

Sec. 8. Section 384.12, subsection 10, Code 2003, is amended to read as follows:

10. A tax for the operation and maintenance of a municipal transit system or for operation and maintenance of a regional transit district, and for the creation of a reserve fund for the system or district, in an amount not to exceed ninety-five cents per thousand dollars of assessed value each year, when the revenues from the transit system or district are insufficient for such purposes, ~~but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system.~~

Approved April 14, 2004

CHAPTER 1073

ADMINISTRATION OF TAX POLICY AND RELATED INTERNAL REVENUE CODE REVISIONS

S.F. 2296

AN ACT relating to the policy administration of the tax and related laws by the department of revenue, including administration of and substantive changes to the state individual income, corporate income, sales, use, property, inheritance, motor fuel, special fuel, cigarette, and tobacco taxes and including penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 15.335, subsection 4, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 2. Section 15A.9, subsection 8, paragraph e, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 3. Section 421.1, subsection 4, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Judicial review of the decisions or orders of the board resulting from the review of decisions or orders of the director of revenue for assessment and collection of taxes by the department may be sought by the taxpayer or the director of revenue in accordance with the terms of chapter 17A.

Sec. 4. Section 421.17, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28. To place on the department's official website the official electronic state of Iowa voter registration form and a link to the Iowa secretary of state's official website.

Sec. 5. Section 421.17A, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Notwithstanding other statutory provisions which provide for the execution, attachment,

garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative levy under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers, employees, or representatives to pursue any other remedy provided by law.

Sec. 6. Section 421.17A, subsection 3, Code Supplement 2003, is amended to read as follows:

3. ~~INITIAL NOTICE OF INTENT TO OBLIGOR.~~ The facility may proceed under this section only if twenty days' notice has been provided to the obligor by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section and of the facility's intention to use the levy process. ~~The facility shall give twenty days' notice of its intention to use the levy process.~~ The ~~twenty-day~~ twenty days' notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

Sec. 7. Section 421.17A, subsection 5, paragraph c, subparagraph (7), Code Supplement 2003, is amended to read as follows:

(7) ~~A The telephone number, address, and contact name of the~~ agent for the facility initiating the action.

Sec. 8. Section 421.17A, subsection 6, Code Supplement 2003, is amended to read as follows:

6. ADMINISTRATIVE LEVY — NOTICE OF INITIATION OF ACTION TO OBLIGOR AND OTHER ACCOUNT HOLDERS.

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 27.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

- (1) The name and social security number of the obligor.
- (2) A statement that the obligor is believed to have an account at the financial institution.
- (3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.
- (4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.
- (5) The prescribed time frames the financial institution must meet in forwarding any amounts.
- (6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.
- (7) The address of the facility and the account number utilized by the facility for the obligor.
- (8) ~~A The telephone number, address, and contact name of the~~ agent for the facility initiating the action.

c. The facility shall forward the notice of initiation of action to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

d. The facility shall notify any other party known to have an interest in the account. The notice shall contain all of the following:

- (1) The name of the obligor.
- (2) The name of the financial institution.

(3) A statement that the account in which the other party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) ~~A The telephone number, address, and contact name of the agent for the facility initiating the action.~~

e. The facility shall forward the notice to the other party known to have an interest by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

Sec. 9. Section 421.17A, subsection 8, paragraphs b, c, and f, Code Supplement 2003, are amended to read as follows:

b. The person challenging the action shall submit a written challenge to the person identified as the ~~contact~~ agent for the facility in the notice, within ten days of the date of the notice of initiation of the levy.

c. The facility, upon receipt of a written challenge, shall review the facts of the ~~case~~ administrative levy with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph "e", either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

Sec. 10. Section 421.17A, subsection 8, Code Supplement 2003, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. Recovery under this section is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

NEW PARAGRAPH. h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the levy can be raised in a challenge to an administrative action under this subsection.

Sec. 11. Section 421.17B, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or the attorney general shall be construed to be an election on the part of the state or any of its officers or representatives to pursue any other remedy provided by law.

~~Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642.~~

The administrative wage assignment is to be considered an additional means of collection

by the facility and not an exclusive means of collection. If the use of an administrative wage assignment is not successful in collecting an outstanding debt due the facility, the facility may use the collection provisions set forth in chapters 626 and 642.

