

Sen. Ways & Means H3 Do Pass 4/12 (p. 1485)

MAR 20 1984

WAYS & MEANS CALENDAR

HOUSE FILE 2507

BY COMMITTEE ON WAYS AND MEANS

(Formerly Study Bill 723)

Passed House, Date 4-3-84 (p. 1576) Passed Senate, Date 4-13-84 (p. 1519)

Vote: Ayes 97 Nays 1 Vote: Ayes 46 Nays 0

Approved May 2, 1984

# A BILL FOR

1 An Act relating to the penalties for certain taxes including  
 2 cigarette and tobacco taxes, state motor vehicle fuel taxes,  
 3 freight line and equipment car mileage taxes, income taxes,  
 4 withholding taxes, franchise taxes, inheritance and estate  
 5 taxes, sales and use taxes, and generation skipping transfer  
 6 taxes.

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

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HF 2507

1 Section 1. Section 98.28, Code 1983, is amended to read  
2 as follows:

3 98.28 ASSESSMENT OF TAX BY DEPARTMENT. If after any  
4 audit, examination of records, or other investigation the  
5 department finds that any person has sold cigarettes, without  
6 stamps affixed thereto as required by this division or that  
7 any person has failed to pay at least ninety percent of any  
8 tax imposed upon the person, the department shall fix and  
9 determine the amount of tax due, and shall assess the tax  
10 against the person, together with a penalty, ~~which is imposed,~~  
11 equal to of five percent of the amount of the tax. The  
12 taxpayer shall pay interest on the tax or additional tax at  
13 the rate determined under section 421.7 counting each fraction  
14 of a month as an entire month, computed from the date the  
15 tax was due. If any person fails to furnish evidence  
16 satisfactory to the director showing purchases of sufficient  
17 stamps to stamp unstamped cigarettes purchased by the person,  
18 the presumption shall be that the cigarettes were sold without  
19 the proper stamps affixed thereto. Within two years after  
20 the return is filed or within two years after the return  
21 became due, whichever is later, the department shall examine  
22 it and determine the correct amount of tax.

23 Sec. 2. Section 98.46, subsections 5 and 6, Code 1983,  
24 are amended to read as follows:

25 5. All taxes shall be due and payable not later than the  
26 twentieth day of the month following the calendar month in  
27 which they were incurred, and thereafter shall bear interest  
28 at the rate of one percent per month in effect under section  
29 421.7 counting each fraction of a month as an entire month,  
30 computed from the date the tax was due.

31 Where, under the provisions of subsections 2 and 3 of this  
32 section, the amount of tax due for a given period is assessed  
33 without allocating it to any particular month or months, the  
34 interest shall commence to run from the date of such the  
35 assessment.

1 The director ~~shall have power to~~ may reduce or abate  
 2 interest when in ~~his~~ the director's opinion the facts warrant  
 3 ~~such~~ the reduction or abatement. The exercise of this power  
 4 shall be subject to the approval of the attorney general.

5 6. The director in issuing ~~his~~ the final assessment  
 6 pursuant to subsection 3 shall add to the amount of tax found  
 7 due and unpaid a penalty of ~~ten~~ five percent ~~thereof~~ of the  
 8 tax if less than ninety percent of the tax has been paid,  
 9 except that, if ~~he~~ the director finds that the taxpayer has  
 10 made a false and fraudulent return with intent to evade the  
 11 tax imposed by this division, the penalty shall be ~~twenty-~~  
 12 ~~five~~ fifty percent of the entire tax as shown by the return  
 13 as corrected. The director in assessing a tax on the basis  
 14 of a return made pursuant to subsection 4 shall add to the  
 15 amount of tax found due and unpaid a penalty of ~~twenty-five~~  
 16 fifty percent thereof of the tax. The penalty imposed under  
 17 this subsection is not subject to waiver.

