

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 38, "Administration," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," Chapter 48, "Composite Returns," Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 54, "Allocation and Apportionment," Chapter 59, "Determination of Net Income," Chapter 86, "Inheritance Tax," Chapter 88, "Generation Skipping Transfer Tax," Chapter 89, "Fiduciary Income Tax," and Chapter 104, "Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest," Iowa Administrative Code.

These amendments clarify existing rules and remove obsolete rules or rule provisions.

Item 1 amends rule 701—10.3(422,450,452A) and the implementation clause to provide that interest due on unpaid tax is not subject to waiver.

Item 2 amends subrule 10.8(1) to provide for an additional exception to the penalty for failure to file relating to Iowa inheritance tax if a disclaimer is filed by a beneficiary.

Item 3 amends subrule 10.8(2) to provide for an additional exception to the penalty for failure to pay relating to Iowa inheritance tax if a disclaimer is filed by a beneficiary.

Item 4 rescinds and reserves rules 701—10.20(422,423) and 701—10.21(422,423), which are obsolete rules regarding penalty for retail sales tax.

Item 5 rescinds and reserves rule 701—10.30(423), which is an obsolete rule regarding penalty for use tax.

Item 6 rescinds and reserves rule 701—10.85(422), which is an obsolete rule regarding penalty for inheritance tax.

Item 7 rescinds and reserves rule 701—10.90(451), which is an obsolete rule regarding penalty for estate tax.

Item 8 rescinds and reserves rule 701—10.96(450A), which is an obsolete rule regarding penalty for generation skipping tax. Rule 701—10.97(422) is also rescinded, but the content is adopted as subrule 88.3(15) in Item 45.

Item 9 rescinds and reserves rules 701—10.101(422) and 701—10.102(422), which are obsolete rules regarding penalty for fiduciary income tax. Rule 701—10.103(422) is also rescinded, but the content is adopted as subrule 89.7(1) in Item 47.

Item 10 rescinds and reserves rules 701—10.110(423A) and 701—10.111(423A), which are obsolete rules regarding penalty for hotel and motel tax.

Items 11 and 12 amend subrule 10.115(2) and the implementation clause for rule 701—10.115(421) by citing an Iowa Supreme Court case regarding the application of payments and to provide guidance for the application of payments in situations where more than one tax period is involved.

Item 13 amends rule 701—38.12(422) to remove obsolete provisions regarding the indexation of the standard deduction for inflation for tax years ending prior to January 1, 1996, for individual income tax.

Item 14 amends the introductory paragraph in rule 701—38.14(422) to remove a reference to a Department publication that no longer exists.

Item 15 amends subrule 38.14(2) to remove an obsolete provision regarding tax information that the Department can obtain from the Internal Revenue Service.

Item 16 amends paragraph 40.2(1)“a” to provide that original issue discount on United States Treasury obligations are exempt from Iowa income tax.

Item 17 amends paragraph 40.2(2)“a” to provide that interest from Federal Agricultural Mortgage Corporation obligations is subject to Iowa income tax.

Item 18 amends subrule 40.16(2) to provide that nonresidents of Iowa who earn compensation in Iowa and at least one other state for an airline company or merchant marine company are only subject to the income tax laws of their state of residence.

Item 19 amends subrule 40.16(5) by adding an example regarding how nonresidents of Iowa are taxed on income from intangible personal property for individual income tax.

Item 20 amends subrule 40.21(6) to correct a reference from corporation income tax to individual income tax.

Item 21 amends rule 701—40.30(422) to remove an obsolete provision regarding percentage depletion for tax years beginning before January 1, 1987, and to include the current provision for percentage depletion for tax years beginning on or after January 1, 1987, for individual income tax.

Item 22 amends rule 701—40.31(422) to remove an obsolete provision regarding away-from-home expenses for state legislators for tax years beginning before January 1, 1987, and to include the current provision for away-from-home expenses for state legislators for tax years beginning on or after January 1, 1987, for individual income tax.

Item 23 amends subrule 40.38(8) by citing an Iowa Supreme Court case regarding the capital gains exclusion for individual income tax.

Item 24 amends rule 701—40.43(422) by striking the last unnumbered paragraph.

Item 25 amends subrule 40.46(4) to correct a reference that has changed due to Department reorganization.

Item 26 amends rule 701—40.53(422), introductory paragraph, to provide that the College Savings Iowa Plan and the Iowa Advisor 529 Plan are eligible for deductions related to contributions to the Iowa Educational Savings Plan Trust for individual income tax.

