

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

The Revenue Department hereby proposes to amend Chapter 38, “Administration,” and Chapter 46, “Withholding,” 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 sections 421.27, 422.16 and 422.25 and 2022 Iowa Acts, House File 2552.

Purpose and Summary

This proposed rule making is intended to implement statutory changes to the penalty imposed on payers of withholding who fail to file income statements with the Department. Payers of withholding will now be penalized \$500 for each instance of willful failure to file an income statement with the Department. This rule making also implements a statutory change that eliminates the requirement that payers of withholding submit an annual summary of withholding payments. Further, this rule making eliminates references to responsible parties and amends other provisions related to withholding registration to better conform with how withholding registration is administered by the Department. Finally, this rule making amends language regarding filing of returns to better conform with how withholding filings are administered by the Department and to make the rules easier to read.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement. The final Fiscal Note for 2022 Iowa Acts, House File 2552, did not indicate any fiscal 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 October 11, 2022. Comments should be directed to:

Kurt Konek
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.587.0440
Email: kurt.konek@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:

October 11, 2022
12:30 to 1:30 p.m.

Via video/conference call

Persons who wish to participate in the video/conference call should contact Kurt Konek before 8 a.m. on October 11, 2022, to facilitate an orderly hearing. A video link or conference call number will be provided to participants prior to the hearing.

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. Rescind subrule **38.1(8)**.

ITEM 2. Amend paragraph **46.1(1)“c”** as follows:

c. Exemption from withholding. An employer may be relieved of the responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the current tax year.

An employee who anticipates no Iowa income tax liability for the current tax year shall file with the employer a withholding allowance certificate claiming exemption from withholding. An employee who meets this criterion may claim an exemption from withholding at any time; however, this exemption from withholding must be renewed by February 15 of each tax year that the criterion is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. ~~See subrule 46.3(2)~~ Subrule 46.3(3) contains more information.

ITEM 3. Amend rule 701—46.3(422) as follows:

701—46.3(422) Forms, returns, and reports.

46.3(1) Definitions. For the purposes of this rule, the following definitions apply.

“GovConnectIowa” means the e-services portal of the department of revenue.

“Income statement” means a statement that conforms to the requirements of Iowa Code section 422.16(7) “a.” An income statement includes, but is not limited to, Internal Revenue Service (IRS) Form W-2, IRS Form 1099, and IRS Form W-2G.

“Payee” means an employee or other person who had Iowa income tax withheld pursuant to Iowa Code section 422.16.

“Payer” means an employer or other person required to withhold and remit Iowa income tax pursuant to Iowa Code section 422.16.

46.3(1) 46.3(2) Employer Withholding registration.

a. Every employer or payer required to deduct and withhold Iowa income tax must register with the department of revenue by filing an “Iowa Business Tax Registration Form.” Iowa Business Tax Registration Form either on a paper form available online at tax.iowa.gov or through GovConnectIowa. The form shall indicate the employer’s or payer’s federal employer identification number. If an employer or a payer has not received a federal employer’s employer identification number, the department will issue a temporary identification number. The employer or payer must notify the department when of the payer’s federal employer identification number is once the number has been assigned. If a payer fails to provide the payer’s federal employer identification number, the department may cancel the payer’s withholding registration.

When initial payment of wages subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer’s or payer’s federal employer’s identification number is assigned by the Internal Revenue Service, the Iowa business tax registration form shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the form.

b. If an employer a payer deducts and withholds Iowa income tax but does not file the Iowa business tax registration form Business Tax Registration Form, the department may register the employer payer using the best information available. If an employer a payer uses a service provider to report and remit Iowa withholding tax on behalf of the employer payer, the department may use information obtained from the service provider to register the employer payer if an Iowa business tax registration form Business Tax Registration Form is not filed. This information would include, but is not limited to, the name, address, federal employer’s employer identification number, filing frequency, and withholding agent and responsible party(ies) contact of the employer payer.

46.3(2) 46.3(3) Allowance certificate.

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee’s withholding allowance certificate (IA W-4) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish a certificate, the employee shall be considered as claiming no withholding allowances. See ~~subrule 46.3(4) for~~ Subrule 46.3(5) contains information on Form IA W-4P₂ which is to be used by payers of pensions, annuities, deferred compensation, individual retirement accounts and other retirement incomes.

The employer must submit to the department of revenue a copy of a withholding allowance certificate received from an employee if:

(1) and (2) No change.

b. to e. No change.

46.3(3) 46.3(4) Reports and payments of income tax withheld.

a. Returns of income tax withheld from wages.