18 ~~The director shall have power to abate penalties, when~~  
 19 ~~in his opinion their enforcement would be unjust and~~  
 20 ~~inequitable. The exercise of this power shall be subject~~  
 21 ~~to the approval of the attorney general.~~

22 Sec. 3. Section 324.65, Code 1983, is amended to read  
 23 as follows:

24 324.65 PENALTY FOR FAILURE TO PROMPTLY REPORT OR PAY FUEL  
 25 TAXES. If a licensee or other person fails ~~to file a required~~  
 26 ~~report with the appropriate state agency on or before the~~  
 27 ~~due date, unless it is shown that the failure was due to~~  
 28 ~~reasonable cause there shall be added to the amount required~~  
 29 ~~to be shown as tax due on the return five percent of the~~  
 30 ~~amount of the tax if the failure is for not more than one~~  
 31 ~~month, with an additional five percent for each additional~~  
 32 ~~month or fraction of a month during which the failure~~  
 33 ~~continues, not exceeding twenty-five percent in the aggregate.~~  
 34 ~~If a licensee or other person fails~~ to remit at least ninety  
 35 percent of the tax due with the filing of the return on or

1 before the due date or pays less than ninety percent of any  
2 tax required to be shown on the return, ~~unless-it-is-shown~~  
3 ~~that-the-failure-was-due-to-reasonable-cause,~~ there shall  
4 be added to the tax a penalty of five percent of the amount  
5 of the tax due, ~~if-the-failure-is-for-not-more-than-one-month,~~  
6 ~~with-an-additional-five-percent-for-each-additional-month~~  
7 ~~or-fraction-of-a-month-during-which-the-failure-continues,~~  
8 ~~not-exceeding-twenty-five-percent-in-the-aggregate.~~ The  
9 penalty imposed under this section is not subject to waiver.

10 The taxpayer shall also pay interest on the tax or additional  
11 tax at the rate in effect under section 421.7 counting each  
12 fraction of a month as an entire month, computed from the  
13 date the return was required to be filed.

14 The appropriate state agency shall not remit any part of  
15 a penalty for delinquent payment where the delinquency results  
16 from the fact that a check given in payment is not honored  
17 because of insufficient funds in the account upon which the  
18 check was drawn. However, if it appears as a result of an  
19 investigation or from a preponderance of the evidence adduced  
20 at a hearing that there has been a deliberate attempt on the  
21 part of a licensee or other person to evade payment of fuel  
22 taxes there shall be added to the assessment against the  
23 offending person and collected a penalty of fifty percent  
24 of the tax due. ~~When-penalties-are-applicable-for-failure~~  
25 ~~to-file-a-return-and-failure-to-pay-the-tax-due-or-required~~  
26 ~~on-the-return,-the-penalty-provision-for-failure-to-file-is~~  
27 ~~in-lieu-of-the-penalty-for-failure-to-pay-the-tax-due-or~~  
28 ~~required-on-the-return,-except-in-the-case-of-a-deliberate~~  
29 ~~attempt-on-the-part-of-the-licensee-or-other-person-to-evade~~  
30 ~~payment-of-fuel-taxes.~~ Any report required of licensees or  
31 persons operating under divisions I, II and III, upon which  
32 no tax may be due, is subject to a penalty of ten dollars  
33 if the report is not timely filed with the appropriate state  
34 agency.

35 Sec. 4. Section 422.16, subsection 10, paragraph b, Code

1 Supplement 1983, is amended to read as follows:

2 b. ~~An-employer-or-withholding-agent-required-to-withhold~~  
3 ~~taxes-on-wages-or-other-taxable-Iowa-income-subject-to-this~~  
4 ~~chapter-who-fails-to-file-a-semimonthly,-monthly,-or-quarterly~~  
5 ~~deposit-form-for-the-withholding-of-tax-with-the-department~~  
6 ~~on-or-before-the-due-date,-unless-it-is-shown-that-the-failure~~  
7 ~~was-due-to-reasonable-cause,-is-subject-to-a-penalty-determined~~  
8 ~~by-adding-to-the-amount-required-to-be-shown-as-tax-due-on~~  
9 ~~the-semimonthly,-monthly,-or-quarterly-deposit-form-five~~  
10 ~~percent-of-the-amount-of-the-tax-if-the-failure-is-for-not~~  
11 ~~more-than-one-month,-with-an-additional-five-percent-for-each~~  
12 ~~additional-month-or-fraction-of-a-month-during-which-the~~  
13 ~~failure-continues,-not-exceeding-twenty-five-percent-in-the~~  
14 ~~aggregate.~~