Item 27 rescinds and reserves subrule 41.5(5), which is an obsolete subrule regarding the deduction for payments of tuition and textbooks for individual income tax.

Item 28 amends rule 701—43.8(422), introductory paragraph, to remove an obsolete provision regarding the livestock production credit for individual income tax.

Item 29 rescinds and adopts new subrule 43.8(1) to remove obsolete provisions regarding the livestock production tax credit for individual income tax.

Item 30 rescinds and reserves paragraph 43.8(2)“i,” which is an obsolete provision regarding the livestock production tax credit for individual income tax.

Item 31 amends subrule 46.4(2) to add two new provisions that provide that nonresidents of Iowa who earn compensation in Iowa and at least one other state for an airline company or merchant marine company are not subject to Iowa withholding tax.

Items 32 and 33 amend subrules 48.9(1) and 48.9(2) to clarify the due date of composite returns.

Item 34 amends rule 701—50.1(422), introductory paragraph, to remove obsolete provisions regarding the S corporation apportionment credit.

Item 35 rescinds and reserves rule 701—50.8(422), which is an obsolete subrule regarding the S corporation apportionment credit.

Item 36 amends paragraph 52.1(1)“d” to cite additional court cases and provide additional examples regarding intangible property located or having a situs within Iowa which would create a filing requirement for corporation income tax.

Item 37 amends subrule 52.1(4) to add an additional example regarding the taxation of corporations having only intangible property located or having a situs in Iowa for corporation income tax.

Items 38 and 39 amend subrule 52.5(4), introductory paragraph and paragraphs “a” and “b,” to remove obsolete provisions regarding the alternative minimum tax credit for corporation income tax.

Item 40 amends subrule 52.18(4), introductory paragraph, to provide clarification on what tax period the historic preservation and cultural and entertainment district tax credit can be claimed for corporation income tax.

Items 41 to 43 amend paragraph 54.6(1)“f,” rule 701—54.9(422) and rule 701—59.29(422) to correct references that have changed due to Department reorganization. This is similar to the change in Item 25.

Item 44 adopts new subrules 86.2(11) and 86.2(12) to set forth the penalty and interest provisions for unpaid Iowa inheritance tax.

Item 45 adopts new subrules 88.3(14) and 88.3(15) to set forth the penalty and interest provisions for unpaid Iowa generation skipping transfer tax.

Item 46 adopts new rule 701—89.6(422) to set forth the penalty provisions for unpaid Iowa fiduciary income tax.

Item 47 adopts new subrule 89.7(1) to set forth the interest provisions for unpaid Iowa fiduciary income tax.

Item 48 adopts new rule 701—104.8(423A) to set forth the penalty and interest provisions for unpaid Iowa hotel and motel tax.

Item 49 adopts new rule 701—104.9(423A) to set forth the provisions for waiver of penalty for Iowa hotel and motel tax.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than April 13, 2009, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 31, 2009. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by April 3, 2009.

These amendments are intended to implement Iowa Code chapters 421, 422, 423, and 423A.

The following amendments are proposed.

ITEM 1. Amend rule 701—10.3(422,450,452A) as follows:

701—10.3(422,423,450,452A) Interest on refunds and unpaid tax.

10.3(1) Interest on refunds. For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

10.3(2) Interest on unpaid tax. Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period the government was deprived of the use of money. Therefore, interest due cannot be waived. *Vick v. Phinney*, 414 F.2d 444, 448 (5th CA 1969); *Time, Inc. v. United States*, 226 F.Supp. 680, 686 (S.D. N.Y. 1964); *In Re Jeffco Power Systems*, Dep't of Revenue Hearing Officer decision, Docket No. 77-9-6A-A (1978); *Waterloo Courier, Inc. v. Iowa*

Department of Revenue and Finance, Case No. LACV081252, Black Hawk County District Court, December 30, 1999.

This rule is intended to implement Iowa Code sections 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

ITEM 2. Adopt the following **new** paragraph **10.8(1)“I”**:

l. Effective for estates with disclaimers filed on or after July 1, 2007, penalty will not be imposed for a late-filed Iowa inheritance tax return if the sole reason for the 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.

ITEM 3. Adopt the following **new** paragraph **10.8(2)“i”**:

i. Effective for estates with disclaimers filed on or after July 1, 2007, penalty will not be imposed for failure to pay Iowa inheritance tax if the sole reason for the failure to pay Iowa inheritance tax 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 filing date of the disclaimer pursuant to Iowa Code section 633E.12.