Sec. 12. Section 421.17B, subsection 3, Code Supplement 2003, is amended to read as follows:

3. NOTICE OF INTENT TO THE OBLIGOR.

a. The facility may proceed under this section only if ~~a ten-day~~ twenty days' notice has been provided to the obligor. Notice by the facility may be by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneous with the remainder of or in lieu of the obligor's compensation due from the employer.

The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or all more of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers ~~that the facility seeks to have an assignment of wages from whom an assignment is sought.~~

b. The notice from the facility to the obligor shall contain all of the following:

- (1) The name and social security number of the obligor.
- (2) A statement that the obligor is believed to have employment with the stated employer.
- (3) A statement that pursuant to the provisions of this section, the obligor's wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.
- (4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.
- (5) The prescribed time frames the employer must meet in forwarding any amounts.
- (6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.
- (7) The address of the facility and the account number utilized by the facility for the obligor.
- (8) ~~A The telephone number, address, and contact name of the~~ agent for the facility initiating the action.

Sec. 13. Section 421.17B, subsection 6, paragraph c, subparagraph (7), Code Supplement 2003, is amended to read as follows:

(7) ~~A The telephone number, address, and name of a contact person with the facility of the~~ agent for the facility initiating the action.

Sec. 14. Section 421.17B, subsection 8, paragraphs a, b, c, and f, Code Supplement 2003, are amended to read as follows:

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A ~~unless the challenge is regarding the validity of the assignment. Actions under this section are in equity and not actions at law.~~

b. The obligor challenging the administrative wage assignment shall submit a written challenge to the person identified as the contact agent for the facility in the notice, within ten days of the date of the notice ~~to the obligor~~ of initiation of the assignment.

c. The facility, upon receipt of a written challenge, shall review the facts of the administrative wage assignment with the obligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or

a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

f. The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

Sec. 15. Section 421.17B, subsection 8, Code Supplement 2003, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. Recovery under this subsection is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

NEW PARAGRAPH. h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the assignment can be raised in a challenge to an administrative action under this subsection.

Sec. 16. Section 421.17B, subsection 9, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

~~Expiration~~ Cessation of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

Sec. 17. Section 422.10, subsection 3, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 18. Section 422.33, subsection 5, paragraph d, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 19. Section 422.42, subsection 6, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. That trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product shall not be included if excessive sales tax is not collected from the purchaser. This paragraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

Sec. 20. Section 422A.1, unnumbered paragraph 8, Code Supplement 2003, is amended to read as follows:

The tax levied shall be in addition to any state sales tax imposed under section 422.43. Section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and sections 422.70 to 422.75, consistent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns as prescribed in section 422.51 and for other than quarterly filing of returns as prescribed in section 422.51, subsection 2. The director may require all persons, as defined in section 422.42, who are engaged in the business of deriving gross receipts subject to tax under this chapter, to register with the department. All taxes collected under this chapter by a

retailer or any individual are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

Sec. 21. Section 422B.9, subsection 3, paragraph a, Code Supplement 2003, is amended to read as follows:

a. The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

Sec. 22. Section 423.1, subsection 47, paragraph b, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 94, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (5) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

Sec. 23. Section 423.1, subsection 47, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 94, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

Sec. 24. Section 423.2, subsection 6, unnumbered paragraph 2, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 95, is amended to read as follows:

~~For the purposes of this subsection, the sales price of a lease or rental includes rents, royalties, and copyright and license fees.~~ For the purposes of this subsection, "financial institutions" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

Sec. 25. Section 423.2, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 95, is amended by adding the following new subsection:

NEW SUBSECTION. 11. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa.

Sec. 26. Section 423.3, subsections 33 and 82, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, are amended to read as follows:

33. a. The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative service bureau ~~services agency~~ and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

b. The legislative services agency is not a retailer under this chapter and the sale of items or provision of services by the legislative services agency is not a retail sale under this chapter and is exempt from the sales tax.

82. a. The sales price from the sale or rental of core and ~~making~~, mold making, ~~equipment~~ and sand handling ~~machinery and equipment, including replacement parts,~~ directly and primarily used in the mold making process by a foundry.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electric current, or from the sale of electricity, consumed by core making, mold making, and sand handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

c. The sales price from the furnishing of the design and installation, including electrical and electronic installation, of core making, mold making, and sand handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

Sec. 27. Section 423.3, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, is amended by adding the following new subsection:

NEW SUBSECTION. 43A. The sales price from the sale of wine which is shipped from outside Iowa and which meets the requirements for sales and use tax exemption pursuant to section 123.187.

