SENAM : ascots
EQ COMNTTEE ON WAYS AND MEANS
(SLCCESSOR TO SSB 2223)
 Vote: Ayes _ 46 Nay
 Approved heinie 18,1990

## A BILL FOR

7 BR IP ENACTED BY THE GENERAL ASSEMBLY OF THE SAME OF IONA: motor flue, individual income, withholding, corporation income, franchise, sales, use, retailer's use, environmental protection charge, inheritance, generation skipping transfer, and estate taxes, and providing effective and appiscabiiity dates.
S.F.

H.F.

Section l. Section 98.28, Code 1989, is amended to read as foliows:
98.28 ASSESSMENT OF TAX BY DEPARTMENT -- INTEREST -PENALTY.

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-faided-to-pay-at-ieast-ninety percent-of-any-tax-imposed-apon-the-persen, the department shall fix and determine the amount of tax due, and shail assess the tax against the person, together with a penalty of seven-and-one-hats-pereent-of-the-amoant-of-the-tax;-exeept as provided in section 421.27 . The taxpayer shall pay interest on the tax or additional tax at the rate determined under section $42 \lambda .7$ 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 $i t$ the return and determine the correct amount of tax.

Sec. 2. Section 98.46, subsection 3, Code 2989 , is amenced by striking the subsection and inserting in lieu thereof the following:
3. In addition to the tax or additional tax, the taxpayer shall pay a peralty as provided in section 421.27.

Sec. 3. Section 324.65, unnumbered paragraph :, Code Supplement 1989, is amended to reac as follows:
 ninety-percent-of-the-tax-due-mith-the-fiting-of-the-return-on or-before-the-dee-dete-or-pays-iess-than-ainety-pereent-of-any tax-requited-to-be-shomn-on-the-return-there-shatz-be-added
!. !. $\qquad$ - .

 ゆne-penazty-impesed-under-shis-section-is-not-scbject-to maiver- In addition to the tax or additionai tax, the taxpayer shall pay a peralty as provided in section 421.27. 6 The taxpayer shall also pay interest on the tax or additional tax at the rate in effect uncer section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If the amount of the tax $i 0$ as determined by the appropriate state agency is less than the il amount paid, the excess shall be refunded with interest, the 12 interest to begin to accrue on the first day of the third 13 calendar month foilowing the date of payment or the date the 14 return was due to be Eiled or was filed, whichever is the 15 latest, at the rate in effect under section 421.7 counting 16 each fraction of a month as an entire month under the rules 17 prescribed by the appropriate state agency. In lieu of a is refind allowed under this section, the licensee may reques: 19 that the department ailow che refund to be held as a credit 20 for the licensee.

## s.f. 2304 п.е.

 2 to read as Eollows:34 hospitalization of the taxpayer, of a member of the immediate calendar year shail be the rate which is two percentage points greate: than the numerical average, rounded to the nearest one percent, of the respective prime rates for each of the months in the twelve-month period that ends September 30 of the previous calendar year. The rate of interest established by this subsection takes effect January 1 , and applies to any amount which is due or becomes payable on or after that date.

Sec. 6. Section 42i.27, Code Suppiement 1989, is amenced by striking the section and inserting in lieu thereof the
foilowing:
421.27 PENALTIES.

1. FAILURE TO TIMELY FILE A RETURN OR DEPOSIT FORM. if a person fails to file with the department on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:
a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.
b. Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.
c. The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directiy responsibie for filing the return and paying the tax, when the death interferes with timely filing.
d. The onset of serious, long-term illness or family of the taxpayer, or of the person directly responsible

Sec. 5. Section 421.7, subsection 2, Code 1989, is amended
2. The rate of interest that shall be in effect during a
for Eiling the return and paying the ax
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4 G. The Eaxpayer presents p:oci that the Eaxpayer rei ied
5 upon appiicabie, documented, written advice specificaily made
5 to the taxpaycr, to the taxpayer's prepare: , or to an
7 association representative ot the taxpayer fromi the
8 depart:nent, state department of transportation, county
9 treasurer, or federal internai revenue service, whichever is
10 appropriate, that has not been superseded by a court decision,
11 ruling by a quasi-judicial body, or the adoption, amendment,
12 or repeal of a rule or law.
g. Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audi: expressly and cleariy addressed the issue and tine previous audit results have not been supersecied by a court decision, or the adoption, amendment, or repeal of a rule or law.
h. Unde: rliles prescribed by the director, the taxpayer presents documented proof of substantial authorizy to rely upon a particular position or upon proof that ai: facts and circumstances are disclosed on a return or deposit form.
i. The return, dedosit form, or payment is tineiy, but erroneousiy, mailed with adequate postage to the internai revanue service, another state agency, or a iocal government agency and the taxpayer provides proof of timely mailing with adequate postage.
j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.
$k$. The failure to file was discovered through a sanctioned self-audit program conducted by the department.
2. FAILURE TO TIMELY PAY THE TAX SHOWN DUE, OR THE TAX REQUIRED TO BE SHOWN DUE WITH THE FILING OF A RETERN OR DEPOSIT FORM. If a person fails to pay the tax snown due or required to be shown due on a return or deposit form on or
S.F.