ITEM 4. Rescind and reserve rules **701—10.20(422,423)** and **701—10.21(422,423)**.

ITEM 5. Rescind and reserve rule **701—10.30(423)**.

ITEM 6. Rescind and reserve rule **701—10.85(422)**.

ITEM 7. Rescind and reserve rule **701—10.90(451)**.

ITEM 8. Rescind and reserve rules **701—10.96(450A)** and **701—10.97(422)**.

ITEM 9. Rescind and reserve rules **701—10.101(422)** to **701—10.103(422)**.

ITEM 10. Rescind and reserve rules **701—10.110(423A)** and **701—10.111(423A)**.

ITEM 11. Amend subrule 10.115(2) as follows:

10.115(2) *Partial payments made after notices of assessments are issued.* Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period, then to the penalty, interest, and tax to the next oldest tax period, and so on until the payment is exhausted.

Where there are both agreed- and unagreed-to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed-to items of the examination when all of the penalty, interest, and tax on the agreed-to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed-to items of the examination.

ITEM 12. Amend rule **701—10.115(421)**, implementation sentence, as follows:

This rule is intended to implement ~~1994 Iowa Acts, chapter 1133, section 1~~ Iowa Code section 422.25(4).

ITEM 13. Amend rule 701—38.12(422) as follows:

701—38.12(422) Indexation of the optional standard deduction for inflation. Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor

is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. ~~In determining the annual standard deduction factor for tax years beginning on or after January 1, 1990, but prior to January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the implicit price deflator for the gross national product computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the U.S. Department of Commerce and shall add one-half of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.~~

This rule is intended to implement Iowa Code section 422.4 as amended by 1996 Iowa Acts, Senate File 2449.

ITEM 14. Amend rule 701—38.14(422), introductory paragraph, as follows:

701—38.14(422) Information returns for reporting income payments to the department of revenue. Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody, or disposal of any of the income items described in subrule 38.14(1), ~~are to~~ shall file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, “every person” is every individual who is a resident of this state. For purposes of this rule, “every corporation” includes all corporations ~~who~~ that have a place of business in this state. ~~Information about submitting information returns to the department, including submitting the returns on magnetic tape or diskettes, is included in department of revenue publication, “State of Iowa Income Information Return Reporting Guidelines,” which is available from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.~~

ITEM 15. Amend subrule 38.14(2), introductory paragraph, as follows:

38.14(2) Information on income payments available from the Internal Revenue Service. The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year, ~~to the extent the income payments were made to residents of Iowa. Therefore, those entities making income payments to nonresidents of Iowa will not be relieved of the responsibility for making information returns to the department on those payments, because of the availability of information on income payments from the IRS.~~ The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

ITEM 16. Amend paragraph **40.2(1)“a”** as follows:

a. United States Government obligations: United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation

ITEM 17. Amend paragraph **40.2(2)“a”** as follows:

- a. Federal agency obligations:*
1. Federal or State Savings and Loan Associations
 2. Export-Import Bank of the United States

3. Building and Loan Associations
4. Interest on federal income tax refunds
5. Postal Savings Account
6. Farmers Home Administration
7. Small Business Administration
8. Federal or State Credit Unions
9. Mortgage Participation Certificates
10. Federal National Mortgage Association
11. Federal Home Loan Mortgage Corporation (Freddie Mac)
12. Federal Housing Administration
13. Federal National Mortgage Association (Fannie Mae)
14. Government National Mortgage Association (Ginnie Mae)
15. Merchant Marine (Maritime Administration)
16. Federal Agricultural Mortgage Corporation (Farmer Mac)

ITEM 18. Amend subrule **40.16(2)**, seventh unnumbered paragraph, as follows:

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to ~~the Amtrak Reauthorization and Improvement Act of 1990~~ federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a merchant marine company, or for a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

ITEM 19. Amend subrule **40.16(5)** by adopting the following **new** example:

EXAMPLE G - A nonresident is a partner in a family partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make the decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would be included in net income allocated to Iowa since it was derived from a business carried on within the state. *Jensen, Herman A. & Vineta L.*, Docket No. 88-20-1-0014, Letter of Findings (1992).

ITEM 20. Amend subrule 40.21(6) as follows:

40.21(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa ~~corporation~~ individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

ITEM 21. Amend rule 701—40.30(422) as follows:

701—40.30(422) Percentage depletion. ~~For tax years beginning on or after January 1, 1986, but before January 1, 1987, add to net income the amount that percentage depletion of an oil, gas, or geothermal~~

~~well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code. For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.~~

This rule is intended to implement Iowa Code section 422.7.

