

FRANCHISE TAX SUBCOMMITTEE  
OF THE  
HOUSE COMMITTEE ON WAYS AND MEANS

Report to Members of the  
Second Session of the Sixty-seventh General Assembly

State of Iowa  
1978

FINAL REPORT  
FRANCHISE TAX SUBCOMMITTEE  
of the  
HOUSE COMMITTEE ON WAYS AND MEANS

The five member Franchise Tax Subcommittee authorized by the Legislative Council on July 14, 1977 met two days during the 1977 interim to consider three bills assigned to the Subcommittee. Members of the Subcommittee are:

Representative William W. Dieleman, Chairperson  
Representative LaVern R. Harvey  
Representative Thomas J. Jochum  
Representative Patricia L. Thompson  
Representative James D. Wells

The Subcommittee was assigned three bills for its review. These bills include:

1. Senate File 141, a bill for An Act relating to the definition of withholding agent for income tax purposes and making the Act retroactive.
2. Study Bill 157, a bill for An Act relating to the revocation of sales tax permits, responsibility of corporate officers and members of partnerships for sales and use taxes, and changes to the sales and use tax civil and criminal penalties.
3. House File 518, a bill for An Act relating to the imposition and rates of the franchise tax, and making the Act retroactive.

At its first meeting on October 4, 1977, the Subcommittee reviewed the three bills and referred Senate File 141 to the House Committee on Ways and Means with a recommendation of "do pass". Senate File 141 provides that an officer of a corporation or a member of a partnership who has the responsibility to withhold state income taxes and forward these tax receipts to the Department of Revenue shall be personally liable for the withheld taxes not paid over to the Department and a lien may be attached against the personal assets of the responsible party to secure collection of the tax.

The Subcommittee reviewed Study Bill 157 and directed the Legislative Service Bureau staff to redraft the bill with language similar to that found in Senate File 141. As originally drafted, any corporate officer or member of a partnership would be personally liable for sales and use taxes collected and not paid to the Department of Revenue. As redrafted, the party responsible for payment of the taxes collected to the Department of Revenue may have a lien attached to his or her personal assets if he or she

fails to submit sales tax receipts collected to the Department of Revenue.

The Subcommittee referred Study Bill 157, as amended, to the House Committee on Ways and Means with a recommendation of "do pass".

The Subcommittee also reviewed House File 518. House File 518 amends the franchise tax law to specify that the tax is imposed for the privilege of doing business in this state. The bill increases the tax rates and imposes the tax on interest income from state and municipal securities. The other provision of the bill disallows a deduction of franchise taxes paid and federal income taxes paid in computing net income.

After considerable debate, the Subcommittee recommended that Legislative Service Bureau draft a new bill with the title "An Act relating to the franchise tax by providing for its imposition for the privilege of doing business in the state and by disallowing a deduction for franchise taxes paid", that the bill include those provisions of House File 518 adopted by the Subcommittee, namely section one, the provision disallowing a deduction of franchise taxes paid or accrued during the taxable year from net income, and making the Act effective January 1, 1979 for tax years beginning on or after January 1, 1979, and that the bill as redrafted be referred to the House Committee on Ways and Means without recommendation.

Copies of Senate File 141, Study Bill 157, as amended, and the franchise tax bill as redrafted, are attached and by this reference made a part of this report.

FILED FEB 23 1977

SENATE FILE 141

By COMMITTEE ON WAYS AND MEANS

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the definition of withholding agent  
2 for income tax purposes and making the Act retroactive.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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1 Section 1. Section four hundred twenty-two point four  
2 (422.4), subsection thirteen (13), Code 1977, is amended to  
3 read as follows:

4 13. The term "withholding agent" means any individual,  
5 fiduciary, estate, trust, corporation, partnership or  
6 association in whatever capacity acting and including all  
7 officers and employees of the state of Iowa, or any municipal  
8 corporation of the state of Iowa and of any school district  
9 or school board of the state, or of any political subdivision  
10 of the state of Iowa, or any tax-supported unit of government  
11 that is obligated to pay or has control of paying or does  
12 pay to any resident or nonresident of the state of Iowa or  
13 his agent any wages that are subject to the Iowa income tax  
14 in the hands of such resident or nonresident, or any of the  
15 above-designated entities making payment or having control  
16 of making such payment of any taxable Iowa income to any  
17 nonresident. The term "withholding agent" shall also in-  
18 clude an officer or employee of a corporation or association,  
19 or a member or employee of a partnership, who as such officer,  
20 employee, or member has the responsibility to perform an act  
21 under section four hundred twenty-two point sixteen (422.16)  
22 of the Code and who subsequently violates the provisions of  
23 section four hundred twenty-two point sixteen (422.16) of  
24 the Code.