1 before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penaity, if assessed, shail be waived by the department upon a showing of any of the following conditions:
a. At least ninety percent of the tax required to be shown 6 due has been paid by the due date of the tax.
7 b. The taxpayer voluntarily files an amended return and 8 pays all tax shown to be due on the return prior to any
9 contact by the department, except under a sanctioned self10 audit program conducted by the department.

11 c. The taxpayer provides written notification to the 12 department of a feceral audit while it is in progress and 13 voluntarily files an amended return which includes a copy of 14 the federal document showing the final disposition or final 15 federal adjustments within sixty days of the fina: disposition 16 of the federal government's audit.
17 d. The taxpayer presents proof that the taxpayer relied 18 upon appiicable, documented, written advice specifically made 19 to the taxpayer, to the taxpayer's preparer, or to an 20 association representative of the taxpayer from the depart21 ment, state department of transportation, county treasurer, or
22 federal internal revenue service, whichever is appropriate,
23 that has not been superseded by a court decision, ruling by a 24 quasi-judicial body, or the adoption, amendment, or repeai of 25 a rule or law.

26 e. Reliance upon results in a previous audit was a direct 27 cause for the failure to pay the tax required to be shown due 28 where the previous audit expressiy and clearly addressed the 29 issue and the previous audit results have not been superseded 30 by a court decision, or the adoption, amendment, or repea, of 31 a ruie or law.

32 f. under rules prescribed by the director, the taxpayer 33 presents documentec proof of substantial authority to reiy 34 upon a particular position or upon proof that all facts anc 35 circumstances are disciosed on a return or deposit Eorm.
9. The return, deposis form, or paymen i: =imeiy, but erroneously, mailed with adequate postage to the internai revenue service, another state agency, or a boca: governmert agency and the taxpayer provides pronf of timely mailing with adequate postage.
h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.
3. AUDIT DEFICIENCIES. If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there 12 shail be added to the tax required to be shown due a penalty 13 of Eive percent of the tax required to be shown due. The 14 penalty, if assessed, shall be waived by the departmert upon a
a. At least ninety percent of the tax required to be shown due has been paid by the due date.
b. The taxpayer presents proof that the taxpayer reiied upon applicable, documented, written advice specificaliy made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been supersecied by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressiy and clearly addressed the issue and the previous audit results have not been supersedec by a court decision, or the adoption, amendment, or repeal of a rule or law.
d. Under rules prescribed by the director, the taxpayer preserts documented proof of substantial authority to reiy upon a particular position or lipon proof that all facts and
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$\qquad$ 35 monthiyf-o:-quarteriy-deposit-fornt-seventy-five-pe=eent-of
 tax， provided ir section 422．27．The taxpayer sana also pay interest on the tax or additional tax at tine 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 tine tax due from the withholding agent．Phe－venazty－impesean－aneen也nis－subsectun－is－not－suisject－to－maiver＝

Sec．8．Section 422．25，subsection 2 ，Code Supplement 1989，is amended to read as follows：

2．In addition to the tax or additional tax determined by the department under subsection 1 ，the taxpayer final 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 che return was required to be filed．If－any－pergen－Eaíts－eo－remit－et子ease－nineey－percent－sf－the－tax－dye－siとh－the－6iまimg－os－the retura－en－er－beferc－che－due－dace；－op－pays－̇ess－chan－nine－y




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 or adritionai tax，the taxpayer shat pay a penalty as provided in section 421．27．

