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WAYS & MEANS CALENDAR

HOUSE FILE 334

BY COMMITTEE ON WAYS AND MEANS

(Formerly House Study Bill 93)

Passed House, Date 3-3-87 (p. 505) Passed Senate, Date 4/21/87 (p. 1418)Vote: Ayes 100 Nays 0 Vote: Ayes 44 Nays 1Approved June 4, 1987

A BILL FOR

1 An Act relating to cigarette and tobacco tax assessment periods,
 2 penalties and appeal periods, offsetting of claims against the
 3 state with a person's liabilities to the state, tax return
 4 confidentiality, the filing of sales and services tax refund
 5 claims, audit periods for sales, services, and use tax
 6 returns, use tax penalty, and penalties for interfering with
 7 department of revenue and finance employees in the performance
 8 of their duties and providing effective dates.

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

HOUSE FILE 334

H-3128

1 Amend House File 334 as follows:

2 1. By striking page 9, line 23 through page 10,
 3 line 1 and inserting the following:

4 "A person who knowingly resists or obstructs anyone
 5 known by the person to be an officer or employee of
 6 the department of revenue and finance in the
 7 performance of any act which is within the scope of
 8 the lawful duty or authority of that officer or
 9 employee commits a simple misdemeanor. However, if a
 10 person commits an interference with official acts, as
 11 defined in this section, and in so doing inflicts
 12 bodily injury other than serious injury, that person
 13 commits a serious misdemeanor. If a person commits an
 14 interference with official acts, as defined in this
 15 section, and in so doing inflicts or attempts to
 16 inflict serious injury, or displays a dangerous
 17 weapon, as defined in section 702.7, or is armed with
 18 a firearm, that person commits an aggravated
 19 misdemeanor. The terms "resist" and "obstruct", as
 20 used in this section, do not include verbal harassment
 21 unless the verbal harassment is accompanied by a
 22 present ability and apparent intention to execute a
 23 verbal threat physically."

H-3128 FILED FEBRUARY 27, 1987 BY ROSENBERG of Story

Adopted 3/3/87 (p. 504)H/F
334

1 Section 1. Section 98.45, subsection 1, unnumbered
2 paragraph 2, Code 1987, is amended to read as follows:

3 When a licensed distributor sells tobacco products
4 exclusively to the ultimate consumer at the address given in
5 the license, ~~no~~ an invoice of those sales ~~shall be~~ is not
6 required, but itemized invoices shall be made of all tobacco
7 products transferred to other retail outlets owned or
8 controlled by that licensed distributor. All books, records
9 and other papers and documents required by this subdivision to
10 be kept shall be preserved for a period of at least ~~one-year~~
11 two years after the date of the documents, ~~as aforesaid,~~ or
12 the date of the entries ~~thereof~~ appearing in the records,
13 unless the director, in writing, authorized their destruction
14 or disposal at an earlier date. At any time during usual
15 business hours, the director, or the director's duly
16 authorized agents or employees, may enter any place of
17 business of a distributor, without a search warrant, and
18 inspect the premises, the records required to be kept under
19 this subdivision, and the tobacco products contained therein,
20 to determine ~~whether or not~~ if all the provisions of this
21 division are being fully complied with. If the director, or
22 any such agent or employee, is denied free access or is
23 hindered or interfered with in making ~~such~~ the examination,
24 the license of the distributor at ~~such~~ that premises ~~shall be~~
25 is subject to revocation by the director.

26 Sec. 2. Section 98.46, subsection 1, Code 1987, is amended
27 to read as follows:

28 1. On or before the twentieth day of each calendar month
29 every distributor with a place of business in this state shall
30 file a return with the director showing the quantity and
31 wholesale sales price of each tobacco product ~~{a}~~ brought, or
32 caused to be brought, into this state for sale; and ~~{b}~~ made,
33 manufactured or fabricated in this state for sale in this
34 state, during the preceding calendar month. Every licensed
35 distributor outside this state shall in like manner file a

1 return showing the quantity and wholesale sales price of each
2 tobacco product shipped or transported to retailers in this
3 state to be sold by those retailers, during the preceding
4 calendar month. Returns shall be made upon forms furnished
5 and prescribed by the director and shall contain ~~such~~ other
6 information as the director may require. Each return shall be
7 accompanied by a remittance for the full tax liability shown
8 therein on the return, less a discount as fixed by the
9 director not to exceed five percent of the tax. Within two
10 years after the return is filed or within two years after the
11 return became due, whichever is later, the department shall
12 examine it, determine the correct amount of tax, and assess
13 the tax against the taxpayer for any deficiency.

14 Sec. 3. Section 98.46, subsections 2, 3, 4, 5, and 6, Code
15 1987, are amended by striking the subsections and inserting in
16 lieu thereof the following:

17 2. All taxes shall be due and payable not later than the
18 twentieth day of the month following the calendar month in
19 which they were incurred, and shall bear interest at the rate
20 in effect under section 421.7 counting each fraction of a
21 month as an entire month, computed from the date the tax was
22 due.

23 The director may reduce or abate interest when in the
24 director's opinion the facts warrant the reduction or
25 abatement. The exercise of this power shall be subject to the
26 approval of the attorney general.

27 3. The director in issuing an assessment shall add to the
28 amount of tax found due and unpaid a penalty of seven and one-
29 half percent of the tax if less than ninety percent of the tax
30 has been paid, except as provided in section 421.27, except
31 that, if the director finds that the taxpayer has made a false
32 and fraudulent return with intent to evade the tax or failed
33 to file a return with intent to evade the tax imposed by this
34 division, the penalty shall be seventy-five percent of the
35 entire tax as shown by the return as corrected. The penalty

1 imposed under this subsection is not subject to waiver.

2 4. The department shall notify any person assessed
3 pursuant to this section by sending a written notice of the
4 determination and assessment by mail to the principal place of
5 business of the person as shown on the person's application
6 for permit, and if an application was not filed by the person,
7 to the person's last known address. A determination by the
8 department of the amount of tax, penalty, and interest due, or
9 the amount of refund for excess tax paid, is final unless the
10 person aggrieved by the determination appeals to the director
11 for a revision of the determination within thirty days from
12 the postmark date of the notice of determination of tax,
13 penalty, and interest or refund owing. The director shall
14 grant a hearing and upon the hearing, the director shall
15 determine the correct tax, penalty, and interest or refund due
16 and notify the appellant of the decision by mail. Judicial
17 review of action of the director may be sought in accordance
18 with chapter 17A and section 422.29.

