for
35 a hearing or unless the ~~director-on-the-director's-motion~~

1 ~~shall reduce the charge~~ taxpayer contests the determination by
2 paying the tax, interest, and penalty and timely filing a
3 claim for refund. At ~~such~~ the hearing evidence may be offered
4 to support ~~such~~ the determination or to prove that it is
5 incorrect. After ~~such~~ the hearing the director shall give
6 notice of the decision to the person liable for the charge.
7 If a depositor's, receiver's, or other person's challenge
8 relates to the diminution rate, the burden of proof upon the
9 challenger shall only be satisfied by clear and convincing
10 evidence.
11 Sec. 9. Section 429.2, Code 1993, is amended by striking
12 the section and inserting in lieu thereof the following:
13 429.2 APPEAL.
14 1. Notwithstanding the provisions of chapter 17A, the
15 taxpayer shall have thirty days from the date of postmark of
16 the notice of assessment to appeal the assessment to the state
17 board of tax review. Thereafter, the proceedings before the
18 state board of tax review shall conform to the provisions of
19 subsection 2, section 421.1, subsection 4, and chapter 17A.
20 2. The following rules shall apply to the appeal pro-
21 ceedings in addition to those stated in section 421.1,
22 subsection 4, and chapter 17A.
23 a. The department's assessment shall be presumed correct
24 and the burden of proof shall be on the taxpayer with respect
25 to all issues raised on appeal, including any challenge of the
26 director's valuation.
27 b. The burden of proof must be carried by a preponderance
28 of the evidence.
29 c. The board shall hear all evidence presented by the
30 taxpayer and the department, including, but not limited to,
31 evidence relating to the valuation of the property involved.
32 d. The board shall determine the value of the property
33 based upon its review of the evidence presented.
34 e. Upon the request of a party the board shall set the
35 case for hearing within one year of the date of the request.

1 The hearing shall not be unreasonably continued, and absent
2 justification for delay, if either party fails to appear at
3 the hearing on the date scheduled, judgement shall be entered
4 against the party failing to appear and the party failing to
5 appear shall be barred from appealing for judicial review as
6 provided in section 429.3.
7 Sec. 10. Section 429.3, Code 1993, is amended by striking
8 the section and inserting in lieu thereof the following:
9 429.3 JUDICIAL REVIEW.
10 Either party may petition for judicial review in the
11 district court pursuant to the following provisions, which are
12 in lieu of the judicial review provisions of chapter 17A:
13 1. Proceedings for judicial review shall be instituted by
14 filing a petition in Polk county district court. Within ten
15 days after the filing of a petition for judicial review the
16 petitioner shall serve by the means provided in the Iowa rules
17 of civil procedure for the personal service of an original
18 notice, or shall mail copies of the petition to all parties
19 named in the petition. The personal service or mailing shall
20 be jurisdictional. The delivery by personal service or
21 mailing referred to in this subsection may be made upon the
22 party's attorney of record in the proceeding before the state
23 board of tax review. A mailing shall be addressed to the
24 parties or their attorney of record in the proceeding before
25 the board. A mailing shall be addressed to the parties and
26 their attorney of record at their last known mailing address.
27 Proof of mailing shall be by affidavit.
28 2. The petition for review shall contain a concise
29 statement of all of the following:
30 a. The nature of the board's action which is the subject
31 of the petition.
32 b. The facts upon which jurisdiction of the court is
33 based.
34 c. An assignment of each error alleged to have been made
35 by the board.

1 d. A brief statement of the facts relied upon by the
2 appellant.
3 e. The relief sought.
4 3. The filing of the petition in district court does not
5 itself stay execution or enforcement of the state board of tax
6 review action. Upon application the court may, in appropriate
7 cases, order a stay pending the outcome of the judicial review
8 proceedings.
9 4. The board shall certify a record of its proceedings to
10 the district court which record shall be reviewed and
11 considered by the district court. The district court shall
12 not consider evidence or issues not presented to the board,
13 except that the court shall permit testimony by witnesses who
14 appeared before the board upon motion of a party. This motion
15 shall be granted if a party establishes that the testimony of
16 the witness is material and will assist the court.
17 5. The district court shall have jurisdiction in any
18 judicial review proceedings, to review by trial de novo all
19 decisions of the board. As used in this section, "trial de
20 novo" means an original, independent proceeding, and does not
21 mean a trial de novo on the record.
22 6. The court may affirm, reverse, modify, or grant other
23 appropriate relief from the board action.
24 Sec. 11. NEW SECTION. 429.4 APPEALS OF JUDICIAL REVIEW.
25 An aggrieved party to the judicial review proceeding may
26 obtain a review of any final judgment of the district court by
27 appeal. The appeal shall be taken as in other civil cases.
28 Sec. 12. Section 450.94, subsection 3, Code 1993, is
29 amended to read as follows:
30 3. If the amount paid is greater than the correct tax,
31 penalty, and interest due, the department shall refund the
32 excess with interest. Interest shall be computed at the rate
33 in effect under section 421.7, under the rules prescribed by
34 the director counting each fraction of a month as an entire
35 month and the interest shall begin to accrue on the first day