ITEM 22. Amend rule 701—40.31(422) as follows:

~~**701—40.31(422) Away-from-home expenses of state legislators.** For tax years beginning on or after January 1, 1981, but before January 1, 1987, state legislators may claim a deduction on the Iowa return of up to \$50 per “legislative day” for away from home expenses incurred in performing the trade or business of a state legislator. For purposes of this deduction, a “legislative day” is any day during a tax year in which the legislature was in session (includes any day in which the legislature was not in session for a period of four consecutive days) or any day in which the legislature was not in session, but the legislator’s physical presence was formally recorded at a committee meeting of the legislature. For federal income tax purposes, there is a requirement that in order for a state legislator to deduct away from home expenses, the state legislator’s personal residence in the legislative district must be more than 50 miles from the state capitol. However, legislators may claim the deduction for away from home expenses on their state returns even in instances when their personal residences are less than 50 miles from the state capitol. State legislators whose away from home expenses such as expenses for food and lodging exceed \$50 per legislative day may claim deductions for these expenses if they itemize these expenses when they file their state returns. For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.~~

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

ITEM 23. Amend subrule **40.38(8)**, eleventh unnumbered paragraph, as follows:

Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain exclusion. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

ITEM 24. Amend rule **701—40.43(422)**, second unnumbered paragraph, as follows:

~~For purposes of this exemption, a member of the caregiver’s family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great grandparent, and lineal descendant such as grandchild and great grandchild, and those previously described relatives that are related by marriage or adoption. Those licensed health care professionals that are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, and audiologists.~~

ITEM 25. Amend subrule **40.46(4)**, first unnumbered paragraph, as follows:

The request for an alternative method should be filed with the ~~Policy Section, Compliance~~ Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

ITEM 26. Amend rule 701—40.53(422), introductory paragraph, as follows:

701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted. The Iowa educational savings plan trust was created so that individuals can contribute funds on behalf of beneficiaries in accounts administered by the ~~secretary~~ treasurer of state to cover future higher education costs of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted.

ITEM 27. Rescind and reserve subrule **41.5(5)**.

ITEM 28. Amend rule 701—43.8(422), introductory paragraph, as follows:

701—43.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers. For tax years beginning on or after January 1, 1996, corporate and individual taxpayers who own certain livestock, have livestock production operations in Iowa in the tax year, and who meet certain qualifications are eligible for a livestock production credit refund. The amount of a livestock production credit refund is determined by adding together for each head of livestock in the taxpayer's operation the product of 10 cents for each corn equivalent deemed to have been consumed by that animal in the taxpayer's operation in the tax year. ~~However, for tax years beginning in the 1996 and the 1997 calendar years, only qualified taxpayers that have cow-calf livestock production operations described in paragraph "i" of subrule 43.8(2) will be eligible for the livestock production credit refunds and for~~ For tax years beginning on or after January 1, 1998, only qualified taxpayers that have cow-calf livestock operations described in paragraph "o" of subrule 43.8(2) will be eligible for the livestock production refunds, notwithstanding the other types of livestock operations mentioned in this rule. Note that the livestock production credit refund is also available to taxpayers who meet the qualifications described in subrule 43.8(1) and operate certain types of poultry operations in this state and own the poultry in the operations. The amounts of the livestock production credit refunds for these taxpayers are determined on the basis of 10 cents for each corn equivalent deemed to have been consumed by the chickens or the turkeys in the taxpayers' poultry operations in the tax year. However, the amount of livestock production credit refund may not exceed \$3,000 per livestock or poultry operation for a tax year. In addition, the amount of livestock production credit refund per taxpayer for a tax year may not exceed \$3,000. Therefore, if a particular taxpayer is involved in a cow-calf beef operation, a sheep-ewe flock operation, and a farrow-to-finish hog operation, the maximum livestock production credit refund for this taxpayer may not exceed \$3,000.

ITEM 29. Rescind subrule 43.8(1) and adopt the following **new** subrule in lieu thereof:

43.8(1) Qualifications for the livestock production credit refunds. For tax years beginning on or after January 1, 1997, individual and corporate taxpayers will be eligible for the livestock production credit refund if the taxpayer's federal taxable income is \$99,600 or less. In the case of married taxpayers, their combined federal taxable income must be considered to determine if they are eligible for the credit.