19 Sec. 4. Section 421.17, subsection 26, Code 1987, is
20 amended to read as follows:

21 26. To provide that in the case of multiple claims to
22 ~~refunds-or-rebates~~ payments filed under subsections 21, 23,
23 and 25, and 29 that priority shall be given to claims filed by
24 the child support recovery unit or the foster care recovery
25 unit under subsection 21, next priority shall be given to
26 claims filed by the college aid commission under subsection
27 23, next priority shall be given to claims filed by the office
28 of investigations under subsection 21, ~~and-last~~ next priority
29 shall be given to claims filed by a clerk of the district
30 court under subsection 25, and last priority shall be given to
31 claims filed by other state agencies under subsection 29. In
32 the case of multiple claims under subsection 29, priority
33 shall be determined in accordance with rules to be established
34 by the director.

35 Sec. 5. Section 421.17, Code 1987, is amended by adding

1 the following new subsections:

2 NEW SUBSECTION. 29. To establish and maintain a procedure
3 to set off against any claim owed to a person by a state
4 agency any liability of that person owed to a state agency,
5 except the setoff procedures provided for in subsections 21,
6 23, and 25. The procedure shall only apply when at the
7 discretion of the director it is feasible. The procedure
8 shall meet the following conditions:

9 a. For purposes of this subsection unless the context
10 requires otherwise:

11 (1). "State agency" means a board, commission, department,
12 including the department of revenue and finance, or other
13 administrative office or unit of the state of Iowa. The term
14 "state agency" does not include the general assembly, the
15 governor, or any political subdivision of the state, or its
16 offices and units.

17 (2) "Department" means the department of revenue and
18 finance.

19 (3) The term "person" does not include a state agency.

20 b. Before setoff, a person's liability to a state agency
21 and the person's claim on a state agency shall be in the form
22 of a liquidated sum due, owing, and payable.

23 c. Before setoff, the state agency shall obtain and
24 forward to the department the full name and social security
25 number of the person liable to it or to whom a claim is owing
26 who is a natural person. If the person is not a natural
27 person, before setoff, the state agency shall forward to the
28 department the information concerning the person as the
29 department shall, by rule, require. The department shall
30 cooperate with other state agencies in the exchange of
31 information relevant to the identification of persons liable
32 to or claimants of state agencies. However, the department
33 shall provide only relevant information required by a state
34 agency. The information shall be held in confidence and used
35 for the purpose of setoff only. Section 422.72, subsection 1,

1 does not apply to this paragraph.

2 d. Before setoff, a state agency shall, at least annually,
3 submit to the department the information required by paragraph
4 "c" along with the amount of each person's liability to and
5 the amount of each claim on the state agency. The department
6 may, by rule, require more frequent submissions.

7 e. Before setoff, the amount of a person's claim on a
8 state agency and the amount of a person's liability to a state
9 agency shall be at least fifty dollars.

10 f. Upon submission of an allegation of liability by a
11 state agency, the department shall notify the state agency
12 whether the person allegedly liable is entitled to payment
13 from a state agency, and, if so entitled, shall notify the
14 state agency of the amount of the person's entitlement and of
15 the person's last address known to the department. Section
16 422.72, subsection 1, does not apply to this paragraph.

17 g. Upon notice of entitlement to a payment, the state
18 agency shall send written notification to that person of the
19 state agency's assertion of its rights to all or a portion of
20 the payment and of the state agency's entitlement to recover
21 the liability through the setoff procedure, the basis of the
22 assertion, the opportunity to request that a jointly or
23 commonly owned right to payment be divided among owners, and
24 the person's opportunity to give written notice of intent to
25 contest the amount of the allegation. The state agency shall
26 send a copy of the notice to the department. A state agency
27 subject to chapter 17A shall give notice, conduct hearings,
28 and allow appeals in conformity with chapter 17A.

29 h. Upon the timely request of a person liable to a state
30 agency or of the spouse of that person and upon receipt of the
31 full name and social security number of the person's spouse, a
32 state agency shall notify the department of the request to
33 divide a jointly or commonly owned right to payment. Any
34 jointly or commonly owned right to payment is rebuttably
35 presumed to be owned in equal portions by its joint or common

1 owners.

2 i. The department shall, after the state agency has sent
3 notice to the person liable, set off the amount owed to the
4 agency against any amount which a state agency owes that
5 person. The department shall refund any balance of the amount
6 to the person. The department shall periodically transfer
7 amounts set off to the state agencies entitled to them. If a
8 person liable to a state agency gives written notice of intent
9 to contest an allegation, a state agency shall hold a refund
10 or rebate until final disposition of the allegation. Upon
11 completion of the setoff, a state agency shall notify in
12 writing the person who was liable.

13 j. The department's existing right to credit against tax
14 due or to become due under section 422.73 is not to be
15 impaired by a right granted to or a duty imposed upon the
16 department or other state agency by this subsection. This
17 subsection is not intended to impose upon the department any
18 additional requirement of notice, hearing, or appeal
19 concerning the right to credit against tax due under section
20 422.73.

21 NEW SUBSECTION. 30. Under substantive rules established
22 by the director, the department shall seek reimbursement from
23 other state agencies to recover its costs for setting off
24 liabilities.

25 Sec. 6. Section 422.20, Code 1987, is amended by adding
26 the following new subsections:

27 NEW SUBSECTION. 3. Unless otherwise expressly permitted
28 by section 421.17, subsections 21, 22, 23, 25, and 29,
29 sections 252B.9, 324.63, 421.19, 421.28, and 422.72, and this
30 section, a tax return, return information, or investigative or
31 audit information shall not be divulged to any person or
32 entity, other than the taxpayer, the department, or internal
33 revenue service for use in a matter unrelated to tax
34 administration.

35 This prohibition precludes persons or entities other than

1 the taxpayer, the department, or the internal revenue service
2 from obtaining such information from the department, and a
3 subpoena, order, or process which requires the department to
4 produce such information to a person or entity, other than the
5 taxpayer, the department, or internal revenue service for use
6 in a nontax proceeding is void.

7 NEW SUBSECTION. 4. The director may disclose taxpayer
8 identity information to the press and other media for purposes
9 of notifying persons entitled to tax refunds when the
10 director, after reasonable effort and lapse of time, has been
11 unable to locate the persons.

12 Sec. 7. Section 422.45, subsection 33, Code 1987, is
13 amended by adding the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. Claims for refund of tax,
15 interest, or penalty which arise under this subsection for the
16 sale or use of automotive fluids occurring between January 1,
17 1979, and June 30, 1986, shall not be allowed unless filed
18 prior to December 31, 1987, notwithstanding any other
19 provision of law.

20 Sec. 8. Section 422.54, subsection 1, Code 1987, is
21 amended to read as follows:

22 1. As soon as practicable after a return is filed and in
23 any event within five years after the return is filed the
24 department shall examine it, assess and determine the tax due
25 if the return is found to be incorrect and give notice to the
26 taxpayer of such assessment and determination as provided in
27 subsection 2 hereof. The period for the examination and
28 determination of the correct amount of tax is unlimited in the
29 case of a false or fraudulent return made with the intent to
30 evade tax or in the case of a failure to file a return. If
31 the determination that a return is incorrect is the result of
32 an audit of the books and records of the taxpayer, the tax, or
33 additional tax, if any is found due, shall be assessed and
34 determined and the ~~aforesaid~~ notice to the taxpayer shall be
35 given by the department within one year after the completion

1 of the examination of ~~said~~ the books and records.

