Senate File 141 3/... Amend & Do Pass 12/16 (p. 36)
Ways and Means
Norland, chair
Rinas
Hines
Jochum
Wells
Branstad
West
Clark of Lee

FILED FEB 23 1977

SENATE FILE 141

By COMMITTEE ON WAYS AND MEANS
Approved 2/24 (438)

Passed Senate, Date 2-28-77 (p. 468) Passed House, Date 1-12-78 (p. 85)
Vote: Ayes 37 Nays 6 Vote: Ayes 77 Nays 15
Approved April 27 1978

Repassed Senate per House amendment 5025
as amended by 5168 2-10-78 (p. 288)
43-2

A BILL FOR

An Act relating to the definition of withholding agent for income tax purposes and making the Act retroactive.

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

Motion to reconsider prevailed 2/15 (p. 316)
Repassed Senate 2-15-78 (p. 317)
41-3
Repassed Senate 4-10-78 (p. 802)
26-21
Motion to reconsider p. 811 w.d. 4/13 (p. 869)

Publication 6/30

H-5001

Amend Senate File 141, as passed by the Senate, as follows:

1. Page 1, line 26, by striking the figure "1977" and inserting in lieu thereof the figure "1978".

H-5001 FILED - adopted 1/12 (p. 72) BY COMMITTEE ON WAYS AND MEANS
JANUARY 9, 1978 NORLAND of Worth, Chair

H-5008

Amend Senate File 141 as follows:

1. Page 1, line 22, by inserting after the word "subsequently" the word "knowingly".

H-5008 FILED - adopted 1/12 (p. 72) BY CONLON of Muscatine
JANUARY 11, 1978 RINAS of Linn

S.F. 141 H.F. ______

Section 1. Section four hundred twenty-two point four (422.4), subsection thirteen (13), Code 1977, is amended to read as follows:

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

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

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

EXPLANATION

Section 422.16, subsection 4 of the Code provides for personal liability for withholding taxes and section 422.16, subsection 6 of the Code states that the responsible party liable for such taxes, who fails to pay them, not only owes the taxes, but the tax becomes a lien upon that responsible party pursuant to section 422.26 of the Code. The Regional Council of the Internal Revenue Service has taken the position that if the withholding agent is a corporation, the tax lien for unpaid Iowa withholding taxes only attaches to the property of the corporation and not to the property of the individual corporate officer as the responsible party.

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

H-5019

Amend Senate File 141 as follows:

1. Page 1, by inserting after line 24 the following new section:

"Sec. _____. Section four hundred twenty-two point sixteen (422.16), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require a nonresident employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon any such sale, any surplus above the amounts due under this section shall be returned to the nonresident employer or withholding agent who deposited the securities."

2. Amend the title, line 1, by inserting after the word "definition" the words "and bonding".

H-5019 FILED, ADOPTED JANUARY 12, 1978

BY CLARK of Lee
SCHROEDER of Pottawattamie
WEST of Marshall
NORLAND of Worth

House Amendment to Senate File 141

S-5025

Amend Senate File 141, as passed by the Senate, as follows:

1. Page 1, line 22, by inserting after the word "subsequently" the word "knowingly".

2. Page 1, by inserting after line 24 the following new section:

"Sec. ____. Section four hundred twenty-two point sixteen (422.16), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require a nonresident employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon any such sale, any surplus above the amounts due under this section shall be returned to the nonresident employer or withholding agent who deposited the securities."

3. Page 1, line 26, by striking the figure "1977" and inserting in lieu thereof the figure "1978".

4. Amend the title, line 1, by inserting after the word "definition" the words "and bonding".

S-5025 FILED
JANUARY 18, 1978

RECEIVED FROM THE HOUSE
Senate amended & concurred 2/10 (p 287)
Reconsidered & amended by 5187
and concurred 2/15 (p. 317)

SENATE FILE 141

S-5168

Amend House amendment S-5025, to Senate File 141 as follows:

1. Page 1, by striking lines 5 through 27.

2. Page 1, by striking lines 30 through 31.

S-5168 FILED & ADOPTED (p 287) BY PHILIP B. HILL
FEBRUARY 10, 1978 Reconsidered & withdrawn 2/15 (p. 317)

SENATE FILE 141

S-5187

Amend the House amendment, S-5025, to Senate File 141 as follows:

1. Page 1, by striking lines 5 through 28.
2. Page 1, by striking lines 31 through 32.

S-5187 FILED & ADOPTED (p. 317) BY WARREN E. CURTIS
FEBRUARY 15, 1978 PHILIP B. HILL

SENATE AMENDMENT TO
HOUSE AMENDMENT TO
SENATE FILE 141

H-5322

Amend the House amendment, S-5025, to Senate File 141 as follows:

1. Page 1, by striking lines 5 through 28.
2. Page 1, by striking lines 31 through 32.

H-5322 FILED
RECEIVED FROM SENATE
FEBRUARY 16, 1978

House refused to concur 4/5 (p. 1305)
Senate receded 4/10 (p. 822)

SENATE FILE 141

AN ACT

RELATING TO THE DEFINITION AND BONDING OF WITHHOLDING AGENT FOR INCOME TAX PURPOSES AND MAKING THE ACT RETROACTIVE.

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

Section 1. Section four hundred twenty-two point four (422.4), subsection thirteen (13), Code 1977, is amended to read as follows:

13. The term "withholding agent" means any individual, fiduciary, estate, trust, corporation, partnership or association in whatever capacity acting and including all officers and employees of the state of Iowa, or any municipal corporation of the state of Iowa and of any school district or school board of the state, or of any political subdivision of the state of Iowa, or any tax-supported unit of government that is obligated to pay or has control of paying or does pay to any resident or nonresident of the state of Iowa or his agent any wages that are subject to the Iowa income tax in the hands of such resident or nonresident, or any of the above-designated entities making payment or having control

of making such payment of any taxable Iowa income to any nonresident. The term "withholding agent" shall also include an officer or employee of a corporation or association, or a member or employee of a partnership, who as such officer, employee, or member has the responsibility to perform an act under section four hundred twenty-two point sixteen (422.16) of the Code and who subsequently knowingly violates the provisions of section four hundred twenty-two point sixteen (422.16) of the Code.

Sec. 2. Section four hundred twenty-two point sixteen (422.16), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require a nonresident employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon any such sale, any surplus above the amounts due under this section shall be returned to the nonresident employer or withholding agent who deposited the securities.

Sec. 3. The provisions of this Act are effective to January 1, 1978, and to this extent the provisions of this Act are retroactive.

Sec. 4. This Act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Adair County Free Press, a newspaper published

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in Greenfield, Iowa, and in the Storm Lake Pilot-Tribune, a newspaper published in Storm Lake, Iowa.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 141, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved ______________, 1978

ROBERT D. RAY
Governor