

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to penalties and waivers
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 421.27; 2020 Iowa Acts, House File 2641; 2021 Iowa Acts, Senate File 608; and 2021 Iowa Acts, Senate File 366.

Purpose and Summary

During the 2021 Legislative Session, the Department requested that the Legislature modify Iowa Code section 421.27, which sets forth penalties and penalty waivers related to the filing of tax returns and payment of tax. The changes were enacted and signed into law as 2021 Iowa Acts, Senate File 608, and became effective July 1, 2021.

Through the process of designing the Department’s new tax administration system, the Department reviewed how and when certain penalties are imposed or waivers apply to those penalties in both the current system and what the Department desires in the new system. During this review, the Department identified legal requirements that, due to system constraints, legacy systems could not support without substantial manual intervention. The goal of the changes made by Senate File 608 is to make penalties and waivers easier to understand and implement. The changes are either taxpayer-neutral or taxpayer-friendly. These penalties and waivers generally apply to all taxpayers for all tax types.

The Department now proposes these amendments to its rules implementing Iowa Code section 421.27 to reflect the changes made by Senate File 608. The Department has also revised and published its Penalty Waiver Request Form to reflect the changes to the law.

This proposed rule making also implements the penalty for failure to timely file an income return by a specified business (C corporations, S corporations, partnerships, and financial institutions) with no tax due that was enacted in 2020 Iowa Acts, House File 2641, division I, and amended by 2021 Iowa Acts, Senate File 366, division V. Under Iowa law, this new penalty will apply to tax years beginning on or after January 1, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fiscal estimate for 2021 Iowa Acts, Senate File 608, did not indicate any impact.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

August 17, 2021
1 to 2 p.m.

Via video/conference call

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—10.5(421) as follows:

701—10.5(421) Improper receipt of credit, ~~or~~ refund, exemption, reimbursement, rebate, or other payment or benefit.

10.5(1) Erroneous application. A person who makes an erroneous application for refund, ~~or~~ credit, exemption, reimbursement, rebate, or other payment or benefit shall be liable for any overpayment received plus interest at the rate in effect under Iowa Code section ~~421.7, subsection 2~~ 421.7(2). ~~In addition, a~~

10.5(2) Willfully false or frivolous application. A person who willfully makes a false or frivolous application or willfully submits any false information, document, or document containing false information in support of an application for refund, ~~or~~ credit, exemption, reimbursement, rebate, or other payment or benefit with the intent to evade tax or with the intent to receive a refund, ~~or~~ credit, exemption, reimbursement, rebate, or other payment or benefit to which the person is not entitled is guilty of a fraudulent practice and is liable for a penalty equal to 75 percent of the refund, ~~or~~ credit, exemption, reimbursement, rebate, or other payment or benefit claimed. This penalty is not subject to waiver.

This rule is intended to implement Iowa Code section 421.27 as amended by 2010 Iowa Acts, House File 2531, ~~section 124~~ 2021 Iowa Acts, Senate File 608.

ITEM 2. Rescind the division heading before rule **701—10.6(421)**.

ITEM 3. Amend rule 701—10.6(421) as follows:

701—10.6(421) Penalties.

10.6(1) Penalties applicable to all taxpayers. A penalty shall be assessed upon all tax and deposits due under the following circumstances: described in this subrule. The rates for penalties described in this rule are uniform for all tax types. Unless otherwise specified in this subrule, see rule 701—10.7(421) for waivers that may apply to these penalties.

~~1. a.~~ For failure to timely file a return, ~~or deposit form~~ there is a ~~10~~ 5 percent penalty on the unpaid tax. This penalty, once imposed, will be assessed on all subsequent amounts found by the taxpayer or the department to be due ~~or required to be shown due on the return or deposit form~~ for the tax period. This penalty is in addition to any other penalty provided by law.

~~EXAMPLE: The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.~~

~~2. b.~~ For failure to timely pay the tax due on a return ~~or deposit form~~, there is a 5 percent penalty on the unpaid tax. This penalty is in addition to any other penalty provided by law.

~~3. c.~~ For a deficiency of tax due ~~on a return or deposit form~~ found during an audit or examination, there is a 5 percent penalty on the unpaid tax. ~~For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form. This penalty is in lieu of the penalty for failure to timely pay but is in addition to any other penalty provided by law.~~

~~Audit deficiency occurs when the department determines additional tax is due.~~

~~4. d.~~ For willful failure to file a return ~~or deposit form~~ with the intent to evade tax ~~or a filing requirement~~, or in the case of willfully filing a false return ~~or deposit form~~ with the intent to evade tax, there is a 75 percent penalty. This penalty is in lieu of other penalties applicable under this rule. This penalty is not subject to waiver.