15 If any person or withholding agent fails to remit at least  
16 ninety percent of the tax due with the filing of the  
17 semimonthly, monthly, or quarterly deposit form on or before  
18 the due date, or pays less than ninety percent of any tax  
19 required to be shown on the semimonthly, monthly, or quarterly  
20 deposit form, ~~unless-it-is-shown-that-the-failure-was-due~~  
21 ~~to-reasonable-cause,~~ there shall be added to the tax a penalty  
22 of five ten percent of the amount of the tax due, ~~if-the~~  
23 ~~failure-is-for-not-more-than-one-month,-with-an-additional~~  
24 ~~five-percent-for-each-additional-month-or-fraction-of-a-month~~  
25 ~~during-which-the-failure-continues,-not-exceeding-twenty-five~~  
26 ~~percent-in-the-aggregate.~~

27 ~~When-penalties-are-applicable-for-failure-to-file-a~~  
28 ~~semimonthly,-monthly,-or-quarterly-deposit-form-and-failure~~  
29 ~~to-pay-the-tax-due-or-required-on-the-semimonthly,-monthly,-~~  
30 ~~or-quarterly-deposit-form,-the-penalty-provision-for-failure~~  
31 ~~to-file-is-in-lieu-of-the-penalty-provision-for-failure-to~~  
32 ~~pay-the-tax-due-or-required-on-the-semimonthly,-monthly,-or~~  
33 ~~quarterly-deposit-form.~~ In the case of willful failure to  
34 file a semimonthly, monthly, or quarterly deposit form with  
35 intent to evade tax or willful filing of a false semimonthly,

1 monthly, or quarterly deposit form with intent to evade tax,  
2 in lieu of the penalty otherwise provided in this paragraph,  
3 there is added to the amount required to be shown as tax on  
4 the semimonthly, monthly, or quarterly deposit form, fifty  
5 percent of the amount of the tax. The taxpayer shall also  
6 pay interest on the tax or additional tax at the rate in  
7 effect under section 421.7, for each month counting each  
8 fraction of a month as an entire month, computed from the  
9 date the semimonthly, monthly, or quarterly deposit form was  
10 required to be filed. The penalty and interest become a part  
11 of the tax due from the withholding agent. The penalty imposed  
12 under this subsection is not subject to waiver.

13 Sec. 5. Section 422.25, subsection 2, Code Supplement  
14 1983, is amended to read as follows:

15 2. In addition to the tax or additional tax determined  
16 by the department under subsection 1, the taxpayer shall pay  
17 interest on the tax or additional tax at the rate in effect  
18 under section 421.7 for each month counting each fraction  
19 of a month as an entire month, computed from the date the  
20 return was required to be filed. ~~in-case-of-failure-to-file~~  
21 ~~a-return-with-the-department-on-or-before-the-due-date~~  
22 ~~determined-with-regard-to-any-extension-of-time-for-filing,~~  
23 ~~unless-it-is-shown-that-the-failure-was-due-to-reasonable~~  
24 ~~cause-and-not-due-to-willful-neglect,-there-shall-be-added~~  
25 ~~to-the-amount-required-to-be-shown-as-tax-on-the-return-five~~  
26 ~~percent-of-the-amount-of-the-tax-if-the-failure-is-for-not~~  
27 ~~more-than-one-month,-with-an-additional-five-percent-for-each~~  
28 ~~additional-month-or-fraction-thereof-during-which-the-failure~~  
29 ~~continues,-not-exceeding-twenty-five-percent-in-the-aggregate-~~  
30 If any person fails to remit at least ninety percent of the  
31 tax due with the filing of the return on or before the due  
32 date, or pays less than ninety percent of any tax required  
33 to be shown on the return, ~~unless-it-is-shown-that-the-failure~~  
34 ~~was-due-to-reasonable-cause,~~ there shall be added to the tax  
35 a penalty of five percent of the tax due, ~~if-the-failure-is~~

1 ~~for not more than one month, with an additional five percent~~  
2 ~~for each additional month or fraction of a month during which~~  
3 ~~the failure continues, not exceeding twenty five percent in~~  
4 ~~the aggregate. In case of willful failure to file a return~~  
5 ~~with intent to evade tax, or in case of willfully filing a~~  
6 ~~false return with intent to evade tax, in lieu of the penalty~~  
7 ~~otherwise provided in this subsection, there shall be added~~  
8 ~~to the amount required to be shown as tax on the return fifty~~  
9 ~~percent of the amount of the tax. When penalties are~~  
10 ~~applicable for failure to file a return and failure to pay~~  
11 ~~the tax due or required on the return, the penalty provision~~  
12 ~~for failure to file is in lieu of the penalty provision for~~  
13 ~~failure to pay the tax due or required on the return except~~  
14 ~~in the case of willful failure to file a return and willfully~~  
15 ~~filing of a false return with intent to evade tax. The penalty~~  
16 imposed under this subsection is not subject to waiver.