(1) Quarterly returns. Every withholding agent payer required to withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which tax is withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The withholding agent’s “Quarterly Withholding payer’s Iowa Withholding Tax Quarterly Return is the form prescribed for making the return required under this paragraph. Monthly tax deposits or semimonthly tax deposits may be required in addition to quarterly returns. See ~~subparagraphs~~ Subparagraphs (2) and (3) of paragraph 46.3(3) “a.” 46.3(4) “a” contain more information about monthly

and semimonthly tax deposits. In some circumstances, only an annual return and payment of withheld taxes will be required; see paragraph 46.3(3) “c.”. Paragraph 46.3(4) “c” contains more information on annual reporting.

Payments shall be based upon the tax required to be withheld and must be remitted in full.

A withholding agent payer is not required to list the name(s) of the agent’s employee(s) payee(s) when filing quarterly returns, ~~nor is the withholding agent required to show on the employee’s paycheck or voucher the amount of Iowa income tax withheld.~~

If a withholding agent’s payer’s payroll is not constant, and the agent payer finds that no ~~wages or other compensation income~~ was paid during the current quarter, the agent payer shall enter the numeral “zero” on the return and submit the return as usual.

(2) Monthly deposits. Every withholding agent payer required to file a quarterly withholding return shall also file a monthly deposit if the amount of tax withheld during any calendar month exceeds \$500, but is less than \$10,000. ~~A withholding agent needs to file a monthly deposit even if no payment is due.~~ No monthly deposit is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly deposit for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter, and no monthly deposit need be filed for such month.

(3) Semimonthly deposits. Every withholding agent payer who withholds more than \$5,000 in a semimonthly period must file a semimonthly tax deposit. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly deposits are required, a withholding agent payer must still file a quarterly return.

(4) Final returns. A withholding agent payer who in any return period permanently ceases doing business shall file the returns required by subparagraphs (1), (2) and (3) of paragraph ~~46.3(3) “a”~~ 46.3(4) “a” as final returns for such period. The withholding agent payer shall cancel the withholding tax registration by ~~notifying the department~~ submitting the Iowa Business Tax Cancellation Form or by canceling the registration using GovConnectIowa.

b. Time for filing returns.

(1) Quarterly returns. Each return required by subparagraph ~~46.3(3) “a”(1)~~ 46.3(4) “a”(1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) Monthly tax deposits. Monthly deposits required by subparagraph ~~46.3(3) “a”(2)~~ 46.3(4) “a”(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter for the first and second months of each calendar quarter, respectively.

(3) Semimonthly tax deposits. Semimonthly deposits required by subparagraph ~~46.3(3) “a”(3)~~ 46.3(4) “a”(3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month. The semimonthly deposits required by subparagraph ~~46.3(3) “a”(3)~~ 46.3(4) “a”(3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld.

~~For withholding that occurs on or after January 1, 2005, quarterly~~ Quarterly returns, amended returns, monthly deposits and semimonthly deposits shall be made electronically in a format and by means specified by the department of revenue. Tax payments are considered to have been made on the date that the tax is transmitted and released ~~by the vendor~~ to the department. For withholding that occurs on or after January 1, 2022, tax payments shall be made using GovConnectIowa.

(4) Determination of filing status payment frequency. ~~Effective July 1, 2002, the~~ The department and the department of management have the authority to change filing payment thresholds by department rule. This paragraph sets forth the filing payment thresholds and frequencies for each filer payer based on the amount withheld ~~for withholding that occurs on or after January 1, 2003.~~

The following criteria will be used ~~by the department~~ to determine if a change in filing status payment frequency is warranted.

<u>Filing Status</u> <u>Payment</u> <u>Frequency</u>	<u>Threshold</u>	<u>Test Criteria</u>
Semimonthly	Greater than \$120,000 in annual withholding taxes (more than \$5,000 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$30,000.
Monthly	Between \$6,000 and \$120,000 in annual withholding taxes (more than \$500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.
Quarterly	Less than \$6,000 in annual withholding taxes.	Tax remitted in 3 of most recent 4 quarters examined is less than \$1,500 per quarter.
Annual	Less than 3 employees.	