~~The penalty rates are uniform for all taxes and deposits due under this chapter.~~

~~The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.~~

~~5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.~~

~~e.~~ For failure to remit at least 90 percent of the tax due by the time an extension for further time to file a return is made, there is a 10 percent penalty on the unpaid tax.

~~f.~~ For failure to remit payment of taxes in the form or manner required by the rules of the director, there is a 5 percent penalty on the amount of the payment remitted in the incorrect form or manner, not to exceed \$500 per instance. This penalty shall be waived if the taxpayer was not notified of the requirement to remit tax payments electronically or if the incorrect electronic transmission of the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

10.6(2) Penalties applicable to specified businesses for tax years beginning on or after January 1, 2022, in which no tax is due.

~~a. Definitions. For purposes of this subrule, the following definitions apply:~~

~~“Imputed Iowa liability” means the specified business’s Iowa net income after the application of the Iowa business activity ratio, if applicable, multiplied by the applicable tax rate for the tax year, less any Iowa tax credits available to be claimed by the specified business in the current year. The applicable tax rate is:~~

~~1. In the case of an entity taxed as a C corporation, the top corporation income tax rate under Iowa Code section 422.33,~~

~~2. In the case of a financial institution as defined in Iowa Code section 422.61, the franchise tax rate under Iowa Code section 422.63, or~~

3. In the case of an entity taxed as an S corporation or partnership, the top individual income tax rate under Iowa Code section 422.5A.

“Income return” includes an Iowa corporation income tax return (IA 1120), an Iowa franchise tax return (IA 1120F), an Iowa S corporation income tax return (IA 1120S), and an Iowa partnership income tax return (IA 1065).

“Specified business” means any of the following:

1. An entity taxed as a C corporation that is required to file an Iowa corporation income tax return (IA 1120). This includes a consolidated group of corporations electing or required to file an Iowa consolidated return under Iowa Code section 422.37.

2. An entity taxed as an S corporation that is required to file an Iowa S corporation income tax return (IA 1120S).

3. A financial institution that is required to file an Iowa franchise tax return (IA 1120F).

4. An entity taxed as a partnership that is required to file an Iowa partnership income tax return (IA 1065).

b. For a failure by a specified business to timely file an income return when no tax is due, a penalty shall be assessed equal to the greater of \$200 or 5 percent of the imputed Iowa liability of the specified business, not to exceed \$25,000. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.

c. For willful failure by a specified business to file an income return with no tax shown due with the intent to evade a filing requirement, or in the case of willfully filing a false income return with no tax shown due with the intent to evade reporting of Iowa-source income, a penalty shall be assessed equal to the greater of \$1,500 or 75 percent of the imputed Iowa liability of the specified business. This penalty is not subject to waiver. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.

10.6(3) Examples. The following are examples to illustrate the computation of penalties imposed under this rule 701—10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax due was paid.

Example (a) — Failure to Timely File and Failure to Timely Pay

a. Tax due is \$100.

b. Return filed 3 2 months and 10 days after the due date.

c. ~~\$100~~ \$0 paid ~~with the return~~ prior to filing.

The calculation for ~~additional tax~~ the total amount due 3 months after the due date is shown below:

Tax	\$100
Penalty	10 (10% 5% for failure to timely file, 5% for failure to timely pay)
Interest	4 3 (4 3 months interest)
Total amount due	\$114
	\$113
Less payment	100
Additional tax due	\$14

Example (b) — Failure to Timely Pay

a. Tax due is \$100.

b. Return is timely filed.

c. \$0 paid with the return.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100
Penalty	5 (5% for failure to timely pay)
Interest	5 (5 months interest)
Total <u>amount due</u>	\$110

Example (c) — Failure to File and Failure to Pay

- a. Tax due is \$100.
- b. Return is filed 2 months and 10 days after the due date.
- c. \$0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	\$100
Penalty	10 (10% for failure to file)
Interest	3 (3 months interest)
Total due in 3rd month	\$113

Example (d) (c) — Audit Deficiency on Timely Filed Return

- a. ~~\$100 in additional tax found due.~~ Timely filed return reported \$100 tax due.
- b. ~~Timely filed return.~~ \$100 paid with return.
- c. Audit completed 8 months after the due date of the return.
- d. ~~Return showed \$100 as the computed tax, which was paid with the return.~~ \$100 in additional tax found due during audit.

The calculation for the total amount due is shown below:

Computed tax after audit	\$200
Less tax paid with return	100
Additional tax due	\$100
Penalty	5 (5% for audit deficiency)
Interest	8 (8 months interest)
Total <u>amount due</u>	\$113

Example (e) (d) — Audit Deficiency on Late Return Granted an Exception From Failure to File

- a. Tax due reported on return is \$100.
- b. Return filed 3 months and 10 days after the due date.
- c. \$100 paid with the return.
- d. Taxpayer is granted an exception from penalty for failure to timely file and failure to timely pay. (~~Return is then considered timely filed.~~)
- e. Audit completed 8 months after the due date of the return. ~~\$100 additional tax found due.~~
- f. ~~Return showed \$100 as the computed tax which was paid with the return.~~ \$100 additional tax found due during audit.