2 Sec. 9. Section 422.72, subsection 3, Code 1987, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 3. Unless otherwise expressly permitted by section 421.17,
6 subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63,
7 421.19, 421.28, and 422.20, and this section, a tax return,
8 return information, or investigative or audit information
9 shall not be divulged to any person or entity, other than the
10 taxpayer, the department, or internal revenue service for use
11 in a matter unrelated to tax administration.

12 This prohibition precludes persons or entities other than
13 the taxpayer, the department, or the internal revenue service
14 from obtaining such information from the department, and a
15 subpoena, order, or process which requires the department to
16 produce such information to a person or entity, other than the
17 taxpayer, the department, or internal revenue service for use
18 in a nontax proceeding is void.

19 4. A person violating subsection 1, 2, or 3 is guilty of a
20 serious misdemeanor.

21 5. The director may disclose taxpayer identity information
22 to the press and other media for purposes of notifying persons
23 entitled to tax refunds when the director, after reasonable
24 effort and lapse of time, has been unable to locate the
25 persons.

26 Sec. 10. Section 423.18, subsection 1, Code 1987, is
27 amended to read as follows:

28 1. If a person or permit holder fails to remit at least
29 ninety percent of the tax due with the filing of the monthly
30 deposit form or return on or before the due date, or pays less
31 than ninety percent of any tax required to be shown on the
32 monthly deposit form or return, excepting the period between
33 the completion of an examination of the books and records of a
34 taxpayer and the giving of notice to the taxpayer that a tax
35 or additional tax is due, there shall be added to the tax a

1 penalty of seven and one-half percent of the tax due, except
2 as provided in section 421.27. For tax due under section
3 423.9, the penalty shall be ~~ten~~ fifteen percent. In case of
4 willful failure to file a monthly deposit form or return,
5 willfully filing a false monthly deposit form or return, or
6 willfully filing a false or fraudulent monthly deposit form or
7 return with intent to evade tax, in lieu of the penalty
8 otherwise provided in this subsection, there shall be added to
9 the amount required to be shown as tax on the monthly deposit
10 form or return seventy-five percent of the amount of the tax.
11 The taxpayer shall also pay interest on the tax or additional
12 tax at the rate in effect under section 421.7, for each month
13 counting each fraction of a month as an entire month, computed
14 from the date the monthly deposit form or return was required
15 to be filed. The penalty and interest shall be paid to the
16 department and disposed of in the same manner as other
17 receipts under this chapter. Unpaid penalties and interest
18 may be collected in the same manner as the tax imposed by this
19 chapter. The penalty imposed under this subsection is not
20 subject to waiver.

21 Sec. 11. NEW SECTION. 718.7 ATTEMPTS TO INTERFERE WITH
22 THE ADMINISTRATION OF IOWA REVENUE LAWS.

23 Whoever corruptly or by force or threat of force endeavors
24 to intimidate or impede an officer or employee of the Iowa
25 department of revenue and finance acting in an official
26 capacity or in any other manner corruptly or by force or
27 threat of force obstructs or impedes, or endeavors to obstruct
28 or impede the due administration of the revenue laws of the
29 state shall be guilty of a class "D" felony. The term "threat
30 of force" includes but is not limited to a threat of bodily
31 harm against an officer's or employee's spouse, child, or
32 parent or a threat of destruction of an officer's or
33 employee's property. The term "intimidate" includes but is
34 not limited to the filing of fraudulent or frivolous civil
35 suits or liens and knowingly filing false accusations of

1 criminal conduct.

2 Sec. 12. Sections 4 and 5 of this Act are effective July
3 1, 1988.

4 Sec. 13. Sections 6 and 9 of this Act are effective July
5 1, 1987 for requests and subpoenas for returns, schedules, and
6 attachments to returns made on or after that date.

7 Sec. 14. Section 10 of this Act is retroactive to January
8 1, 1987 for taxes due on or after that date.

9 EXPLANATION

10 The bill changes the tobacco tax penalty, audit and appeal
11 periods to conform with cigarette tax statutes, allows the
12 offsetting of claims against state agencies with liabilities
13 owed to state agencies, clarifies tax return confidentiality
14 provisions, establishes the time frame within which claims for
15 refund of sales tax paid on automotive fluids must be filed,
16 changes the audit period for unfiled or fraudulently filed
17 sales and use tax returns, increases the retail use tax
18 penalty and provides penalties for persons who interfere with
19 department of revenue and finance employees in the performance
20 of their duties.

21 The bill also provides for specific effective dates.

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HOUSE FILE 334

BY COMMITTEE ON WAYS AND MEANS

Substituted for S.F. 263 amended 3/12 (p. 667)

(As Amended and Passed by the House March 3, 1987)

Re Passed House, Date 4/28/87 (p. 1695) Passed Senate, Date 4/21/87 (p. 1418)

Vote: Ayes 94 Nays 0 Vote: Ayes 44 Nays 1

Approved June 4, 1987

Sec. 10 effective 1/1/87

Repassed Senate 5/5/87 (p. 1686)
39-0

A BILL FOR

3175 2124 1 An Act relating to cigarette and tobacco tax assessment periods,
2 penalties and appeal periods, offsetting of claims against the
3 state with a person's liabilities to the state, tax return
4 confidentiality, the filing of sales and services tax refund
5 claims, audit periods for sales, services, and use tax
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7 department of revenue and finance employees in the performance
8 of their duties and providing effective dates.

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

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House Amendments _____

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1 Section 1. Section 98.45, subsection 1, unnumbered
2 paragraph 2, Code 1987, is amended to read as follows:

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4 exclusively to the ultimate consumer at the address given in
5 the license, ~~no~~ an invoice of those sales ~~shall-be~~ is not
6 required, but itemized invoices shall be made of all tobacco
7 products transferred to other retail outlets owned or
8 controlled by that licensed distributor. All books, records
9 and other papers and documents required by this subdivision to
10 be kept shall be preserved for a period of at least ~~one-year~~
11 two years after the date of the documents, ~~as-aforesaid,~~ or
12 the date of the entries thereof appearing in the records,
13 unless the director, in writing, authorized their destruction
14 or disposal at an earlier date. At any time during usual
15 business hours, the director, or the director's duly
16 authorized agents or employees, may enter any place of
17 business of a distributor, without a search warrant, and
18 inspect the premises, the records required to be kept under
19 this subdivision, and the tobacco products contained therein,
20 to determine ~~whether-or-not~~ if all the provisions of this
21 division are being fully complied with. If the director, or
22 any such agent or employee, is denied free access or is
23 hindered or interfered with in making ~~such~~ the examination,
24 the license of the distributor at ~~such~~ that premises ~~shall-be~~
25 is subject to revocation by the director.