~~When it is determined that a withholding agent's filing status is to be changed, the withholding agent shall be notified in writing. A withholding agent has the option of requesting, within 30 days of the department's notice of a change in filing frequency, that the withholding agent file more or less frequently than required by the department.~~

~~1. To request filing to pay on a less frequent basis than assigned by the department required, the request must be in writing and submitted to the department. A withholding agent's payer's written request to be allowed to file pay less frequently than the filing status assigned by the department will be reviewed by the department, and a written determination will be issued to the withholding agent payer who made the request. A change in assigned filing status payment frequency to file pay on a less frequent basis will be granted in only two instances:~~

- ~~• Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.~~
- ~~• Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.~~

~~If a payer is permitted to pay on a less frequent basis, the payer must begin to pay on the less frequent basis at the start of the next quarter unless the payer is permitted to pay annually, in which case the payer must submit future payments in accordance with paragraph 46.3(4) "c."~~

~~2. A withholding agent payer may also request to file pay more frequently than assigned by the department required. This request may be made orally, in writing, in person, or by telephone. No request is required to be made to pay on a more frequent basis.~~

~~3. The department and the department of management may perform a review of filing payment frequency thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing payment frequency thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.~~

~~(5) Amended return. If the amount of Iowa income tax withheld and remitted to the department of revenue for the year is different than the withheld tax and withholding credits claimed, the payer must report the difference on an amended return and, if the return shows less tax withheld and remitted than shown due, the payer must submit payment to the department.~~

c. Reporting annual withholding.

~~(1) Any withholding agent payer who does not have employee withholding but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of paragraph 46.3(3) "a," 46.3(4) "a," if these distributions are made annually in one calendar~~

quarter. These ~~withholding agents~~ payers need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld, ~~and make the required year-end reports.~~

(2) Every ~~withholding agent~~ payer employing not more than two individuals and who expects to employ either or both for the full calendar year may pay with the ~~withholding tax return~~ Iowa Withholding Tax Quarterly Return due for the first calendar quarter of the year the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The ~~withholding agent~~ payer shall advise the department of revenue that annual reporting is contemplated and shall also state the number of persons employed. The ~~withholding agent~~ payer shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. The ~~withholding agent~~ payer shall be entitled to recover from the employee(s) any part of such lump-sum payment that represents an advance to the employee(s). If a ~~withholding agent~~ payer pays a lump sum with the first quarterly return, the ~~agent~~ payer shall be excused from filing further quarterly returns for the calendar year involved unless the ~~agent~~ payer hires other or additional employees. The “Verified Summary of Payments Report” shall be filed at the end of the tax year.

d. Reports for employee Furnishing income statements to payee.

(1) General rule. Every ~~employer~~ payer required to deduct and withhold income tax from compensation of an ~~employee~~ payee must furnish to each ~~employee~~ payee with respect to the ~~compensation~~ income paid in Iowa by such ~~employer~~ payer during the calendar year, ~~a~~ an income statement containing the following information: the name, address, and ~~federal employer taxpayer~~ identification number of the ~~employer~~ payer; the name, address, and ~~social security taxpayer~~ identification number of the ~~employee~~ payee; the total amount of ~~compensation~~ taxable income paid in Iowa; ~~and~~ the total amount deducted and withheld as tax under subrule 46.1(1); and the total amount of federal income tax withheld.

(2) Form of income statement. The information required to be furnished to an ~~employee~~ payee under the preceding paragraph shall be furnished on an ~~Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as “combined W-2.”~~ the appropriate IRS form including but not limited to IRS Form W-2 and IRS Form 1099. Any reproduction, modification, or substitution for a ~~combined W-2~~ an IRS form by the ~~employer~~ payer must be approved by the department. ~~Employers~~ Payers should keep copies of the ~~combined W-2~~ income statements for four years from the end of the year for which the ~~combined W-2~~ applies income statements apply.

(3) Time for furnishing an income statement. Each income statement required by paragraph 46.3(4) “d” to be furnished for a calendar year and each corrected income statement required for any prior year shall be furnished to the ~~employee~~ payee on or before January 31 of the year succeeding such calendar year, or if an employee’s employment is terminated before the close of a calendar year without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee, but not later than January 31 of the following year. ~~See paragraph 46.3(3) “e” for Paragraph 46.3(4) “e” contains provisions relating to the filing of copies of the combined W-2 certain income statements with the department of revenue, and see subparagraph 46.3(3) “f”(1) for the provision relating to filing W-2 forms with the department for tax year 2019 and all subsequent tax years.~~

(4) Corrections. An ~~employer~~ A payer must furnish a corrected ~~combined W-2~~ income statement to an ~~employee~~ payee if, after the original statement has been furnished, an error is discovered in either the amount of ~~compensation~~ income shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. ~~Such~~ The corrected statement shall be marked “corrected by the employer.” ~~See paragraph 46.3(3) “e” for provisions relating to the filing of a corrected combined W-2 with the department.~~

(5) Undelivered ~~combined W-2~~ income statements. Any ~~employee’s~~ payee’s copy of the ~~combined W-2~~ income statement which, after reasonable effort, cannot be delivered to an ~~employee~~ payee shall be transmitted to the department with a letter of explanation.