17 Sec. 6. Section 422.58, subsection 1, Code Supplement  
18 1983, is amended to read as follows:

19 1. ~~If a person fails to file a permit holder's semimonthly~~  
20 ~~or monthly tax deposit form or a return with the department~~  
21 ~~on or before the due date, unless it is shown that the failure~~  
22 ~~was due to reasonable cause, there shall be added to the~~  
23 ~~amount required to be shown as tax on the semimonthly or~~  
24 ~~monthly tax deposit form or return five percent of the amount~~  
25 ~~of the tax if the failure is for not more than one month,~~  
26 ~~with an additional five percent for each additional month~~  
27 ~~or fraction of a month during which the failure continues,~~  
28 ~~not exceeding twenty five percent in the aggregate. If a~~  
29 ~~person or permit holder fails to remit at least ninety percent~~  
30 ~~of the tax due with the filing of the semimonthly or monthly~~  
31 ~~tax deposit form or return on or before the due date, or pays~~  
32 ~~less than ninety percent of any tax required to be shown on~~  
33 ~~the return, excepting the period between the completion of~~  
34 ~~an examination of the books and records of a taxpayer and~~  
35 ~~the giving of notice to the taxpayer that a tax or additional~~

1 tax is due, there shall be added to the tax a penalty of five  
2 ~~ten~~ percent of the amount of the tax due, ~~if the failure is~~  
3 ~~for not more than one month, with an additional five percent~~  
4 ~~for each additional month or fraction of a month the failure~~  
5 ~~continues, not exceeding twenty-five percent in the aggregate,~~  
6 ~~unless it is shown that the failure was due to reasonable~~  
7 ~~cause.~~ In case of willful failure to file a semimonthly or  
8 monthly tax deposit form or return, willful filing of a false  
9 semimonthly or monthly tax deposit form or return or willful  
10 filing of a false or fraudulent semimonthly or monthly tax  
11 deposit form or return with intent to evade tax, in lieu of  
12 the penalty otherwise provided in this subsection, there shall  
13 be added to the amount required to be shown as tax on the  
14 semimonthly or monthly tax deposit form or return fifty percent  
15 of the amount of the tax. ~~When penalties are applicable for~~  
16 ~~failure to file a semimonthly or monthly tax deposit form~~  
17 ~~or return and failure to pay at least ninety percent of the~~  
18 ~~tax due or required on the semimonthly or monthly tax deposit~~  
19 ~~form or return, the penalty for failure to file is in lieu~~  
20 ~~of the penalty for failure to pay at least ninety percent~~  
21 ~~of the tax due or required on the semimonthly or monthly tax~~  
22 ~~deposit form or return.~~ The taxpayer shall also pay interest  
23 on the tax or additional tax at the rate in effect under  
24 section 421.7 for each month counting each fraction of a month  
25 as an entire month, computed from the date the semimonthly  
26 or monthly tax deposit form or return was required to be  
27 filed. The penalty and interest shall be paid to the  
28 department and disposed of in the same manner as other receipts  
29 under this division. Unpaid penalties and interest may be  
30 enforced in the same manner as the tax imposed by this  
31 division. The penalty imposed under this subsection is not  
32 subject to waiver.