1 of the second calendar month following the date of payment or
2 on the date the return was due to be filed or was filed,
3 whichever is the latest. However, the director shall not
4 allow a claim for refund or credit that has not been filed
5 with the department within three years after the tax payment
6 upon which a refund or credit is claimed became due, or one
7 year after the tax payment was made, whichever time is later.
8 A determination by the department of the amount of tax,
9 penalty, and interest due, or the amount of refund for excess
10 tax paid, is final unless the person aggrieved by the
11 determination appeals to the director for a revision of the
12 determination within ~~thirty~~ sixty days from the postmark date
13 of the notice of determination of tax, penalty, and interest
14 due or refund owing or unless the taxpayer contests the
15 determination by paying the tax, interest, and penalty and
16 timely filing a claim for refund. The director shall grant a
17 hearing, and upon the hearing the director shall determine the
18 correct tax, penalty, and interest or refund due, and notify
19 the appellant of the decision by mail. The decision of the
20 director is final unless the appellant seeks judicial review
21 of the director's decision under section 450.59 within sixty
22 days after the postmark date of the notice of the director's
23 decision.
24 Sec. 13. Section 452A.64, Code 1993, is amended to read as
25 follows:
26 452A.64 FAILURE TO FILE RETURN -- INCORRECT RETURN.
27 If a return required by this chapter is not filed, or if a
28 return when filed is incorrect or insufficient and the filer
29 fails to file a corrected or sufficient return within twenty
30 days after the same is required by notice from the appropriate
31 state agency, the appropriate state agency shall determine the
32 amount of tax due. The determination shall be made from all
33 information that the appropriate state agency may be able to
34 obtain and, if necessary, the agency may estimate the tax on
35 the basis of external indices. The appropriate state agency

1 shall give notice of the determination to the person liable
2 for the tax. The determination shall ~~finally-and-irrevocably~~
3 fix the tax unless the person against whom it is assessed
4 shall, within ~~thirty~~ sixty days after the giving of notice of
5 ~~such~~ the determination, apply to the director of the
6 appropriate state agency for a hearing or unless the ~~director~~
7 ~~reduces-the-assessment~~ taxpayer contests the determination by
8 paying the tax, interest, and penalty and timely filing a
9 claim for refund. At the hearing, evidence may be offered to
10 support the determination or to prove that it is incorrect.
11 After the hearing, the director shall give notice of the
12 decision to the person liable for the tax. The findings of
13 the appropriate state agency as to the amount of fuel taxes,
14 penalties and interest due from any person shall be presumed
15 to be the correct amount and in any litigation which may
16 follow, the certificate of the agency shall be admitted in
17 evidence, shall constitute a prima-facie case and shall impose
18 upon the other party the burden of showing any error in the
19 findings and the extent thereof or that the finding was
20 contrary to law.
21 ~~The-director-may,-on-the-director's-own-motion-at-any-time,~~
22 ~~abate-any-portion-of-tax,-interest-or-penalties-which-are~~
23 ~~determined-to-be-excessive-in-amount-or-erroneously-or~~
24 ~~illegally-assessed.~~
25 Sec. 14. Section 453A.29, Code 1993, is amended to read as
26 follows:
27 453A.29 NOTICE AND APPEAL.
28 The department shall notify any person assessed pursuant to
29 section 453A.28 by sending a written notice of the
30 determination ~~and-assessment~~ by mail to the principal place of
31 business of the person as shown on the person's application
32 for permit, and if ~~no~~ an application was not filed by the
33 person, to the person's last known address. A determination
34 by the department of the amount of tax, penalty, and interest
35 due, or the amount of refund for excess tax paid, is final,