(6) ~~Lost or destroyed. If the combined W-2 income statement is lost or destroyed, the employer payer shall furnish a substitute copy to the employee payee. The copy shall be clearly marked "Reissued by Employer."~~

(7) Penalty. A willful failure to meet the furnishing requirements set out in this paragraph will subject payers to the penalty under Iowa Code section 422.16(10) "a." Rule 701—46.5(422) contains more information about this penalty.

e. Annual verified summary of payments reports.

(1) ~~Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), and 46.4(1) is to furnish to the department of revenue on or before February 15 following the tax year an annual Verified Summary of Payments Report (VSP).~~

~~The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental new jobs credits, accelerated career education credits and targeted jobs credits claimed on withholding returns for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding remitted to the department of revenue for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to report the additional withholding tax due on an amended return and submit payment to the department.~~

~~If the Iowa income tax shown as withheld on the W-2 forms and 1099 forms issued for the tax year is less than the amount of withholding tax remitted to the department of revenue by the withholding agent, the agent should file an amended return with the department reflecting the excess tax paid.~~

(2) ~~For VSP forms filed with the department of revenue for the year 2000 through the year 2016, the withholding agents are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2013, the request is valid if the request is postmarked, faxed or made on or before December 31, 2016.~~

(3) ~~Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).~~

f. e. W-2 forms. Filing income statements with the department.

(1) For tax year 2019 and all subsequent tax years, all withholding agents payers are required to electronically file all W-2 forms, W-2G forms, and 1099 forms for employees payees from whom Iowa income tax was withheld with the department of revenue on or before February 15 following the tax year. Income statements for tax years beginning on or after January 1, 2022, must be filed using GovConnectIowa.

(2) ~~The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.~~

(2) Corrections. A payer must file a corrected income statement with the department if, after the original statement has been filed, an error is discovered in either the amount of income shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. The corrected statement shall be marked "corrected."

(3) Penalty. Failure A willful failure to meet the filing requirements set out in Iowa Code section 422.16 and this paragraph will subject withholding agents payers to the penalties under Iowa Code section 422.16(10). Rule 701—46.5(422) contains more information about this penalty.

(4) Other income statements. Any income statement not listed in this paragraph that cannot be submitted electronically must be filed with the department by mail on or before February 15 following the tax year.

(5) Extension. The director or the department employee designated by the director may allow a 30-day extension of time for filing income statements with the department in the case of illness, disability, or absence, or if good cause is shown. To apply for an extension, a payer shall use the form available on the department website.

~~g. 1099 forms and W-2G forms.~~

~~(1) For tax year 2019 and all subsequent tax years, all withholding agents are required to electronically file all 1099 forms and W-2G forms for persons from whom Iowa income tax was withheld on or before February 15 following the tax year.~~

~~(2) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.~~

~~(3) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).~~

~~h. f. Withholding deemed to be held in trust. Funds withheld from wages income for Iowa income tax purposes are deemed to be held in trust for payment to the department of revenue. The state and the department shall have a lien upon all the assets of the employer payer and all the property used in the conduct of the employer's payer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien may exempt the property from the lien granted to Iowa by requiring the employer payer to obtain a certificate from the department, certifying that such employer payer has posted with the department security for the payment of the amounts withheld under this rule.~~

~~i. g. Payment of tax deducted and withheld. The amount of tax shown to be due on each deposit or return required to be filed under subrule 46.3(3) 46.3(4) shall be due on or before the date on which such deposit or return is required to be filed.~~

~~j. h. Correction of underpayment or overpayment of taxes withheld.~~

~~(1) Underpayment. If a return is filed for a return period under rule 701—46.3(422) and less than the correct amount of tax is reported on the return and paid to the department, the employer payer shall report and pay the additional amount due by filing an amended withholding tax return Iowa Withholding Tax Quarterly Return.~~

~~(2) Overpayment. If an employer a payer remits more than the correct amount of tax for a return period, the employer must payer may file an amended withholding tax return Iowa Withholding Tax Quarterly Return and request a refund of the withholding tax paid which was not due.~~

~~46.3(4) 46.3(5) Iowa W-4P—withholding certificate for pension or annuity payments.~~

~~a. For payments made from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payers of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld to the extent the monthly payment amount is \$500 or less or the taxable amount per month is \$500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—40.47(422). In addition, no state income tax is required to be withheld to the extent the monthly payment amount is \$1,000 or less or the taxable amount per month is \$1,000 or less if the payee is married and eligible for the retirement benefits exclusion described in rule 701—40.47(422).~~