25 Sec. 2. The provisions of this Act are effective to January  
26 1, 1977, and to this extent the provisions of this Act are  
27 retroactive.

28 Sec. 3. This Act, being deemed of immediate importance,  
29 shall take effect and be in force from and after its publica-  
30 tion in the Adair County Free Press, a newspaper published  
31 in Greenfield, Iowa, and in the Storm Lake Pilot-Tribune,  
32 a newspaper published in Storm Lake, Iowa.

33 EXPLANATION

34 Section 422.16, subsection 4 of the Code provides for per-  
35 sonal liability for withholding taxes and section 422.16,

1 subsection 6 of the Code states that the responsible party  
2 liable for such taxes, who fails to pay them, not only owes  
3 the taxes, but the tax becomes a lien upon that responsible  
4 party pursuant to section 422.26 of the Code. The Regional  
5 Council of the Internal Revenue Service has taken the position  
6 that if the withholding agent is a corporation, the tax lien  
7 for unpaid Iowa withholding taxes only attaches to the property  
8 of the corporation and not to the property of the individual  
9 corporate officer as the responsible party.

10 The proposed amendment to section 422.4, subsection 13  
11 of the Code corresponds to section 6671 of the Internal Revenue  
12 Code and provides that a lien may be attached to the  
13 responsible party's property if Iowa withholding taxes are  
14 unpaid by the corporation.

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Study Bill 157,  
as amended

PROPOSED HOUSE FILE \_\_\_\_\_

By (PROPOSED COMMITTEE ON  
WAYS AND MEANS BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the revocation of sales tax permits,  
2 responsibility of corporate officers and members of  
3 partnerships for sales and use taxes, and changes to  
4 the sales and use tax civil and criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred twenty-two point fifty-  
2 two (422.52), subsection two (2), Code 1977, is amended to  
3 read as follows:

4 2. Every permit holder at the time of making the return  
5 required hereunder, shall compute and pay to the department  
6 the tax due for the preceding period. Each permit holder,  
7 member of a partnership, or officer of a corporation who has  
8 the responsibility to file a return and remit taxes pursuant  
9 to section four hundred twenty-two point fifty-one (422.51)  
10 of the Code, shall be personally, individually, and corporately  
11 liable therefore to the state of Iowa for any sum or sums  
12 due under this division.

13 Sec. 2. Section four hundred twenty-two point fifty-three  
14 (422.53), subsection five (5), Code 1977, is amended to read  
15 as follows:

16 5. Whenever the holder of a permit fails to comply with  
17 any of the provisions of this division or any orders or rules  
18 of the department prescribed and adopted under this division,  
19 the director upon hearing after giving ten days' notice of  
20 the time and place of the hearing to show cause why his the  
21 permit should not be revoked, may revoke the permit. The  
22 director shall also have the power to restore licenses after  
23 such revocation. The director shall promulgate rules setting  
24 forth the period, after such revocation, which a person must  
25 wait before a permit can be restored or a new permit can be  
26 issued. The waiting period shall not exceed ninety days.

27 Sec. 3. Section four hundred twenty-two point fifty-eight  
28 (422.58), subsection one (1), Code 1977, is amended to read  
29 as follows:

30 422.58 PENALTIES--OFFENSES.

31 1. If any person fails to file a permit holders monthly  
32 tax deposit or a return with the department of revenue on  
33 or before the due date, unless it is shown that such failure  
34 was due to reasonable cause, there shall be added to the  
35 amount required to be shown as tax on the monthly tax deposit

