

**701—10.4(421) Frivolous return penalty.** A \$500 civil penalty is imposed on the return of a taxpayer that is considered to be a “frivolous return.” A “frivolous return” is: (1) A return which lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect, or (2) a return which reflects a position of law which is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty which has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

The frivolous return penalty is virtually identical to the penalty for frivolous income tax returns which is authorized in Section 6702 of the Internal Revenue Code. The department will follow federal guidelines and court cases when determining whether or not the frivolous return penalty should be imposed.

The frivolous return penalty may be imposed on all returns filed with the department and not just individual income tax returns. The penalty may be imposed on an amended return as well as an original return. The penalty may be imposed on each return filed with the department.

**10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.*** The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

*a.* A return claiming a deduction against income or a credit against tax liability which is clearly not allowed such as a “war,” “religious,” “conscientious objector” deduction or tax credit.

*b.* A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

*c.* An unsigned return where the taxpayer refused to sign because the signature requirement was “incomprehensible or unconstitutional” or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

*d.* A return which contained personal and financial information on the proper lines but where the words “true, correct and complete” were crossed out above the taxpayer’s signature and where the taxpayer claimed the taxpayer’s income was not legal tender and was exempt from tax.

*e.* A return where the taxpayer claimed that income was not “constructively received” and the taxpayer was the nominee-agent for a trust.

*f.* A return with clearly inconsistent information such as when 99 exemptions were claimed but only several dependents were shown.

*g.* A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

**10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.*** The following examples illustrate situations where the frivolous return penalty would not be applicable:

*a.* A return which includes a deduction, credit, or other item which may constitute a valid item of dispute between the taxpayer and the department.

*b.* A return which includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

*c.* A return which includes a statement of protest or objection, provided the return contains all required information.

*d.* A return which shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.8.