26 Sec. 2. Section 98.46, subsection 1, Code 1987, is amended
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33 manufactured or fabricated in this state for sale in this
34 state, during the preceding calendar month. Every licensed
35 distributor outside this state shall in like manner file a

1 the following new subsections:

2 NEW SUBSECTION. 29. To establish and maintain a procedure
3 to set off against any claim owed to a person by a state
4 agency any liability of that person owed to a state agency,
5 except the setoff procedures provided for in subsections 21,
6 23, and 25. The procedure shall only apply when at the
7 discretion of the director it is feasible. The procedure
8 shall meet the following conditions:

9 a. For purposes of this subsection unless the context
10 requires otherwise:

11 (1) "State agency" means a board, commission, department,
12 including the department of revenue and finance, or other
13 administrative office or unit of the state of Iowa. The term
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15 governor, or any political subdivision of the state, or its
16 offices and units.

17 (2) "Department" means the department of revenue and
18 finance.

19 (3) The term "person" does not include a state agency.

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21 and the person's claim on a state agency shall be in the form
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24 forward to the department the full name and social security
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27 person, before setoff, the state agency shall forward to the
28 department the information concerning the person as the
29 department shall, by rule, require. The department shall
30 cooperate with other state agencies in the exchange of
31 information relevant to the identification of persons liable
32 to or claimants of state agencies. However, the department
33 shall provide only relevant information required by a state
34 agency. The information shall be held in confidence and used
35 for the purpose of setoff only. Section 422.72, subsection 1,

1 does not apply to this paragraph.

2 d. Before setoff, a state agency shall, at least annually,
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5 the amount of each claim on the state agency. The department
6 may, by rule, require more frequent submissions.

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13 from a state agency, and, if so entitled, shall notify the
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15 the person's last address known to the department. Section
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17 g. Upon notice of entitlement to a payment, the state
18 agency shall send written notification to that person of the
19 state agency's assertion of its rights to all or a portion of
20 the payment and of the state agency's entitlement to recover
21 the liability through the setoff procedure, the basis of the
22 assertion, the opportunity to request that a jointly or
23 commonly owned right to payment be divided among owners, and
24 the person's opportunity to give written notice of intent to
25 contest the amount of the allegation. The state agency shall
26 send a copy of the notice to the department. A state agency
27 subject to chapter 17A shall give notice, conduct hearings,
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14 due or to become due under section 422.73 is not to be
15 impaired by a right granted to or a duty imposed upon the
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18 additional requirement of notice, hearing, or appeal
19 concerning the right to credit against tax due under section
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32 entity, other than the taxpayer, the department, or internal
33 revenue service for use in a matter unrelated to tax
34 administration.

35 This prohibition precludes persons or entities other than

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21 amended to read as follows:

22 1. As soon as practicable after a return is filed and in
23 any event within five years after the return is filed the
24 department shall examine it, assess and determine the tax due
25 if the return is found to be incorrect and give notice to the
26 taxpayer of such assessment and determination as provided in
27 subsection 2 hereof. The period for the examination and
28 determination of the correct amount of tax is unlimited in the
29 case of a false or fraudulent return made with the intent to
30 evade tax or in the case of a failure to file a return. If
31 the determination that a return is incorrect is the result of
32 an audit of the books and records of the taxpayer, the tax, or
33 additional tax, if any is found due, shall be assessed and
34 determined and the ~~aforesaid~~ notice to the taxpayer shall be
35 given by the department within one year after the completion

1 of the examination of ~~said~~ the books and records.

2 Sec. 9. Section 422.72, subsection 3, Code 1987, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 3. Unless otherwise expressly permitted by section 421.17,
6 subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63,
7 421.19, 421.28, and 422.20, and this section, a tax return,
8 return information, or investigative or audit information
9 shall not be divulged to any person or entity, other than the
10 taxpayer, the department, or internal revenue service for use
11 in a matter unrelated to tax administration.

12 This prohibition precludes persons or entities other than
13 the taxpayer, the department, or the internal revenue service
14 from obtaining such information from the department, and a
15 subpoena, order, or process which requires the department to
16 produce such information to a person or entity, other than the
17 taxpayer, the department, or internal revenue service for use
18 in a nontax proceeding is void.

19 4. A person violating subsection 1, 2, or 3 is guilty of a
20 serious misdemeanor.

21 5. The director may disclose taxpayer identity information
22 to the press and other media for purposes of notifying persons
23 entitled to tax refunds when the director, after reasonable
24 effort and lapse of time, has been unable to locate the
25 persons.

26 Sec. 10. Section 423.18, subsection 1, Code 1987, is
27 amended to read as follows:

28 1. If a person or permit holder fails to remit at least
29 ninety percent of the tax due with the filing of the monthly
30 deposit form or return on or before the due date, or pays less
31 than ninety percent of any tax required to be shown on the
32 monthly deposit form or return, excepting the period between
33 the completion of an examination of the books and records of a
34 taxpayer and the giving of notice to the taxpayer that a tax
35 or additional tax is due, there shall be added to the tax a

1 penalty of seven and one-half percent of the tax due, except
2 as provided in section 421.27. For tax due under section
3 423.9, the penalty shall be ten fifteen percent. In case of
4 willful failure to file a monthly deposit form or return,
5 willfully filing a false monthly deposit form or return, or
6 willfully filing a false or fraudulent monthly deposit form or
7 return with intent to evade tax, in lieu of the penalty
8 otherwise provided in this subsection, there shall be added to
9 the amount required to be shown as tax on the monthly deposit
10 form or return seventy-five percent of the amount of the tax.
11 The taxpayer shall also pay interest on the tax or additional
12 tax at the rate in effect under section 421.7, for each month
13 counting each fraction of a month as an entire month, computed
14 from the date the monthly deposit form or return was required
15 to be filed. The penalty and interest shall be paid to the
16 department and disposed of in the same manner as other
17 receipts under this chapter. Unpaid penalties and interest
18 may be collected in the same manner as the tax imposed by this
19 chapter. The penalty imposed under this subsection is not
20 subject to waiver.

21 Sec. 11. NEW SECTION. 718.7 ATTEMPTS TO INTERFERE WITH
22 THE ADMINISTRATION OF IOWA REVENUE LAWS.

23 A person who knowingly resists or obstructs anyone known by
24 the person to be an officer or employee of the department of
25 revenue and finance in the performance of any act which is
26 within the scope of the lawful duty or authority of that
27 officer or employee commits a simple misdemeanor. However, if
28 a person commits an interference with official acts, as
29 defined in this section, and in so doing inflicts bodily
30 injury other than serious injury, that person commits a
31 serious misdemeanor. If a person commits an interference with
32 official acts, as defined in this section, and in so doing
33 inflicts or attempts to inflict serious injury, or displays a
34 dangerous weapon, as defined in section 702.7, or is armed
35 with a firearm, that person commits an aggravated misdemeanor.