Sec. 28. Section 424.3, subsection 1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. All taxes or charges collected under this chapter by a depositor or any individual from a receiver or any other individual are considered to be held in trust on behalf of the state of Iowa.

Sec. 29. Section 441.21, subsection 2, Code Supplement 2003, is amended to read as follows:

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value. The property owner shall notify the assessor when property is withdrawn from section 42 eligibility under the Internal Revenue Code. The property shall not be subject to section 42 assessment procedures for the assessment year for which section 42 eligibility is withdrawn. This notification must be provided to the assessor no later than March 1 of the assessment year or the owner will be subject to a penalty of five hundred dollars for that assessment year. The penalty shall be collected at the same time and in the same manner as regular property taxes. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

Sec. 30. Section 450.22, Code 2003, is amended to read as follows:

450.22 ADMINISTRATION AVOIDED — INHERITANCE TAX DUTIES REQUIRED.

1. When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section

450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return.

2. However, this section does not apply and a return is not required to be filed even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, or if the estate exclusively consists of property held in joint tenancy with the right of survivorship solely by the decedent and any individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax and the estate does not have a federal estate tax obligation.

3. However, this section does not apply and a return is not required to be filed, even though real estate is involved, if the estate does not have a federal estate tax filing obligation and if all the estate's assets are described in any of the following categories:

- a. Assets held in joint tenancy with right of survivorship between husband and wife alone.
- b. Assets held in joint tenancy with right of survivorship solely between the decedent and individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.
- c. Assets passing by beneficiary designation, pursuant to a trust intended to pass the decedent's property at death or through any other nonprobate transfer solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

This subsection does not apply to interests in an asset or assets that pass to both an individual listed in section 450.9 and to that individual's spouse.

4. If a return is not required to be filed pursuant to subsection 3, and if real estate is involved, one of the individuals with an interest in, or succeeding to an interest in, the real estate shall file an affidavit in the county in which the real estate is located setting forth the legal description of the real estate and the fact that an inheritance tax return is not required pursuant to subsection 3. If a false affidavit is filed, the affiant and the personal representative shall be jointly and severally liable for any tax, penalty, and interest that may have been due. Any otherwise applicable statute of limitations on the assessment and collection of the tax, penalty, and interest shall not apply.

5. When this section applies, proceedings for the collection of the tax when a personal representative is not appointed shall conform as nearly as possible to proceedings under this chapter in other cases.

Sec. 31. Section 450.37, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

- a. If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue has ~~thirty six~~ thirty six days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the ~~thirty-day~~ sixty-day period, the value listed on the return is the agreed value of the real property.

Sec. 32. Section 450.53, subsections 1 and 2, Code Supplement 2003, are amended to read as follows:

1. a. All personal representatives, except guardians and conservators, and other persons charged with the management or settlement of any estate or trust from which a tax is due under this chapter, shall file an inheritance tax return, within the time limits set by section 450.6, with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and at the time of filing, shall pay to the department of revenue the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate. The owner of the future interest shall file a supplemental inheritance tax return and pay to the department of revenue the tax due within the time limits set in this chapter. The inheritance tax returns shall be in the form prescribed by the director.

b. Notwithstanding paragraph "a", an inheritance tax return is not required to be filed if the estate does not have a federal estate tax filing obligation and if all the estate or trust assets pass solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax. This paragraph is not applicable if interests in the asset passes¹ to both an individual listed in section 450.9 and to that individual's spouse.

2. a. A person in possession of assets to be reported for purposes of taxation, including a personal representative or trustee, who willfully makes a false or fraudulent return, or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law, is guilty of a fraudulent practice. This paragraph does not apply if a return is not required to be filed pursuant to subsection 1, paragraph "b".

b. If a false affidavit is filed, the affiant and the personal representative shall be jointly and severally liable for any tax, penalty, and interest that may have been due. Any otherwise applicable statute of limitations on the assessment and collection of the tax, penalty, and interest shall not apply.

Sec. 33. Section 450.58, Code Supplement 2003, is amended to read as follows:

450.58 FINAL SETTLEMENT TO SHOW PAYMENT.

The 1. Except as provided in subsection 2, the final settlement of the account of a personal representative shall not be accepted or allowed unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that are made payable by the personal representative and to be settled by the account, have been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64.