For each tax year beginning after 1997, the federal taxable income specified previously in this subrule shall be multiplied by the cumulative index factor for that tax year to calculate the federal taxable income

that will be used to determine whether a taxpayer is eligible for the livestock production refund that is authorized for that tax year. "Cumulative index factor" means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The annual index factor equals the annual inflation factor for that calendar year as computed in Iowa Code section 422.4 for purposes of indexation of the tax rates for individual income tax.

ITEM 30. Rescind and reserve paragraph **43.8(2)"i."**

ITEM 31. Amend subrule **46.4(2)** by adopting the following new numbered paragraphs "**13**" and "**14**":

13. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa and one or more states for an airline company. In accordance with Public Law 103-272 enacted by Congress, airline employees who are nonresidents of Iowa are subject only to the income tax laws of their states of residence or the state in which they perform 50 percent or more of their duties.

14. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa for a merchant marine company. In accordance with Public Law 106-489 enacted by Congress, interstate waterway workers who are nonresidents of Iowa are subject only to the income tax laws of their states of residence.

ITEM 32. Amend subrule 48.9(1) as follows:

48.9(1) A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the ~~taxpayer's taxable tax year~~ of the partners, shareholders, employees, beneficiaries, estates or trusts included in the composite return, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or legal holiday, the composite return is due the first business day following the Saturday, Sunday, or legal holiday. If a return is placed in the mail, properly addressed, postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Composite Return Processing, Department of Revenue, P.O. Box 10469, Des Moines, Iowa 50306.

ITEM 33. Amend subrule 48.9(2), introductory paragraph, as follows:

48.9(2) Extension of time for filing composite returns. ~~If the taxpayer has paid at least 90 percent of the tax required to be shown due~~ has been paid by the due date and ~~has not filed a~~ no return was filed by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa Tax Voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

ITEM 34. Amend rule 701—50.1(422), introductory paragraph, as follows:

701—50.1(422) Apportionment of income for resident shareholders of S corporations. ~~For tax years beginning on or after January 1, 1996, and before January 1, 1998, resident shareholders of S corporations which are value added corporations and which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1998, resident shareholders of all S corporations which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1996, and before January 1, 1997, in order to take advantage of this provision, the taxpayers must first file their return reporting all income to Iowa and then file a refund claim based on allocation and~~

~~apportionment.~~ Estates and trusts which are shareholders in S corporations cannot take advantage of these apportionment provisions.

ITEM 35. Rescind and reserve rule **701—50.8(422)**.

ITEM 36. Amend paragraph **52.1(1)“d”** as follows:

d. Intangible property located or having a situs within Iowa. Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico*, 131 P. 3d 27 (N.M. Ct. App. 2001), rev’d on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.*, 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson*, 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J.Super.A.D. 2005), aff’d, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S. Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission*, 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm’r*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue*, 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

ITEM 37. Adopt the following new example in subrule **52.1(4)**:

EXAMPLE 9: J, a corporation with a commercial domicile in State X, earns income from mortgages that the corporation has purchased. J has no physical presence in Iowa and no other contact with Iowa. J earns interest income from the mortgages on property located in Iowa. Under these circumstances, the interest income is an integral part of business activity in Iowa. Accordingly, J is required to file an Iowa income tax return and include the interest income from the mortgages related to Iowa property in the numerator of the apportionment factor.

ITEM 38. Amend subrule 52.5(4), introductory paragraph, as follows:

52.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, ~~by a taxpayer~~ can be claimed as a tax credit against the taxpayer’s regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. ~~However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are “deferral items” qualifies for the minimum tax credit for tax years beginning before January 1, 1990. “Deferral items” are those tax preferences and adjustments which result in a temporary change in a taxpayer’s tax liability. An example of a “deferral item” is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the “exclusion item” for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state “exclusion~~

item,” although there are several “exclusion items” which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1990, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between “deferral items” and “exclusion items.” The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

ITEM 39. Amend paragraphs 52.5(4)“a” and “b” as follows:

a. *Computation of minimum tax credit on Form Schedule IA 8801C 8827.* The minimum tax credit is computed on Form Schedule IA 8801C 8827 from information on Form Schedule IA 4626 for the prior tax year years, from Form IA 1120 and Form Schedule IA 4626 for the current year and from Form Schedule IA 8801C 8827 for the prior tax year (applies in 1989 and in subsequent tax years) years.