1 The terms "resist" and "obstruct", as used in this section, do
2 not include verbal harassment unless the verbal harassment is
3 accompanied by a present ability and apparent intention to
4 execute a verbal threat physically.

5 Sec. 12. Sections 4 and 5 of this Act are effective July
6 1, 1988.

7 Sec. 13. Sections 6 and 9 of this Act are effective July
8 1, 1987 for requests and subpoenas for returns, schedules, and
9 attachments to returns made on or after that date.

10 Sec. 14. Section 10 of this Act is retroactive to January
11 1, 1987 for taxes due on or after that date.

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SENATE AMENDMENT TO HOUSE FILE 334

H-3883

- 1 Amend House File 334, as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 7, by inserting after line 19 the
- 4 following new section:
- 5 "Sec. ____ . Section 422.47B, subsection 1,
- 6 paragraph c, Code 1987, is amended to read as follows:
- 7 c. The claim is filed on forms provided by the
- 8 department ~~and is filed during the three months~~
- 9 ~~following the fiscal year in which the purchase or~~
- 10 ~~rental was made not later than October 1, 1987 for a~~
- 11 purchase or rental made between July 1, 1985 and June
- 12 30, 1987."
- 13 2. By striking page 9, line 21 through page 10,
- 14 line 4.
- 15 3. Title, line 1, by inserting after the word
- 16 "to" the words "the administration of Iowa revenue
- 17 laws pertaining to".
- 18 4. Title page, by striking lines 6 through 8 and
- 19 inserting the following: "returns, use tax penalty,
- 20 and providing effective dates."
- 21 5. By renumbering, relettering, or redesignating
- 22 and correcting internal references as necessary.

H-3883 FILED APRIL 21, 1987 RECEIVED FROM THE SENATE

Amended by 40064 Senate
Concurred 4/28/87 (p. 1694)

HOUSE FILE 334

H-4006

- 1 Amend the Senate amendment, H-3883, to House File
- 2 334 as amended, passed and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 3 through 12.

H-4006 FILED APRIL 27, 1987 BY BRAMMER of Linn

Adopted 4/28/87 (p. 1694)

HOUSE AMENDMENT TO
SENATE AMENDMENT TO

S-3918

House File 334

- 1 Amend the Senate amendment, H-3883, to House File
- 2 334 as amended, passed and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 3 through 12.

S-3918

Filed April 30, 1987

RECEIVED FROM THE HOUSE

Senate concurred 5/5/87 (p. 1686)

HOUSE FILE 334

S-3166

- 1 Amend House File 334, as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Title, line 1, by inserting after the word
- 4 "to" the words "the administration of Iowa revenue
- 5 laws pertaining to".

S-3166

Filed March 12, 1987

BY EDGAR H. HOLDEN

Adopted 4/21/87 (p. 1418)

HOUSE FILE 334

S-3173

- 1 Amend House File 334 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. By striking page 9, line 21 through page 10,
- 4 line 4.
- 5 2. Title page, by striking lines 6 through 8 and
- 6 inserting the following: "returns, use tax penalty,
- 7 and providing effective dates."

S-3173

Filed March 16, 1987

BY DONALD V. DOYLE

Adopted 4/20/87 (p. 1387)

WILLIAM W. DIELEMAN
TOM MANN, JR.

HOUSE FILE 334

S-3175

- 1 Amend House File 334, as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 7, by inserting after line 19 the
- 4 following new section:
- 5 "Sec. ____ . Section 422.47B, subsection 1,
- 6 paragraph c, Code 1987, is amended to read as follows:
- 7 c. The claim is filed on forms provided by the
- 8 department ~~and-is-filed-during-the-three-months~~
- 9 ~~following-the-fiscal-year-in-which-the-purchase-or~~
- 10 ~~rental-was-made~~ not later than October 1, 1987 for a
- 11 purchase or rental made between July 1, 1985 and June
- 12 30, 1987."
- 13 2. Renumber sections and correct internal
- 14 references as necessary in accordance with this
- 15 amendment.

S-3175

Filed March 16, 1987

BY RAY TAYLOR

Adopted 4/20/87 (p. 1387)

HSB 93

WAYS AND MEANS

SENATE/HOUSE FILE _____

BY (PREFILED DEPARTMENT OF
REVENUE AND FINANCE BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to cigarette and tobacco tax assessment periods,
2 penalties and appeal periods, offsetting of claims against the
3 state with a person's liabilities to the state, tax return
4 confidentiality, the filing of sales and services tax refund
5 claims, audit periods for sales, services, and use tax
6 returns, use tax penalty, and penalties for interfering with
7 department of revenue and finance employees in the performance
8 of their duties.

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

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SUB COMMITTEE ASSIGNMENTS

CHAIR: Brammer

COMMITTEE: Ways and Means

2/5/87

1 Section 1. Section 98.45, subsection 1, unnumbered
2 paragraph 2, Code 1987, is amended to read as follows:

3 When a licensed distributor sells tobacco products
4 exclusively to the ultimate consumer at the address given in
5 the license, ~~no an~~ invoice of those sales ~~shall-be~~ is not
6 required, but itemized invoices shall be made of all tobacco
7 products transferred to other retail outlets owned or
8 controlled by that licensed distributor. All books, records
9 and other papers and documents required by this subdivision to
10 be kept shall be preserved for a period of at least one-year
11 two years after the date of the documents, ~~as-aforesaid,~~ or
12 the date of the entries thereof appearing in the records,
13 unless the director, in writing, authorized their destruction
14 or disposal at an earlier date. At any time during usual
15 business hours, the director, or the director's duly
16 authorized agents or employees, may enter any place of
17 business of a distributor, without a search warrant, and
18 inspect the premises, the records required to be kept under
19 this subdivision, and the tobacco products contained therein,
20 to determine ~~whether-or-not~~ if all the provisions of this
21 division are being fully complied with. If the director, or
22 any such agent or employee, is denied free access or is
23 hindered or interfered with in making ~~such~~ the examination,
24 the license of the distributor at ~~such~~ that premises ~~shall-be~~
25 is subject to revocation by the director.