2. If an inheritance tax return is not required to be filed pursuant to section 450.53, subsection 1, paragraph "b", the personal representative's final settlement of account need not contain an inheritance tax receipt from the department, but shall, instead, contain the personal representative's statement, under oath, that an inheritance tax return is not required to be filed pursuant to section 450.53, subsection 1, paragraph "b". If a false affidavit is filed, the affiant and the personal representative shall be jointly and severally liable for any tax, penalty, and interest that may have been due. Any otherwise applicable statute of limitations on the assessment and collection of the tax, penalty, and interest shall not apply.

3. Any order contravening any provision of this section is void.

Sec. 34. Section 450.94, subsection 2, Code Supplement 2003, is amended to read as follows:

2. The Unless a return is not required to be filed pursuant to section 450.22, subsection 3, or section 450.53, subsection 1, paragraph "b", the taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of a month and before the first day of the following month.

Sec. 35. Section 452A.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7. All excise taxes collected under this chapter by a supplier, restrictive supplier, importer, dealer, blender, user, or any individual are deemed to be held in trust for the state or² Iowa.

Sec. 36. Section 453A.6, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. All excise taxes collected under this division by a distributor, manufacturer, or any individual are deemed to be held in trust for the state of Iowa.

¹ According to enrolled Act

² According to enrolled Act

Sec. 37. Section 453A.11, Code 2003, is amended to read as follows:

453A.11 CANCELLATION OF STAMPS.

Stamps affixed to a package of cigarettes shall not be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of the stamp. However, the director may require such cancellation of the tax stamps affixed to packages of cigarettes which is necessary to carry out properly the provisions of this division. A person who cancels or causes the cancellation of stamps in violation of this section shall be considered in possession of unstamped cigarettes and is subject to the penalty provided in section 453A.31, subsection 1.

Sec. 38. Section 453A.15, subsection 1, Code 2003, is amended to read as follows:

1. The director may prescribe the forms necessary for the efficient administration of this division and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of ~~two~~ three years from the date of each transaction, for the inspection at all times by the department.

Sec. 39. Section 453A.28, Code 2003, is amended to read as follows:

453A.28 ASSESSMENT OF TAX BY DEPARTMENT — INTEREST — PENALTY.

If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed or that any person responsible for paying the tax has not done so as required by this division, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed. Within ~~two~~ three years after the report is filed or within ~~two~~ three years after the report became due, whichever is later, the department shall examine the report and determine the correct amount of tax. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report made with the intent to evade tax, or in the case of a failure to file a report, or if a person purchases or is in possession of unstamped cigarettes.

The ~~two-year~~ three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

Sec. 40. Section 453A.31, subsection 1, paragraphs c, d, and e, Code 2003, are amended to read as follows:

c. A ~~one thousand~~ twenty-five dollar per pack penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.

d. For a second violation within ~~two~~ three years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and ~~two thousand~~ thirty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

e. For a third or subsequent violation within ~~two~~ three years of the first violation, the penalty is six hundred dollars if a person is in possession of more than forty but not more than four

hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and ~~three thousand~~ forty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

Sec. 41. Section 453A.31, subsection 2, paragraphs b and c, Code 2003, are amended to read as follows:

b. A five hundred dollar penalty for a second violation within ~~two~~ three years of the first violation.

c. A thousand dollar penalty for a third or subsequent violation within ~~two~~ three years of the first violation.

Sec. 42. Section 453A.32, subsections 1, 4, and 5, Code 2003, are amended to read as follows:

1. All cigarettes on which taxes are imposed or required to be imposed by this division, which are found in the possession or custody, or within the control of any person, for the purpose of being sold, distributed, or removed by the person in violation of this division, and all cigarettes which are removed ~~or are~~, stored, transported, deposited, or concealed in any place ~~with intent to avoid payment of taxes without the proper taxes paid~~, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal, storage, deposit, concealment, or transportation of cigarettes for ~~such the purpose of avoiding the payment of the proper tax~~, and all equipment or other tangible personal property incident to and used for ~~such the purpose of avoiding the payment of the proper tax~~, found in the place, building, or vehicle where cigarettes are found, and all counterfeit cigarettes may be seized by the department, with or without process and shall be from the time of the seizure forfeited to the state of Iowa. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain the seizure and declare and perfect the forfeiture. All cigarettes, counterfeit cigarettes, vehicles, and property seized, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, are not subject to replevin.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale ~~thereof of the seized property, other than the counterfeit cigarettes~~, to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury. Counterfeit cigarettes shall be destroyed or disposed of in a manner determined by the director.