33 Sec. 7. Section 423.18, subsection 1, Code Supplement  
34 1983, is amended to read as follows:

35 1. ~~If a person fails to file a monthly deposit form or~~

1 a return with the department on or before the due date, unless  
2 it is shown that the failure was due to reasonable cause,  
3 there shall be added to the amount required to be shown as  
4 tax on the monthly deposit form or return five percent of  
5 the amount of the tax if the failure is for not more than  
6 one month, with an additional five percent for each additional  
7 month or fraction of a month during which the failure  
8 continues, not exceeding twenty-five percent in the aggregate.  
9 If a person or permit holder fails to remit at least ninety  
10 percent of the tax due with the filing of the monthly deposit  
11 form or return on or before the due date, or pays less than  
12 ninety percent of any tax required to be shown on the monthly  
13 deposit form or return, excepting the period between the  
14 completion of an examination of the books and records of a  
15 taxpayer and the giving of notice to the taxpayer that a tax  
16 or additional tax is due, there shall be added to the tax  
17 a penalty of five percent of the tax due, if the failure is  
18 for not more than one month, with an additional five percent  
19 for each additional month or fraction of a month during which  
20 the failure continues, not exceeding twenty-five percent in  
21 the aggregate, unless it is shown that the failure was due  
22 to reasonable cause. For tax due under section 423.9, the  
23 penalty shall be ten percent. In case of willful failure  
24 to file a monthly deposit form or return, willfully filing  
25 a false monthly deposit form or return, or willfully filing  
26 a false or fraudulent monthly deposit form or return with  
27 intent to evade tax, in lieu of the penalty otherwise provided  
28 in this subsection, there shall be added to the amount required  
29 to be shown as tax on the monthly deposit form or return fifty  
30 percent of the amount of the tax. When penalties are  
31 applicable for failure to file a monthly deposit form or  
32 return and failure to pay at least ninety percent of the tax  
33 due or required on the monthly deposit form or return, the  
34 penalty for failure to file is in lieu of the penalty for  
35 failure to pay at least ninety percent of the tax due or

1 ~~required-on-the-monthly-deposit-form-or-return.~~ The taxpayer  
2 shall also pay interest on the tax or additional tax at the  
3 rate in effect under section 421.7, for each month counting  
4 each fraction of a month as an entire month, computed from  
5 the date the monthly deposit form or return was required to  
6 be filed. The penalty and interest shall be paid to the  
7 department and disposed of in the same manner as other receipts  
8 under this chapter. Unpaid penalties and interest may be  
9 collected in the same manner as the tax imposed by this  
10 chapter. The penalty imposed under this subsection is not  
11 subject to waiver.

12 Sec. 8. Section 435.5, Code 1983, is amended to read as  
13 follows:

14 435.5 PENALTY. ~~In case of failure to file a return with~~  
15 ~~the department on or before the due date, unless it is shown~~  
16 ~~that the failure was due to reasonable cause and not due to~~  
17 ~~willful neglect, there shall be added to the amount required~~  
18 ~~to be shown as tax on the return five percent of the amount~~  
19 ~~of tax if the failure is for not more than one month, with~~  
20 ~~an additional five percent for each additional month or~~  
21 ~~fraction thereof during which the failure continues, not~~  
22 ~~exceeding twenty-five percent in the aggregate.~~ If any person  
23 fails to remit at least ninety percent of the tax due with  
24 the filing of the return on or before the due date, or pays  
25 less than ninety percent of the total amount of the tax due  
26 as shown on the return, ~~unless it is shown that the failure~~  
27 ~~was due to reasonable cause,~~ there shall be added to the tax  
28 a penalty of five percent of the tax due, ~~if the failure is~~  
29 ~~for not more than one month, with an additional five percent~~  
30 ~~for each additional month or fraction of a month during which~~  
31 ~~the failure continues, not exceeding twenty-five percent in~~  
32 ~~the aggregate.~~ In case of willful failure to file a return  
33 with intent to evade tax, or in case of willfully filing a  
34 false return with intent to evade tax, in lieu of the penalty  
35 above provided, there shall be added to the amount required

1 to be shown as tax on the return fifty percent of the amount  
2 of the tax. ~~When penalties are applicable for failure to~~  
3 ~~file a return and failure to pay the tax due or required on~~  
4 ~~the return, the penalty provision for failure to file is in~~  
5 ~~lieu of the penalty provision for failure to pay the tax due~~  
6 ~~or required on the return except in the case of willful failure~~  
7 ~~to file a return and willfully filing of a false return with~~  
8 ~~intent to evade tax.~~ The penalty imposed under this section  
9 is not subject to waiver.