26 Sec. 2. Section 98.46, subsection 1, Code 1987, is amended
27 to read as follows:

28 1. On or before the twentieth day of each calendar month
29 every distributor with a place of business in this state shall
30 file a return with the director showing the quantity and
31 wholesale sales price of each tobacco product ~~(a)~~ brought, or
32 caused to be brought, into this state for sale; and ~~(b)~~ made,
33 manufactured or fabricated in this state for sale in this
34 state, during the preceding calendar month. Every licensed
35 distributor outside this state shall in like manner file a

1 return showing the quantity and wholesale sales price of each
2 tobacco product shipped or transported to retailers in this
3 state to be sold by those retailers, during the preceding
4 calendar month. Returns shall be made upon forms furnished
5 and prescribed by the director and shall contain ~~such~~ other
6 information as the director may require. Each return shall be
7 accompanied by a remittance for the full tax liability shown
8 ~~therein~~ on the return, less a discount as fixed by the
9 director not to exceed five percent of the tax. Within two
10 years after the return is filed or within two years after the
11 return became due, whichever is later, the department shall
12 examine it, determine the correct amount of tax, and assess
13 the tax against the taxpayer for any deficiency.

14 Sec. 3. Section 98.46, subsections 2, 3, 4, 5, and 6, Code
15 1987, are amended by striking the subsections and inserting in
16 lieu thereof the following:

17 2. All taxes shall be due and payable not later than the
18 twentieth day of the month following the calendar month in
19 which they were incurred, and shall bear interest at the rate
20 in effect under section 421.7 counting each fraction of a
21 month as an entire month, computed from the date the tax was
22 due.

23 The director may reduce or abate interest when in the
24 director's opinion the facts warrant the reduction or
25 abatement. The exercise of this power shall be subject to the
26 approval of the attorney general.

27 3. The director in issuing an assessment shall add to the
28 amount of tax found due and unpaid a penalty of seven and one-
29 half percent of the tax if less than ninety percent of the tax
30 has been paid, except as provided in section 421.27, except
31 that, if the director finds that the taxpayer has made a false
32 and fraudulent return with intent to evade the tax or failed
33 to file a return with intent to evade the tax imposed by this
34 division, the penalty shall be seventy-five percent of the
35 entire tax as shown by the return as corrected. The penalty

1 imposed under this subsection is not subject to waiver.

2 4. The department shall notify any person assessed
3 pursuant to this section by sending a written notice of the
4 determination and assessment by mail to the principal place of
5 business of the person as shown on the person's application
6 for permit, and if an application was not filed by the person,
7 to the person's last known address. A determination by the
8 department of the amount of tax, penalty, and interest due, or
9 the amount of refund for excess tax paid, is final unless the
10 person aggrieved by the determination appeals to the director
11 for a revision of the determination within thirty days from
12 the postmark date of the notice of determination of tax,
13 penalty, and interest or refund owing. The director shall
14 grant a hearing and upon the hearing, the director shall
15 determine the correct tax, penalty, and interest or refund due
16 and notify the appellant of the decision by mail. Judicial
17 review of action of the director may be sought in accordance
18 with chapter 17A and section 422.29.

19 Sec. 4. Section 421.17, subsection 26, Code 1987, is
20 amended to read as follows:

21 26. To provide that in the case of multiple claims to
22 ~~refunds-or-rebates~~ payments filed under subsections 21, 23,
23 and 25, and 30 that priority shall be given to claims filed by
24 the child support recovery unit or the foster care recovery
25 unit under subsection 21, next priority shall be given to
26 claims filed by the college aid commission under subsection
27 23, next priority shall be given to claims filed by the office
28 of investigations under subsection 21, ~~and-last~~ next priority
29 shall be given to claims filed by a clerk of the district
30 court under subsection 25, and last priority shall be given to
31 claims filed by other state agencies under subsection 30. In
32 the case of multiple claims under subsection 30, priority
33 shall be determined in accordance with rules to be established
34 by the director.

35 Sec. 5. Section 421.17, Code 1987, is amended by adding

1 the following new subsections:

2 NEW SUBSECTION. 30. To establish and maintain a procedure
3 to set off against any claim owed to a person by a state
4 agency any liability of that person owed to a state agency,
5 except the setoff procedures provided for in subsections 21,
6 23, and 25. The procedure shall only apply when in the
7 discretion of the director it is feasible. The procedure
8 shall meet the following conditions:

9 a. For purposes of this subsection unless the context
10 requires otherwise:

11 (1) "State agency" means a board, commission, department,
12 including the department of revenue and finance, or other
13 administrative office or unit of the state of Iowa. The term
14 "state agency" does not include the general assembly, the
15 governor, or any political subdivision of the state, or its
16 offices and units.

17 (2) "Department" means the department of revenue and
18 finance.

19 (3) The term "person" does not include a state agency.

20 b. Before setoff, a person's liability to a state agency
21 and the person's claim on a state agency shall be in the form
22 of a liquidated sum due, owing, and payable.

23 c. Before setoff, the state agency shall obtain and
24 forward to the department the full name and social security
25 number of the person liable to it or to whom a claim is owing
26 who is a natural person. If the person is not a natural
27 person, before setoff, the state agency shall forward to the
28 department the information concerning the person as the
29 department shall, by rule, require. The department shall
30 cooperate with other state agencies in the exchange of
31 information relevant to the identification of persons liable
32 to or claimants of state agencies. However, the department
33 shall provide only relevant information required by a state
34 agency. The information shall be held in confidence and used
35 for the purpose of setoff only. Section 422.72, subsection 1,

1 does not apply to this paragraph.

2 d. Before setoff, a state agency shall, at least annually,
3 submit to the department the information required by paragraph
4 "c" along with the amount of each person's liability to and
5 the amount of each claim on the state agency. The department
6 may, by rule, require more frequent submissions.

7 e. Before setoff, the amount of a person's claim on a
8 state agency and the amount of a person's liability to a state
9 agency shall be at least fifty dollars.

10 f. Upon submission of an allegation of liability by a
11 state agency, the department shall notify the state agency
12 whether the person allegedly liable is entitled to payment
13 from a state agency, and, if so entitled, shall notify the
14 state agency of the amount of the person's entitlement and of
15 the person's last address known to the department. Section
16 422.72, subsection 1, does not apply to this paragraph.

17 g. Upon notice of entitlement to a payment, the state
18 agency shall send written notification to that person of the
19 state agency's assertion of its rights to all or a portion of
20 the payment and of the state agency's entitlement to recover
21 the liability through the setoff procedure, the basis of the
22 assertion, the opportunity to request that a jointly or
23 commonly owned right to payment be divided among owners, and
24 the person's opportunity to give written notice of intent to
25 contest the amount of the allegation. The state agency shall
26 send a copy of the notice to the department. A state agency
27 subject to chapter 17A shall give notice, conduct hearings,
28 and allow appeals in conformity with chapter 17A.

29 h. Upon the timely request of a person liable to a state
30 agency or of the spouse of that person and upon receipt of the
31 full name and social security number of the person's spouse, a
32 state agency shall notify the department of the request to
33 divide a jointly or commonly owned right to payment. Any
34 jointly or commonly owned right to payment is rebuttably
35 presumed to be owned in equal portions by its joint or common

1 owners.