The computation for the total amount due is shown below:

Computed tax <u>Tax due</u> after audit	\$200
Less tax paid with return	100
Additional tax due	\$100
Penalty	5 (5% for audit deficiency. No penalty for failure to file.)
Interest	8 (8 months interest)
Total <u>amount due</u>	\$113

Example (f) (e) — Audit Deficiency on Late Filed Return No Pay Return

- a. ~~\$100 claimed as tax~~ Tax due reported on the return is \$100.
- b. ~~\$100 in additional tax found due.~~ Return filed 3 months and 10 days after the due date.
- c. ~~Return filed 3 months and 10 days after the due date.~~ \$114 in tax, penalty, and interest paid with the return.
- d. Audit completed 8 months after the due date.
- e. \$100 additional tax found due during audit.

The computation for the total amount due is shown below:

<u>Tax due reported on original return</u>	<u>\$100</u>	
<u>Penalty</u>	<u>10</u>	<u>(5% for failure to timely file, 5% for failure to timely pay)</u>
<u>Interest</u>	<u>4</u>	<u>(4 months interest)</u>
<u>Total amount due on original return</u>	<u>\$114</u>	
Computed <u>Additional tax due after audit</u>	<u>\$200</u>	
	<u>\$100</u>	
<u>Penalty</u>	<u>20 10</u>	<u>(10% 5% for failure to file, 5% for audit deficiency)</u>
<u>Interest</u>	<u>46 8</u>	<u>(8 months interest)</u>
<u>Amount due after audit</u>	<u>\$118</u>	
<u>Total amount due for tax period</u>	<u>\$236</u>	
	<u>\$232</u>	

Example (f) — Failure to Timely File by a Specified Business

- a. Tax due for tax year 2023 is \$0 because the entity is a partnership (IA 1065).
- b. Return is filed 7 months and 10 days after the due date.
- c. Partnership net income after calculation of the Iowa business activity ratio is \$30,000.
- d. Net income multiplied by the top individual tax rate in 2023 of 6.5 percent is \$1,950.
- e. Iowa tax credits available are \$1,000.
- f. Imputed Iowa liability is \$950.
- g. The penalty is the greater of 5 percent of the imputed Iowa liability (\$48) or \$200.

The calculation for the total amount due is shown below:

<u>Tax</u>	<u>\$0</u>
<u>Penalty</u>	<u>200</u>
<u>Interest</u>	<u>0</u>
<u>Total amount due</u>	<u>\$200</u>

ITEM 4. Amend rule 701—10.7(421) as follows:

701—10.7(421) Waiver of penalty—definitions. ~~A penalty, if assessed, shall be waived by the department upon a showing of the circumstances stated below. Under certain circumstances, the penalty for failure to timely file a return, failure to timely pay the tax due with the filing of a return, or failure to pay following an audit by the department is waived. The taxpayer has the burden to prove the necessary conditions to waive a penalty.~~

10.7(1) Definitions. For purposes of ~~these rules~~ this rule, the following definitions apply:

“Act of God” means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight. ~~There is a rebuttable presumption that an “act of God” that precedes the due date of the return or form by 30 days is not an act of God for purposes of an exception to penalty.~~

“Immediate family” includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer’s immediate family for purposes of the waiver exceptions.

“Sanctioned self-audit program” means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

~~“Serious, long-term illness or hospitalization” means an illness or hospitalization, documented by written evidence, which precedes the due date of the return or form by no later than 30 days and continues through the due date of the return or form and interferes with the timely filing of the return or form. There is a rebuttable presumption that an illness or hospitalization that precedes the due date of the return or form by more than 30 days is not an illness or hospitalization for purposes of an exception to penalty. The taxpayer will be provided an automatic extension of 30 days from the date the return or form is originally due or the termination of the serious, long-term illness or hospitalization whichever is later without incurring penalty. The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred.~~

“Substantial authority” means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return and deposit form instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return, deposit form, or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or deposit form or paying the tax due.

~~10.7(2) Reserved.~~ Documentation. Unless otherwise indicated, written documentation is required to support the waiver of a penalty.