5. In the event the cigarettes seized ~~hereunder~~ and sought to be sold upon forfeiture shall ~~be~~ are unstamped, the cigarettes shall be sold by the director or the director's designee to the highest bidder among the licensed permitted distributors in this state after written notice has been mailed to all ~~such~~ distributors. If there is no bidder, or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds ~~of such from the~~ sales shall be paid into the state treasury.

Sec. 43. Section 453A.36, Code 2003, is amended by adding the following new subsection: NEW SUBSECTION. 9. a. It is unlawful for a person to ship or import into this state or to offer for sale, sell, distribute, transport, or possess counterfeit cigarettes, knowing such cigarettes are counterfeit cigarettes or having reasonable cause to believe that such cigarettes are counterfeit cigarettes.

b. For purposes of this subsection and section 453A.32, "counterfeit cigarettes" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a

label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

Sec. 44. NEW SECTION. 453A.39 TOBACCO PRODUCT AND CIGARETTE SAMPLES — RESTRICTIONS — ADMINISTRATION.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent, or agent thereof, shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. a. All cigarette samples shall be shipped only to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. All cigarette samples must have a cigarette stamp. The manufacturer shipping samples under this section shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at the time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco products to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

c. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

Sec. 45. Section 453A.43, Code 2003, is amended by adding the following new subsection: NEW SUBSECTION. 6. All excise taxes collected under this chapter by a distributor or any individual are deemed to be held in trust for the state of Iowa.

Sec. 46. Section 453A.45, subsection 1, unnumbered paragraph 2, Code 2003, is amended to read as follows:

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least ~~two~~ three years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

Sec. 47. Section 453A.45, subsections 2, 3, and 4, Code 2003, are amended to read as follows:

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the

purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all ~~such~~ these invoices for ~~two~~ three years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each ~~such~~ invoice for ~~two~~ three years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for ~~two~~ three years from the date of delivery of the tobacco products.

Sec. 48. Section 453A.46, subsections 1 and 6, Code 2003, are amended to read as follows:

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; and made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within ~~two~~ three years after the return is filed or within ~~two~~ three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The ~~two-year~~ three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within ~~two~~ three years after the return is filed or within ~~two~~ three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

Sec. 49. Section 453B.3, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. All excise taxes collected under this chapter by a dealer or any individual are deemed to be held in trust for the state of Iowa.

Sec. 50. Section 633.479, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

An order approving the final report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers of notice as provided in section 633.478, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if the statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with sections 422.27 and 450.58 have been fulfilled and receipts, sworn statements, and certificates, as any of these that are required, are on file. In those instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report.

Sec. 51. Sections 2A.8 and 48A.24, Code Supplement 2003, are repealed.

Sec. 52. REFUNDS. Refunds of taxes, interest, or penalties which arise from claims resulting from the amendment to section 422.42, subsection 6, in this Act, for the noninclusion of trade discounts in computing gross receipts on sales occurring between January 1, 1997, and the effective date of the section amending section 422.42, subsection 6, in this Act, shall be limited to twenty-five thousand dollars in the aggregate and shall not be allowed unless refund claims are filed prior to October 1, 2004, notwithstanding any other provision of law. If the amount of claims totals more than twenty-five thousand dollars in the aggregate, the department of revenue shall prorate the twenty-five thousand dollars among all claimants in relation to the amounts of the claimants' valid claims.

Sec. 53. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS.

1. The section amending section 422.42, subsection 6, in this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to January 1, 1997.
2. The section amending section 422.42, subsection 6, in this Act is void on and after July 1, 2004.
3. The section providing for sales and use tax refunds in this Act ceases to apply to any refund claims filed after September 30, 2004.

Approved April 14, 2004

CHAPTER 1074

CITY PLANNING AND ZONING COMMISSION MEMBERSHIP

H.F. 2145

AN ACT relating to membership on certain city planning and zoning commissions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 414.23, unnumbered paragraph 2, Code 2003, is amended to read as follows:

A municipality, during the time its zoning jurisdiction is extended under this section, shall