1 or return five percent of the amount of the tax if the failure  
2 is for not more than one month, with an additional five percent  
3 for each additional month or fraction of a month during which  
4 such failure continues, not exceeding twenty-five percent  
5 in the aggregate. If any person or permit holder fails to  
6 remit the tax due with the filing of the monthly tax deposit  
7 or return on or before the due date, or fails to pay any  
8 amount of any tax required to be shown on the return, ex-  
9 cepting the period between the completion of an examination  
10 of the books and records of a taxpayer and the giving of  
11 notice to the taxpayer that a tax or additional tax is due,  
12 there shall be added to the tax a penalty of five percent  
13 on the tax due, unless it is shown that such failure was due  
14 to reasonable cause. In case of willful failure to file a  
15 return with intent to evade tax, or in case of willfully  
16 filing a false return with intent to evade tax, in lieu of  
17 the penalty above provided, there shall be added to the amount  
18 required to be shown as tax on such return fifty percent of  
19 the amount of such tax. When penalties are applicable for  
20 failure to file a monthly tax deposit or return and failure  
21 to pay the tax due or required on the monthly tax deposit  
22 or return, the penalty provision for failure to file shall  
23 be in lieu of the penalty provision for failure to pay the  
24 tax due or required on the monthly tax deposit or return.  
25 The taxpayer shall also pay interest on the tax or additional  
26 tax at the rate of three-fourths of one percent per month  
27 counting each fraction of a month as an entire month, computed  
28 from the date the monthly tax deposit or return was required  
29 to be filed. Such penalty and interest shall be paid to the  
30 department and disposed of in the same manner as other receipts  
31 under this division. Unpaid penalties and interest may be  
32 enforced in the same manner as the tax imposed by this  
33 division.

34 Sec. 4. Section four hundred twenty-two point fifty-eight  
35 (422.58), subsections two (2) and three (3), Code 1977, as

1 amended by Acts of the Sixty-sixth General Assembly, 1976  
2 Session, chapter one thousand two hundred forty-five (1245),  
3 section three hundred forty-two (342), are amended to read  
4 as follows:

5 2. Any person who shall sell tangible personal property,  
6 tickets or admissions to places of amusement and athletic  
7 events, or gas, water, electricity, and communication service  
8 at retail, or engage in the rendering, furnishing, or  
9 performing services enumerated in section 422.43, in this  
10 state after the person's license shall have been revoked,  
11 or without procuring a license ~~within sixty days after the~~  
12 ~~effective date of this division~~, as provided in section 422.53;  
13 or who shall violate the provisions of section 422.49, and  
14 the officers of any corporation who shall so act, shall be  
15 guilty of a ~~simple~~ serious misdemeanor.

16 3. Any person required to make, render, sign, or certify  
17 any return or supplementary return or any officer of a  
18 corporation or member of a partnership, who makes any false  
19 or fraudulent return with intent to defeat or evade the  
20 assessment required by law to be made, shall be guilty of  
21 a class "B" "C" felony.

22 Sec. 5. Section four hundred twenty-two point fifty-eight  
23 (422.58), Code 1977, is amended by adding the following new  
24 subsection:

25 NEW SUBSECTION. Any person required to make, sign, or  
26 file any return or to pay any tax, or any officer of a  
27 corporation or member of a partnership who is required to  
28 make, sign, or file any return or to pay any tax, who willfully  
29 fails to pay such tax, or willfully fails to make, sign, or  
30 file such return, at the time or times required by law, shall  
31 be guilty of a fraudulent practice.

32 Sec. 6. Section four hundred twenty-three point thirteen  
33 (423.13), Code 1977, is amended to read as follows:

34 423.13 PAYMENT TO DEPARTMENT. Each permit holder required  
35 or authorized, pursuant to sections 423.9 or 423.10, to collect

1 the tax herein imposed, shall be required to pay to the  
2 department the amount of such tax, on or before the last day  
3 of the month next succeeding each quarterly period. At such  
4 time, each such retailer shall file with the department a  
5 return for the preceding quarterly period in such form as  
6 may be prescribed by the director showing the sales price  
7 of any or all tangible personal property sold by the retailer  
8 during such preceding quarterly period, the use of which is  
9 subject to the tax imposed by this chapter, and such other  
10 information as the director may deem necessary for the proper  
11 administration of this chapter. The return shall be  
12 accompanied by a remittance of the amount of such tax, for  
13 the period covered by the return. Each permit holder, member  
14 of a partnership, officer of a corporation who has the  
15 responsibility to file a return and remit taxes under this  
16 section, shall be personally, individually, and corporately  
17 liable therefore to the state of Iowa for any sum or sums  
18 due under this division. If necessary in order to insure  
19 payment to the state of the amount of such tax, the director  
20 may in any or all cases require returns and payments of such  
21 amount to be made for other than quarterly periods. The  
22 director may, upon request and a proper showing of the  
23 necessity therefor, grant an extension of time not to exceed  
24 thirty days for making any return and payment. Returns shall  
25 be signed by the retailer or his duly authorized agent, and  
26 must be certified by him such retailer or agent to be correct.