~~b. Form IA W-4P is available from the department for payers of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$6,000 to \$12,000 exclusion is considered. Note that the \$6,000 to \$12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$6,000 to \$12,000 in payments made in the year to an individual. If an individual receives retirement benefits and has not completed Form IA W-4P, the payer is directed to withhold Iowa income tax from the retirement benefit payment after a \$6,000 exclusion is allowed on an annual basis.~~

~~c. Payers of retirement benefits that want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.~~

~~d. The payers are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payers cannot accept a request for exemption from the withholding of state income tax~~

made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.

This rule is intended to implement Iowa Code sections 422.7 and 422.12C, and section 422.16 as amended by 2007 Iowa Acts, House File 904, section 3 ~~2022 Iowa Acts, House File 2552.~~

ITEM 4. Amend rule 701—46.5(422) as follows:

701—46.5(422) Penalty and interest.

46.5(1) Definitions. For the purposes of this rule, the following definitions apply.

“Income statement” means a statement that conforms to the requirements of Iowa Code section 422.16(7) “a.” An income statement includes, but is not limited to, Internal Revenue Service (IRS) Form W-2, IRS Form 1099, and IRS Form W-2G.

“Payee” means an employee or other person who had Iowa income tax withheld pursuant to Iowa Code section 422.16.

“Payer” means an employer or other person required to withhold and remit Iowa income tax pursuant to Iowa Code section 422.16.

~~46.5(1)~~ **46.5(2) Penalty.** *Penalties for willful failure to file or furnish an income statement or for willfully filing or furnishing a false or fraudulent income statement. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.*

a. Payers responsible for furnishing an income statement to a payee as described in paragraph 46.3(4) “d” and for filing an income statement with the department as described in paragraph 46.3(4) “e” shall be subject to a \$500 penalty for each instance of any of the following:

(1) Willful failure to furnish an income statement to a payee by January 31 of the year following the year in which income tax is withheld.

(2) Willful failure to file an income statement with the department by February 15 of the year following the year in which income tax is withheld.

(3) Willfully furnishing a false or fraudulent income statement to a payee.

(4) Willfully filing a false or fraudulent income statement with the department.

b. Penalties assessed under this subrule may not be waived.

c. Penalties assessed under this subrule are in addition to any other penalty allowed under law.

46.5(3) Penalties for failure to file a return or failure to pay.

a. Payers are subject to the penalties provided in Iowa Code section 421.27 for failure to file a quarterly return and failure to remit any withholding due. A penalty assessed under Iowa Code section 421.27 is in addition to any penalty assessed under law. Rule 701—10.6(421) contains a further explanation and examples applying the penalties under Iowa Code section 421.27. The penalties imposed under Iowa Code sections 421.27(1), 421.27(2), and 421.27(3) may be subject to waiver. Rule 701—10.7(421) contains details on penalty waivers.

b. Pursuant to Iowa Code section 421.27(4), if the department determines that the payer willfully failed to file or pay with the intent to evade tax or a filing requirement, the penalty shall be 75 percent of the unpaid tax. In this case, the penalty is not subject to waiver.

~~46.5(2)~~ **46.5(4) Computation of interest on unpaid tax.** Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. ~~See rule Rule 701—10.2(421) for the~~ contains more information about the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

~~46.5(3)~~ **46.5(5) Computation of interest on overpayments.** If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

46.5(6) Examples.

EXAMPLE 1: Employer has ten employees, all residing in Iowa. After the close of the tax year, Employer fails to furnish two of its employees with W-2s by January 31 of the following year. Additionally, Employer fails to file any W-2s with the department by February 15 of the following year and does not request an extension. If the department determines that Employer's failures to furnish two W-2s to its employees and file ten W-2s with the department were willful, the department shall assess a penalty in the amount of \$6,000 (12 instances x \$500).

EXAMPLE 2: The same facts as Example 1, but the department determines Employer underpaid its withholding obligations by \$2,000 for the tax year. Employer timely filed its required quarterly returns. In addition to the penalties assessed in Example 1, Employer shall be assessed a penalty of \$100 (5% x \$2,000) for failure to pay, plus interest calculated pursuant to subrule 46.5(5). If the department determines Employer willfully underpaid and filed a false return in order to avoid paying Iowa withholding, the department shall assess a penalty of \$1,500 (75% x \$2,000).

This rule is intended to implement Iowa Code sections 421.27, 422.16, and 422.25.