2 i. The department shall, after the state agency has sent
3 notice to the person liable, set off the amount owed to the
4 agency against any amount which a state agency owes that
5 person. The department shall refund any balance of the amount
6 to the person. The department shall periodically transfer
7 amounts set off to the state agencies entitled to them. If a
8 person liable to a state agency gives written notice of intent
9 to contest an allegation, a state agency shall hold a refund
10 or rebate until final disposition of the allegation. Upon
11 completion of the setoff, a state agency shall notify in
12 writing a person who was liable.

13 j. The department's existing right to credit against tax
14 due or to become due under section 422.73 is not to be
15 impaired by a right granted to or a duty imposed upon the
16 department or other state agency by this subsection. This
17 subsection is not intended to impose upon the department any
18 additional requirement of notice, hearing, or appeal
19 concerning the right to credit against tax due under section
20 422.73.

21 NEW SUBSECTION. 31. Under substantive rules established
22 by the director, the department shall seek reimbursement from
23 other state agencies to recover its costs for setting off
24 liabilities.

25 Sec. 6. Section 422.20, Code 1987, is amended by adding
26 the following new subsections:

27 NEW SUBSECTION. 3. Unless otherwise expressly permitted
28 by section 421.17, subsections 21, 22, 23, 25, and 30,
29 sections 252B.9, 324.63, 421.19, 421.28, and 422.72, and this
30 section, a tax return, return information, or investigative or
31 audit information shall not be divulged to any person or
32 entity, other than the taxpayer, the department, or internal
33 revenue service for use in a matter unrelated to tax
34 administration.

35 This prohibition precludes persons or entities other than

1 the taxpayer, the department, or the internal revenue service
2 from obtaining such information from the department, and a
3 subpoena, order, or process which requires the department to
4 produce such information to a person or entity, other than the
5 taxpayer, the department, or internal revenue service for use
6 in a nontax proceeding is void.

7 NEW SUBSECTION. 4. The director may disclose taxpayer
8 identity information to the press and other media for purposes
9 of notifying persons entitled to tax refunds when the
10 director, after reasonable effort and lapse of time, has been
11 unable to locate the persons.

12 Sec. 7. Section 422.45, subsection 33, Code 1987, is
13 amended by adding the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. Claims for refund of tax,
15 interest, or penalty which arise under this subsection for the
16 sale or use of automotive fluids occurring between January 1,
17 1979 and June 30, 1986, shall not be allowed unless filed
18 prior to December 31, 1987, notwithstanding any other
19 provision of law.

20 Sec. 8. Section 422.54, subsection 1, Code 1987, is
21 amended to read as follows:

22 1. As soon as practicable after a return is filed and in
23 any event within five years after the return is filed the
24 department shall examine it, assess and determine the tax due
25 if the return is found to be incorrect and give notice to the
26 taxpayer of such assessment and determination as provided in
27 subsection 2 hereof. The period for the examination and
28 determination of the correct amount of tax is unlimited in the
29 case of a false or fraudulent return made with the intent to
30 evade tax or in the case of a failure to file a return. If
31 the determination that a return is incorrect is the result of
32 an audit of the books and records of the taxpayer, the tax, or
33 additional tax, if any is found due, shall be assessed and
34 determined and the ~~aforsaid~~ notice to the taxpayer shall be
35 given by the department within one year after the completion

1 of the examination of ~~said~~ the books and records.

2 Sec. 9. Section 422.72, subsection 3, Code 1987, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 3. Unless otherwise expressly permitted by section 421.17,
6 subsections 21, 22, 23, 25, and 30, sections 252B.9, 324.63,
7 421.19, 421.28, and 422.20, and this section, a tax return,
8 return information, or investigative or audit information
9 shall not be divulged to any person or entity, other than the
10 taxpayer, the department, or internal revenue service for use
11 in a matter unrelated to tax administration.

12 This prohibition precludes persons or entities other than
13 the taxpayer, the department, or the internal revenue service
14 from obtaining such information from the department, and a
15 subpoena, order, or process which requires the department to
16 produce such information to a person or entity, other than the
17 taxpayer, the department, or internal revenue service for use
18 in a nontax proceeding is void.

19 4. A person violating subsection 1, 2, or 3 is guilty of a
20 serious misdemeanor.

21 5. The director may disclose taxpayer identity information
22 to the press and other media for purposes of notifying persons
23 entitled to tax refunds when the director, after reasonable
24 effort and lapse of time, has been unable to locate the
25 persons.

26 Sec. 10. Section 423.18, subsection 1, Code 1987, is
27 amended to read as follows:

28 1. If a person or permit holder fails to remit at least
29 ninety percent of the tax due with the filing of the monthly
30 deposit form or return on or before the due date, or pays less
31 than ninety percent of any tax required to be shown on the
32 monthly deposit form or return, excepting the period between
33 the completion of an examination of the books and records of a
34 taxpayer and the giving of notice to the taxpayer that a tax
35 or additional tax is due, there shall be added to the tax a

1 penalty of seven and one-half percent of the tax due, except
2 as provided in section 421.27. For tax due under section
3 423.9, the penalty shall be ten fifteen percent. In case of
4 willful failure to file a monthly deposit form or return,
5 willfully filing a false monthly deposit form or return, or
6 willfully filing a false or fraudulent monthly deposit form or
7 return with intent to evade tax, in lieu of the penalty
8 otherwise provided in this subsection, there shall be added to
9 the amount required to be shown as tax on the monthly deposit
10 form or return seventy-five percent of the amount of the tax.
11 The taxpayer shall also pay interest on the tax or additional
12 tax at the rate in effect under section 421.7, for each month
13 counting each fraction of a month as an entire month, computed
14 from the date the monthly deposit form or return was required
15 to be filed. The penalty and interest shall be paid to the
16 department and disposed of in the same manner as other
17 receipts under this chapter. Unpaid penalties and interest
18 may be collected in the same manner as the tax imposed by this
19 chapter. The penalty imposed under this subsection is not
20 subject to waiver.

21 Sec. 11. NEW SECTION. 718.7 ATTEMPTS TO INTERFERE WITH
22 THE ADMINISTRATION OF IOWA REVENUE LAWS.

23 Whoever corruptly or by force or threat of force endeavors
24 to intimidate or impede an officer or employee of the Iowa
25 department of revenue and finance acting in an official
26 capacity or in any other manner corruptly or by force or
27 threat of force obstructs or impedes, or endeavors to obstruct
28 or impede the due administration of the revenue laws of the
29 state shall be guilty of a class "D" felony. The term "threat
30 of force" includes but is not limited to a threat of bodily
31 harm against an officer's or employee's spouse, child, or
32 parent or a threat of destruction of an officer's or
33 employee's property. The term "intimidate" includes but is
34 not limited to the filing of fraudulent or frivolous civil
35 suits or liens and knowingly filing false accusations of

1 criminal conduct.