1 unless the person aggrieved by the determination appeals to
2 the director for a revision of the determination within ~~thirty~~
3 sixty days from the postmark date of the notice of
4 determination of tax, penalty, and interest or refund owing or
5 unless the taxpayer contests the determination by paying the
6 tax, interest, and penalty and timely filing a claim for
7 refund. The director shall grant a hearing and upon the
8 hearing, the director shall determine the correct tax,
9 penalty, and interest or refund due and notify the appellant
10 of the decision by mail. Judicial review of action of the
11 director may be sought in accordance with the Iowa
12 administrative procedure Act and section 422.29.
13 Sec. 15. Section 453A.46, subsection 4, Code 1993, is
14 amended to read as follows:
15 4. The department shall notify any person assessed
16 pursuant to this section by sending a written notice of the
17 determination ~~and assessment~~ by mail to the principal place of
18 business of the person as shown on the person's application
19 for permit, and if an application was not filed by the person,
20 to the person's last known address. A determination by the
21 department of the amount of tax, penalty, and interest due, or
22 the amount of refund for excess tax paid, is final, unless the
23 person aggrieved by the determination appeals to the director
24 for a revision of the determination within ~~thirty~~ sixty days
25 from the postmark date of the notice of determination of tax,
26 penalty, and interest or refund owing or unless the taxpayer
27 contests the determination by paying the tax, interest, and
28 penalty and timely filing a claim for refund. The director
29 shall grant a hearing and upon the hearing, the director shall
30 determine the correct tax, penalty, and interest or refund due
31 and notify the appellant of the decision by mail. Judicial
32 review of action of the director may be sought in accordance
33 with chapter 17A and section 422.29.
34 Sec. 16. Section 453A.48, subsection 5, Code 1993, is
35 amended to read as follows:

1 5. Any person aggrieved by an order of the director fixing
2 a tax, penalty or interest under section 453A.43 may, within
3 ~~thirty~~ sixty days from the date of notice of the order, appeal
4 to the board of review in the manner provided by law or unless
5 the taxpayer contests the determination by paying the tax,
6 interest, and penalty and timely filing a claim for refund.
7 Judicial review of any other action of the director may be
8 sought in accordance with the terms of the Iowa administrative
9 procedure Act.
10 Sec. 17. EFFECTIVE DATES.
11 1. Section 1, subsection 2, paragraph "a", of this Act is
12 effective for contacts made by the department on or after
13 January 1, 1995.
14 2. Section 1, subsection 2, paragraphs "b" and "c", and
15 section 1, subsections 4 and 6, of this Act are effective for
16 notices of assessment or refund denials issued on or after
17 January 1, 1995.
18 3. Section 1, subsection 2, paragraphs "h", "i", and "k",
19 and subsection 8, and sections 2, 3, 5, and 7 through 16 of
20 this Act are effective for notices of assessment issued on or
21 after January 1, 1995.
22 4. Section 1, subsection 2, paragraph "d", of this Act is
23 effective for designations made on or after January 1, 1995.
24 5. Section 1, subsection 2, paragraph "e", of this Act is
25 effective to accrue interest on or after January 1, 1995.
26 6. Section 1, subsection 2, paragraph "f", of this Act is
27 effective for refund claims filed on or after January 1, 1995.
28 7. Section 1, subsection 2, paragraph "g", of this Act is
29 effective for appeals filed on or after January 1, 1995.
30 8. Section 1, subsection 2, paragraph "j", of this Act is
31 effective for taxpayer interviews conducted on or after
32 January 1, 1995.
33 9. Section 1, subsection 2, paragraph "l", of this Act is
34 effective for annual reports for fiscal years ending June 30,
35 1995, and thereafter.

1 10. Section 1, subsection 3, of this Act is effective for
2 deferred payment agreements made on or after January 1, 1995.
3 11. Section 1, subsection 5, of this Act is effective for
4 actions of the director or department employee that occur on
5 or after January 1, 1995.
6 12. Section 1, subsection 7, of this Act is effective for
7 evaluations made on or after January 1, 1995.
8 13. Section 1, subsection 9, of this Act is effective on
9 or after January 1, 1995.
10 14. Section 4 of this Act is effective for payments made
11 on or after January 1, 1995.
12 15. Section 6 of this Act is effective for petitions for
13 judicial review filed on or after January 1, 1995.
14 EXPLANATION
15 The bill sets out the obligations of the department of
16 revenue and finance and the rights of taxpayers and procedures
17 to be followed in regard to state taxes which are, in most
18 cases, in addition to those responsibilities and duties
19 presently existing. These duties require informing the
20 taxpayer of the taxpayer's rights, the obligations of the
21 department with respect to notice of tax owed, denial of
22 claim, or reduction in refunds and the reasons for such, and
23 the taxpayer's right to appeal and the time period when the
24 appeal must be filed. The bill also provides for awarding of
25 costs and damages to a taxpayer as a result of a position
26 taken by the department which is not substantially justified.
27 The bill provides that if a determination of additional tax
28 is made or refund claim denied the taxpayer has 60 days, which
29 is an increase from the present 30 days, to file an appeal or
30 to contest the action by paying the tax, interest, and penalty
31 and timely filing a claim for refund.
32 The bill has effective and applicability date provisions.
33
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35