10 Sec. 9. Section 450.63, subsection 2, Code 1983, is amended  
11 to read as follows:

12 2. If a person liable for the payment of tax as stated  
13 in section 450.5 fails to ~~file a return with the department~~  
14 ~~of revenue on or before the due date, unless it is shown that~~  
15 ~~the failure was due to reasonable cause, there shall be added~~  
16 ~~to the amount of tax required to be shown as tax due on the~~  
17 ~~return five percent of the amount of the tax, if the failure~~  
18 ~~is for not more than one month, with an additional five percent~~  
19 ~~for each additional month or fraction of a month during which~~  
20 ~~the failure continues, not exceeding twenty five percent in~~  
21 ~~the aggregate.~~ ~~---If a person fails to~~ remit at least ninety  
22 percent of the tax due with the filing of the return on or  
23 before the due date or pays less than ninety percent of any  
24 tax required to be shown on the return, ~~unless it is shown~~  
25 ~~that the failure was due to reasonable cause,~~ there shall  
26 be added to the tax a penalty of five percent of the amount  
27 of the tax due, ~~if the failure is for not more than one month,~~  
28 ~~with an additional five percent for each additional month~~  
29 ~~or fraction of a month during which the failure continues,~~  
30 ~~not exceeding twenty five percent in the aggregate.~~ When  
31 ~~penalties are applicable for failure to file a return and~~  
32 ~~failure to pay the tax due or required to be shown on the~~  
33 ~~return, the penalty provision for failure to file is in lieu~~  
34 ~~of the penalty provision for failure to pay the tax due or~~  
35 ~~required to be shown on the return.~~ The penalty imposed under

1 this subsection is not subject to waiver.

2 Sec. 10. This Act takes effect January 1 following enact-  
3 ment for taxes due and payable on or after that date.

4 EXPLANATION

5 The bill eliminates the penalties for failure to file re-  
6 turns and pay taxes timely and establishes a flat rate of  
7 penalty that differs according to the type of tax for the  
8 taxes administered by the department of revenue. The penalty  
9 cannot be waived. The bill also changes the penalty for a  
10 false or fraudulent tobacco tax return to 50 percent. The  
11 bill takes effect January 1 following enactment for taxes  
12 due and payable on or after that date.

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HOUSE FILE 2507

FISCAL NOTE

REQUESTED BY REPRESENTATIVE DODERER

In compliance with a written request received March 19, 1984, there is hereby submitted a Fiscal Note for HOUSE FILE 2507 pursuant to Joint Rule 17. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the General Assembly upon request.

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House File 2507 eliminates the penalties for failure to file returns and pay taxes timely. The bill further establishes a flat rate of penalty that differs according to the type of tax for the taxes administered by department of revenue. The penalty cannot be waived. House File 2507 also changes the penalty for a false or fraudulent tobacco tax return to 50%. The bill takes effect January 1 following enactment for taxes due and payable after that date.

Fiscal Effect: The total fiscal effect of this bill, which impacts fiscal year 1985 and beyond, cannot be determined. A reduction in penalty rates will reduce income depending upon the amount of penalty assessed. A portion of this revenue loss will be offset by the non-waiver provision. Further, the department currently processes approximately 6,000 penalty waivers per year, utilizing the time and efforts of 2 full-time examiners. If these examiners are shifted from waiver processing to the corporate or individual income tax audit programs, an additional \$1.0 million audit revenue would be generated which would also act to offset the decline in penalty assessments.

(4011H, 84-282E, CMG)

Source: Department of Revenue

FILED MARCH 21, 1984

BY DENNIS PROUTY, FISCAL DIRECTOR

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## HOUSE FILE 2507

## AN ACT

RELATING TO THE PENALTIES FOR CERTAIN TAXES INCLUDING CIGARETTE AND TOBACCO TAXES, STATE MOTOR VEHICLE FUEL TAXES, FREIGHT LINE AND EQUIPMENT CAR MILEAGE TAXES, INCOME TAXES, WITHHOLDING TAXES, FRANCHISE TAXES, INHERITANCE AND ESTATE TAXES, SALES AND USE TAXES, AND GENERATION SKIPPING TRANSFER TAXES.

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

Section 1. Section 98.28, Code 1983, is amended to read as follows:

98.28 ASSESSMENT OF TAX BY DEPARTMENT. If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes, without stamps affixed thereto as required by this division or that any person has failed to pay at least ninety percent of any tax imposed upon the person, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty, which is imposed, equal to of five percent of the amount of the tax. 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 thereto. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it and determine the correct amount of tax.