27 Sec. 7. Section four hundred twenty-three point eighteen  
28 (423.18), Code 1977, is amended to read as follows:

29 423.18 FAILURE TO PAY--PENALTIES. If any person fails  
30 to file a return with the department of revenue on or before  
31 the due date, unless it is shown that such failure was due  
32 to reasonable cause, there shall be added to the amount  
33 required to be shown as tax on the return five percent of  
34 the amount of the tax if the failure is for not more than  
35 one month, with an additional five percent for each additional

1 month or fraction of a month during which such failure  
2 continues, not exceeding twenty-five percent in the aggregate.  
3 If any person fails to remit the tax due with the filing of  
4 the return on or before the due date, or fails to pay any  
5 amount of any tax required to be shown on the return, excepting  
6 the period between the completion of an examination of the  
7 books and records of a taxpayer and the giving of notice to  
8 the taxpayer that a tax or additional tax is due, there shall  
9 be added to the tax a penalty of five percent on such tax  
10 due, unless it is shown that such failure was due to reasonable  
11 cause. In case of willful failure to file a return with  
12 intent to evade tax, or in case of willfully filing a false  
13 return with intent to evade tax, in lieu of the penalty  
14 provided above, there shall be added to the amount required  
15 to be shown as tax on such return, fifty percent of the amount  
16 of such tax. When penalties are applicable for failure to  
17 file a return and failure to pay the tax due or required on  
18 the return, the penalty provision for failure to file shall  
19 be in lieu of the penalty provision for failure to pay the  
20 tax due or required on the return. The taxpayer shall also  
21 pay interest on the tax or additional tax at the rate of  
22 three-fourths of one percent per month counting each fraction  
23 of a month as an entire month, computed from the date the  
24 return was required to be filed. Such penalty and interest  
25 shall be paid to the department and disposed of in the same  
26 manner as other receipts under this chapter. Unpaid penalty  
27 and interest may be enforced in the same manner as the tax  
28 imposed by this chapter. The certificate of the director  
29 to the effect that a tax or amount required to be paid by  
30 this chapter has not been paid, that a return has not been  
31 filed, or that information has not been supplied pursuant  
32 to the provisions of this chapter, shall be prima-facie  
33 evidence thereof.

34 Sec. 8. Section four hundred twenty-three point nineteen  
35 (423.19), Code 1977, is amended to read as follows:



November, 1977

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the franchise tax by providing for its  
2 imposition for the privilege of doing business in the  
3 state and by disallowing a deduction for franchise taxes  
4 paid.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred twenty-two point sixty  
2 (422.60), Code 1977, is amended to read as follows:

3 422.60 IMPOSITION OF TAX. A franchise tax according to  
4 and measured by net income is hereby imposed on financial  
5 institutions for the privilege of doing business in this  
6 state.

7 Sec. 2. Section four hundred twenty-two point sixty-one  
8 (422.61), subsection four (4), Code 1977, as amended by Acts  
9 of the Sixty-seventh General Assembly, 1977 Session, chapter  
10 one hundred nineteen (119), section ten (10), is amended to  
11 read as follows:

12 4. "Net income" means the net income of the financial  
13 institution computed in accordance with section 422.35, with  
14 the exception that interest and dividends from federal  
15 securities and any amount of franchise taxes paid or accrued  
16 under this division during the taxable year shall not be  
17 subtracted and interest and dividends from evidences of  
18 indebtedness and securities of this state and its political  
19 subdivisions, exempt from federal income tax under the Internal  
20 Revenue Code of 1954 as amended to and including January 1,  
21 1977, shall not be added.

22 Sec. 3. The provisions of this Act are effective January  
23 1, 1979 for tax years beginning on or after January 1, 1979.

24 EXPLANATION

25 The bill specifies that the tax on financial institutions  
26 is imposed for the privilege of doing business in this state  
27 rather than a net income tax which is labeled a franchise  
28 tax. The bill also provides that in computing "net income"  
29 for tax purposes, no deduction is allowed for franchise taxes  
30 paid or accrued during the taxable year.

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