2 Sec. 12. Sections 4 and 5 of this Act are effective July
3 1, 1988.

4 Sec. 13. Sections 6 and 9 of this Act are effective July
5 1, 1987 for requests and subpoenas for returns, schedules, and
6 attachments to returns made on or after that date.

7 Sec. 14. Section 10 of this Act is retroactive to January
8 1, 1987 for taxes due on or after that date.

9 EXPLANATION

10 The bill changes the tobacco tax penalty, audit and appeal
11 periods to conform with cigarette tax statutes, allows the
12 offsetting of claims against state agencies with liabilities
13 owed to state agencies, clarifies tax return confidentiality
14 provisions, establishes the time frame within which claims for
15 refund of sales tax paid on automotive fluids must be filed,
16 changes the audit period for unfiled or fraudulently filed
17 sales and use tax returns, increases the retail use tax
18 penalty and provides penalties for persons who interfere with
19 department of revenue and finance employees in the performance
20 of their duties.

21 The bill also provides for specific effective dates.

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HOUSE FILE 334

AN ACT

RELATING TO THE ADMINISTRATION OF IOWA REVENUE LAWS PERTAINING TO CIGARETTE AND TOBACCO TAX ASSESSMENT PERIODS, PENALTIES AND APPEAL PERIODS, OFFSETTING OF CLAIMS AGAINST THE STATE WITH A PERSON'S LIABILITIES TO THE STATE, TAX RETURN CONFIDENTIALITY, THE FILING OF SALES AND SERVICES TAX REFUND CLAIMS, AUDIT PERIODS FOR SALES, SERVICES, AND USE TAX RETURNS, USE TAX PENALTY, AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 98.45, subsection 1, unnumbered paragraph 2, Code 1987, 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, no an invoice of those sales ~~shall be~~ 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 one-year ~~two years~~ after the date of the documents, ~~as aforesaid~~, or the date of the entries thereof 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 whether ~~or not~~ 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 such the examination, the license of the distributor at such that premises ~~shall be~~ is subject to revocation by the director.

Sec. 2. Section 98.46, subsection 1, Code 1987, is 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 ~~for~~ brought, or caused to be brought, into this state for sale; and ~~for~~ 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 such other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown therein on the return, less a discount as fixed by the director not to exceed five percent of the tax. 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, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency.

Sec. 3. Section 98.46, subsections 2, 3, 4, 5, and 6, Code 1987, are amended by striking the subsections and inserting in lieu thereof the following:

2. 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 shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

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

3. The director in issuing an assessment shall add to the amount of tax found due and unpaid a penalty of seven and one-half percent of the tax if less than ninety percent of the tax has been paid, except as provided in section 421.27, except that, if the director finds that the taxpayer has made a false and fraudulent return with intent to evade the tax or failed to file a return with intent to evade the tax imposed by this division, the penalty shall be seventy-five percent of the entire tax as shown by the return as corrected. The penalty imposed under this subsection is not subject to waiver.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination and assessment by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of tax, penalty, and interest or refund owing. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

Sec. 4. Section 421.17, subsection 26, Code 1987, is amended to read as follows:

26. To provide that in the case of multiple claims to refunds or rebates payments filed under subsections 21, 23,

and 25, and 29 that priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21, next priority shall be given to claims filed by the college aid commission under subsection 23, next priority shall be given to claims filed by the office of investigations under subsection 21, and last next priority shall be given to claims filed by a clerk of the district court under subsection 25, and last priority shall be given to claims filed by other state agencies under subsection 29. In the case of multiple claims under subsection 29, priority shall be determined in accordance with rules to be established by the director.

Sec. 5. Section 421.17, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 29. To establish and maintain a procedure to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency, except the setoff procedures provided for in subsections 21, 23, and 25. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. For purposes of this subsection unless the context requires otherwise:

(1) "State agency" means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa. The term "state agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

(2) "Department" means the department of revenue and finance.

(3) The term "person" does not include a state agency.

b. Before setoff, a person's liability to a state agency and the person's claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

c. Before setoff, the state agency shall obtain and forward to the department the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the department the information concerning the person as the department shall, by rule, require. The department shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the department shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

d. Before setoff, a state agency shall, at least annually, submit to the department the information required by paragraph "c" along with the amount of each person's liability to and the amount of each claim on the state agency. The department may, by rule, require more frequent submissions.

e. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall be at least fifty dollars.

f. Upon submission of an allegation of liability by a state agency, the department shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the department. Section 422.72, subsection 1, does not apply to this paragraph.

g. Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or

commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the department. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

h. Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the department of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

i. The department shall, after the state agency has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable.

j. The department's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the department or other state agency by this subsection. This subsection is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

NEW SUBSECTION. 30. Under substantive rules established by the director, the department shall seek reimbursement from

other state agencies to recover its costs for settling off liabilities.

Sec. 6. Section 422.20, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63, 421.19, 421.28, and 422.72, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

NEW SUBSECTION. 4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

Sec. 7. Section 422.45, subsection 33, Code 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Claims for refund of tax, interest, or penalty which arise under this subsection for the sale or use of automotive fluids occurring between January 1, 1979, and June 30, 1986, shall not be allowed unless filed prior to December 31, 1987, notwithstanding any other provision of law.

Sec. 8. Section 422.54, subsection 1, Code 1987, is amended to read as follows:

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the tax due if the return is found to be incorrect and give notice to the taxpayer of such assessment and determination as provided in subsection 2 hereof. The period for the 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. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax, or additional tax, if any is found due, shall be assessed and determined and the ~~aforsaid~~ notice to the taxpayer shall be given by the department within one year after the completion of the examination of said the books and records.

Sec. 9. Section 422.72, subsection 3, Code 1987, is amended by striking the subsection and inserting in lieu thereof the following:

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63, 421.19, 421.28, and 422.20, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, or 3 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

Sec. 10. Section 423.10, subsection 1, Code 1987, is amended to read as follows:

1. 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 seven and one-half percent of the tax due, except as provided in section 421.27. For tax due under section 423.9, the penalty shall be ten fifteen 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 seventy-five 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 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. 11. Sections 4 and 5 of this Act are effective July 1, 1988.

Sec. 12. Sections 6 and 9 of this Act are effective July 1, 1987 for requests and subpoenas for returns, schedules, and attachments to returns made on or after that date.

Sec. 13. Section 10 of this Act is retroactive to January 1, 1987 for taxes due on or after that date.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 334, Seventy-second General Assembly.

Approved June 4, 1987

JOSEPH O'HERN
Chief Clerk of the House

TERRY E. BRANSTAD
Governor

HF 334