Sec. 2. Section 98.46, subsections 5 and 6, Code 1983, are amended to read as follows:

5. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the rate of one percent per month in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

Where, ~~under the provisions of~~ subsections 2 and 3 ~~of this section,~~ the amount of tax due for a given period is assessed without allocating it to any particular month ~~or months,~~ the interest shall commence to run from the date of ~~such the~~ assessment.

The director ~~shall have power to~~ may reduce or abate interest when in ~~his~~ the director's opinion the facts warrant ~~such the~~ reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

6. The director in issuing ~~his~~ the final assessment pursuant to subsection 3 shall add to the amount of tax found due and unpaid a penalty of ten five percent thereof of the tax if less than ninety percent of the tax has been paid, except that, if ~~he~~ the director finds that the taxpayer has made a false and fraudulent return with intent to evade the tax imposed by this division, the penalty shall be ~~twenty-five~~ five fifty percent of the entire tax as shown by the return as corrected. The director in assessing a tax on the basis of a return made pursuant to subsection 4 shall add to the amount of tax found due and unpaid a penalty of ~~twenty-five~~ five fifty percent ~~thereof of the tax.~~ The penalty imposed under this subsection is not subject to waiver.

~~The director shall have power to abate penalties, when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general.~~

Sec. 3. Section 324.65, Code 1983, is amended to read as follows:

324.65 PENALTY FOR FAILURE TO PROMPTLY REPORT OR PAY FUEL TAXES. If a licensee or other person fails ~~to file a required~~

report-with-the-appropriate-state-agency-on-or-before-the due-date, unless it is shown that the failure was due to reasonable cause there shall be added to the amount required to be shown as tax due on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. If a licensee or other person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date or pays less than ninety percent of any tax required to be shown on the return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent of the amount of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. The penalty imposed under this section is not subject to waiver. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed.

The appropriate state agency shall not remit any part of a penalty for delinquent payment where the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon which the check was drawn. However, if it appears as a result of an investigation or from a preponderance of the evidence adduced at a hearing that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of fifty percent of the tax due. ~~When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file is~~

~~in lieu of the penalty for failure to pay the tax due or required on the return, except in the case of a deliberate attempt on the part of the licensee or other person to evade payment of fuel taxes.~~ Any report required of licensees or persons operating under divisions I, II and III, upon which no tax may be due, is subject to a penalty of ten dollars if the report is not timely filed with the appropriate state agency.

Sec. 4. Section 422.16, subsection 10, paragraph b, Code Supplement 1983, is amended to read as follows:

b. ~~An employer or withholding agent required to withhold taxes on wages or other taxable Iowa income subject to this chapter who fails to file a semimonthly, monthly, or quarterly deposit form for the withholding of tax with the department on or before the due date, unless it is shown that the failure was due to reasonable cause, is subject to a penalty determined by adding to the amount required to be shown as tax due on the semimonthly, monthly, or quarterly deposit form five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~

If any person or withholding agent fails to remit at least ninety percent of the tax due with the filing of the semimonthly, monthly, or quarterly deposit form on or before the due date, or pays less than ninety percent of any tax required to be shown on the semimonthly, monthly, or quarterly deposit form, ~~unless it is shown that the failure was due to reasonable cause,~~ there shall be added to the tax a penalty of five ten percent of the amount of the tax due, ~~if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~

~~When penalties are applicable for failure to file a semimonthly, monthly, or quarterly deposit form and failure to pay the tax due or required on the semimonthly, monthly, or quarterly deposit form, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay the tax due or required on the semimonthly, monthly, or quarterly deposit form.~~ In the case of willful failure to file a semimonthly, monthly, or quarterly deposit form with intent to evade tax or willful filing of a false semimonthly, monthly, or quarterly deposit form with intent to evade tax, in lieu of the penalty otherwise provided in this paragraph, there is added to the amount required to be shown as tax on the semimonthly, monthly, or quarterly deposit form, fifty percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent. The penalty imposed under this subsection is not subject to waiver.