~~10.7(3) For failure to timely file a return or failure to timely pay tax due, the 5 percent penalties shall be waived upon a showing of the following exceptions.~~

~~a. An amount of tax greater than \$0 is due and at least 90 percent of the tax required to be shown due has been paid by the due date of the tax return. This exception does not apply to the penalty for failure to timely file by a specified business under subrule 10.6(2).~~

~~b. A taxpayer required to file a monthly or quarterly return is allowed one late return or one late payment within a three-year period.~~

~~(1) The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or payment for purposes of this subrule.~~

~~(2) If the taxpayer receives this waiver, the taxpayer must make timely filings and payments for three years prior to being eligible for another waiver under this paragraph.~~

~~(3) This exception does not apply to an income return, a franchise return, or a moneys and credits return.~~

~~(4) This exception will automatically be applied to a return or payment by the department if the taxpayer is eligible for the exception.~~

~~(5) This exception is determined on the basis of the tax period for which the return or payment is due and not the date on which the return is filed or payment is made.~~

EXAMPLE: Taxpayer A, a retail business with multiple employees, has not been late in filing returns or making payments for five years. Taxpayer A files its withholding return for the fourth quarter of 2020, due January 20, 2021, on the due date but does not make the payment until the next day. Taxpayer A incurs the penalty for failing to timely pay, but the penalty will be waived under this exception. Taxpayer A is not eligible for a waiver for a late return filing or late payment again until the due date for the fourth quarter of 2023.

c. Death of a taxpayer, a member of the immediate family of the taxpayer, or the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing of a return or timely payment of tax. The taxpayer will be provided an extension of 30 days from the date the return or payment is originally due without incurring penalty. There is a rebuttable presumption that a death that occurs more than 30 days before the original date the return or payment is due does not interfere with timely filing or payment. The taxpayer, or taxpayer's legal representative, has the burden of supplying proof of when the death occurred.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax when such illness or hospitalization interferes with the timely filing of a return or timely payment of tax.

(1) There is a rebuttable presumption that the onset of an illness or hospitalization that precedes the due date of the return or payment form by more than 30 days does not interfere with the timely filing or timely payment of tax.

(2) The taxpayer will be provided an extension of at least 30 days from the date the return or payment form is originally due or until the illness or hospitalization no longer reasonably interferes with the taxpayer's ability to file the return without incurring penalty.

(3) The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred, when it occurred, and how the illness or hospitalization interfered with the taxpayer's ability to timely file a return or timely pay.

e. Destruction of records by fire, flood, or act of God when the destruction interferes with the timely filing of a return or timely payment of tax. There is a rebuttable presumption that an "act of God" that precedes the due date of the return or payment by 30 days or more did not interfere with the timely filing or payment.

f. The taxpayer presents proof that the taxpayer at the due date of the return or payment relied upon applicable, documented, written advice made specifically to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The reliance must be the direct cause of the failure to file or failure to pay, and the advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge or the director, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

i. The return or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. The availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer.

m. For estates with disclaimers, a penalty will not be imposed for failure to pay or a late-filed Iowa inheritance tax return if the sole reason for the failure to pay or late-filed inheritance tax return is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the department within the later of nine months from the date of death or 60 days from the delivery or filing date of the disclaimer pursuant to Iowa Code section 633E.12.

10.7(4) In addition to any applicable waivers for failure to timely pay the tax due on a return in subrule 10.7(3), the 5 percent penalty for failure to timely pay the tax due shall be waived upon a showing of any of the following exceptions:

a. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

b. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

10.7(5) For a deficiency of tax due on a return found during an audit or examination, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that the reliance was the direct cause for the failure to pay and the advice has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

ITEM 5. Rescind and reserve rules **701—10.8(421)** and **701—10.9(421)**.

ITEM 6. Amend rule 701—10.76(453A) as follows:

701—10.76(453A) Penalties.

10.76(1) Cigarettes. The following is a list of offenses which subject the violator to a penalty:

1. to 4. No change.

5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A \$200 penalty for the first violation.
- A \$500 penalty for a second violation within three years of the first violation.
- A \$1,000 penalty for a third or subsequent violation within three years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A \$200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.
- A \$500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.

- A \$1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$25 per pack penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a second violation within three years of the first violation, the penalty is \$400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$2,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$35 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a third or subsequent violation within three years of the first violation, the penalty is \$600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$3,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$45 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

See rule ~~701—10.8(421)~~ 701—10.7(421) for statutory exceptions to penalty.

10.76(2) Tobacco.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax.

See rule ~~701—10.8(421)~~ 701—10.7(421) for statutory exceptions to penalty.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

ITEM 7. Amend rule 701—10.79(453A) as follows:

701—10.79(453A) Request for statutory exception to penalty. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for exception seeking that the penalty be waived. The request must be in the form of a letter or affidavit and must contain all facts alleged by the taxpayer and a reason for why the taxpayer qualifies for the exceptions. See rule ~~701—10.8(421)~~ 701—10.7(421).

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.