Form IA 8801C is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated property charitable deduction. In the second portion of Form IA 8801C, the minimum tax attributable to the appreciated property charitable deduction from Part I, is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from the IA 8801C for the prior tax year, if any. This total is compared to the regular income tax liability less the credits set forth in Iowa Code section 422.33, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801C is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to the deferral items and the carryover credit from the prior tax years.

b. — EXAMPLE. Taxpayer had a 1989 taxable income of \$300,000 and an accelerated depreciation tax preference of \$80,000. In 1988 the taxpayer had taxable income of \$345,000 and tax preferences of \$145,000 which consisted of \$110,000 of accelerated depreciation and \$35,000 of appreciated property charitable deduction. The minimum tax credit for 1989 was computed on Form IA 8801C using data from IA 4626 for 1988 and from IA 4626 for 1989 and IA 1120 for 1989.

Form IA 8801C

Part I.	Computation of Minimum Tax on Exclusion Items	
Line 11	- Gross tax on exclusion items	-0-
Line 12	- Less regular tax minus credits	\$33,900
Line 13	- Net minimum tax on exclusion items	-0-
Part II.	Computation of Allowable Credit for 1989	
Line 14	- Enter amount from line 17 IA 4626 for 1988	\$ 1,380
Line 15	- Enter amount from line 13 part I	-0-
Line 16	- Subtract line 15 from line 14	\$ 1,380
Line 17	- Enter credit carryforward from 1987	-0-
Line 18	- Add lines 16 and 17	\$ 1,380
Line 19	- Enter 1989 regular tax liability	\$28,500
Line 20	- Enter 1989 tentative minimum tax	\$27,360
Line 21	- Subtract line 20 from line 19	\$ 1,140
Line 22	- Allowable minimum tax credit for 1989. Enter smaller of line 18 or 21.	\$ 1,140
Part III.	Computation of Minimum Tax Credit Carryovers	

Line 23	- Enter amount from line 18 part II	\$ 1,380
Line 24	- Enter amount from line 22 part II	\$ 1,140
Line 25	- Carryforward of minimum tax credit to 1990. Subtract line 24 from line 23.	\$ 240

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits of \$8,000 and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits of \$8,000 and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

ITEM 40. Amend subrule 52.18(4), introductory paragraph, as follows:

52.18(4) *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office, in consultation with the Iowa department of economic development, ~~is to~~ shall issue a historic preservation and cultural and entertainment district tax credit certificate, which ~~is to~~ shall be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is the later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

ITEM 41. Amend paragraph **54.6(1)"f,"** first unnumbered paragraph, as follows:

If a taxpayer does not believe that the method of apportionment set forth in this subrule reasonably attributes income to business activities within Iowa, the taxpayer may request the use of an alternative method of apportionment. The request must be filed at least 60 days before the due date of the return, considering any extensions of time to file, in which the taxpayer wishes to use an alternative method of apportionment. The request should be filed with ~~Policy Section, Compliance~~ Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. The taxpayer must set forth in detail the extent of the taxpayer's business operations within and without the state, along with the reasons why the apportionment method set forth in this subrule is inappropriate. In addition, the taxpayer must set

forth a proposed method of apportionment and the reasons why the proposed method of apportionment more reasonably attributes income to business activities in Iowa.

ITEM 42. Amend rule **701—54.9(422)**, seventh unnumbered paragraph, as follows:

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the ~~policy section of the compliance~~ taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

ITEM 43. Amend rule **701—59.29(422)**, seventh unnumbered paragraph, as follows:

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the ~~policy section of the compliance~~ taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

ITEM 44. Adopt the following **new** subrules 86.2(11) and 86.2(12):

86.2(11) Penalties. See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

86.2(12) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the inheritance tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

ITEM 45. Adopt the following **new** subrules 88.3(14) and 88.3(15):

88.3(14) Penalties. See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

88.3(15) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the federal generation skipping transfer tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

ITEM 46. Adopt the following **new** rule 701—89.6(422):

701—89.6(422) Penalties. See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

ITEM 47. Adopt the following **new** subrule 89.7(1):

89.7(1) Interest on unpaid tax. Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate described in rule 701—10.2(421). Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

ITEM 48. Adopt the following **new** rule 701—104.8(423A):

701—104.8(423A) Interest and penalty.

104.8(1) Penalties. See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

104.8(2) Interest. Tax not paid by the due date of the return shall draw interest at the rate described in rule 701—10.2(421). Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

ITEM 49. Adopt the following **new** rule 701—104.9(423A):

701—104.9(423A) Request for waiver of penalty. See rule 701—10.6(421) for the statutory provisions to penalty for tax periods beginning on or after January 1, 1991.