Sec. 5. Section 422.25, subsection 2, Code Supplement 1983, is amended to read as follows:

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. ~~In case of failure to file a return with the department on or before the due date determined with regard to any extension of time for filing, unless it is shown that the failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each~~

~~additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ If any person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, ~~unless it is shown that the failure was due to reasonable cause,~~ there shall be added to the tax a penalty of five percent of the tax due, ~~if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return fifty percent of the amount of the tax. ~~When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.~~ The penalty imposed under this subsection is not subject to waiver.

Sec. 6. Section 422.58, subsection 1, Code Supplement 1983, is amended to read as follows:

1. ~~If a person fails to file a permit holder's semimonthly or monthly tax deposit form or a return with the department on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the semimonthly or monthly tax deposit form or return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ If a

person or permit holder fails to remit at least ninety percent of the tax due with the filing of the semimonthly or monthly tax deposit form or return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five ten percent of the amount of the tax due, ~~if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month the failure continues, not exceeding twenty-five percent in the aggregate, unless it is shown that the failure was due to reasonable cause.~~ In case of willful failure to file a semimonthly or monthly tax deposit form or return, willful filing of a false semimonthly or monthly tax deposit form or return or willful filing of a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the semimonthly or monthly tax deposit form or return fifty percent of the amount of the tax. ~~When penalties are applicable for failure to file a semimonthly or monthly tax deposit form or return and failure to pay at least ninety percent of the tax due or required on the semimonthly or monthly tax deposit form or return, the penalty for failure to file is in lieu of the penalty for failure to pay at least ninety percent of the tax due or required on the semimonthly or monthly tax deposit form or return.~~ The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be

enforced in the same manner as the tax imposed by this division. The penalty imposed under this subsection is not subject to waiver.

Sec. 7. Section 423.18, subsection 1, Code Supplement 1983, is amended to read as follows:

1. ~~If a person fails to file a monthly deposit form or a return with the department on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the monthly deposit form or return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the monthly deposit form or return on or before the due date, or pays less than ninety percent of any tax required to be shown on the monthly deposit form or return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five percent of the tax due, ~~if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate,~~ unless it is shown that the failure was due to reasonable cause. For tax due under section 423.9, the penalty shall be ten percent. In case of willful failure to file a monthly deposit form or return, willfully filing a false monthly deposit form or return, or willfully filing a false or fraudulent monthly deposit form or return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the monthly deposit form or return fifty percent of the amount of the tax. ~~When penalties are~~

~~applicable for failure to file a monthly deposit form or return and failure to pay at least ninety percent of the tax due or required on the monthly deposit form or return, the penalty for failure to file is in lieu of the penalty for failure to pay at least ninety percent of the tax due or required on the monthly deposit form or return.~~ The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The penalty imposed under this subsection is not subject to waiver.

Sec. 8. Section 435.5, Code 1983, is amended to read as follows:

435.5 PENALTY. ~~In case of failure to file a return with the department on or before the due date, unless it is shown that the failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent of the amount of tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ If any person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety percent of the total amount of the tax due as shown on the return, ~~unless it is shown that the failure was due to reasonable cause,~~ there shall be added to the tax a penalty of five percent of the tax due, ~~if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in~~

the aggregate. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty above provided, there shall be added to the amount required to be shown as tax on the return fifty percent of the amount of the tax. ~~When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.~~ The penalty imposed under this section is not subject to waiver.

Sec. 9. Section 450.63, subsection 2, Code 1983, is amended to read as follows:

2. If a person liable for the payment of tax as stated in section 450.5 fails to ~~file a return with the department of revenue on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount of tax required to be shown as tax due on the return five percent of the amount of the tax, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ If a person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date or pays less than ninety percent of any tax required to be shown on the return, ~~unless it is shown that the failure was due to reasonable cause,~~ there shall be added to the tax a penalty of five percent of the amount of the tax due, ~~if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.~~ When penalties are applicable for failure to file a return and failure to pay the tax due or required to be shown on the

~~return, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay the tax due or required to be shown on the return.~~ The penalty imposed under this subsection is not subject to waiver.

Sec. 10. This Act takes effect January 1 following enactment for taxes due and payable on or after that date.

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DONALD D. AVENSON  
Speaker of the House

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ROBERT T. ANDERSON  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2507, Seventieth General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved May 2, 1984

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TERRY E. BRANSTAD  
Governor