Sec．9．Section 422．58，subsection i，Code 1989，is amended to read as follows：

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18 amonnt-of-che-tax- In addition to the tax or additional tax,
19 the taxpayer shall pay a penalty as provided in section
20 421.27. The taxpayer shall also pay interest on the Eax or
21 additional tax at the rate in effect under section 421.7 for
22 each month counting each frection of a month as an entire
23 month, computed from the date the semimonthiy or monthly tax
24 deposit form or return was required to be filed. The penaity
25 and interest shall be paid to the department and disposed of
26 in the same manner as other receipts under this division.
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13 \text { the-amount-required-to-be-shom-ay-tax-on-the-monthzy-deposit }
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14 form-oz-return-geventy-five-percenc-of-the-amocnt-of-the-tax:
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16 \text { pay a penalty as provided in section } 421.27 \text {. The Eaxpayer }
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\therefore 7 \text { shall also pay interest on the tax or additionai tax at the }
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\text { ¿8 rate in effect under section } 421.7 \text {, Eor each month counting }
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20 \text { date the montaly deposit form or :eturn was required to be }
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21 filed. The peraity and interest shall be paid to the
22. cepartment and disposed of in the same manne: as other

23 receipts under chis chapter. Unpaid penaities and interest.
24 may be collected in the same manner as the tax imposed by this
25 chapter. The-peraity-imposed-thder-tits-sabseetitn-is-met

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shatz-be-added-to-the-charge-a-penatty-of-fifteen-percent-of
2 the-8mount-of-the-eharge-duer-exeept-as-provided-in-section

4 witffut-fiting-of-a-faige-return-with-intene-to-evace-charges;
in-ìieu-of-the-penazty-othermize-provided-in-this-subsection,
6 there-shaiz-be-aeded-to-the-amount-required-to-be-shome-as-a
7 eharge-en-the-retarn-yeventy-£ive-percent-of-the-ameunt-of-the
8 charger In addition to the charge or additional charge, the
9 charge payer shall pay a penalty as provided in section
10 421.27. The charge payer shall also pay interest on the
11 charge or additional charge at the rate in effect under
12 section 421.7 for each month counting each fraction of a month
13 as an entire month. computed from the date the return was
14 required to be filed. The penalty and interest shall be paid
15 to the department and disposed of in the same manner as the
$i 6$ charge imposed under this chapter. Unpaid penalties and
17 interest may be enforced in the same manner as the charge
18 imposed by this chapter.

Sec. 12. Section 450.63, Code 1989, is amended to read as follows:
450.63 MATURITY OF TAX -- INTEREST -- PENALTY.
t. All taxes not paid within the time prescribed in this chapter are subject to a penalty as provided in subsection- $z$ section 421.27 and shall draw interest at the rate in effect under section 421.7 until paid.
 section-450-5-£aiłs-to-remit-at-teast-ninety-pereent-of-the tax-due-mith-the-fiłing-of-the-retarn-on-or-before-the-due date-or-pays-iess-tean-ninety-percent-of-eny-tax-zequireci-to be-ghown-on-the-seturn--there-ghaま̇-be-aceec-to-the-tax-a

 imposed-under-this-subsection-is-not-subject-te-maiver: Sec. 13.

This Act takes effect January i; i99l.

Gec. i4.
 ap: fabie to tax years beginning on of feter january i, is9.

Sec. 15.
5 Section 22 of this Act is appiicabie to deaths occureing on 6 or after January l, 1991.
(1) A 10 percent penaity for failure to timely file a

17 return or deposit form;
$\therefore 8 \quad(2)$ A 5 percent penalty for faiiure to tiniely pay the tax i 9 due with a return or deposit form;

There are circuristances set forth under which the penalty will not be assessed.

The bill takes effect January i, 1991. Sections 1 through
284 and 6 through 11 are applicable to tax years beginning on or 29 after January $2, i 991$. Section 12 of this bill is applicable 30 to deaths occuring on or after January i, i99i.

senate file 2304
by COMMIENEE ON WAYS AND MEANS
(SUCCESSOR TO SSB 2223)
(AS AMENDED AND PASSED BY THE SENATE MARCH iq, i990)

- New Language by the Senate

Passed Senate, Date $3 / 19 / 90(p / 160)$ Passed House, Date $4 / 2 / 9 c(701673)$
Vote: Ayes 4. Nays 0 Vote: Ayes 95 Nays . . .
Approved
Effatim $\qquad$

## A BILL FOR

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2 \text { motor fuel, individual income, withhoiding, corporation }
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3 \text { income, franchise, sales, use, retailer's use, environmental }
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4 \text { protection charge, inheritarce, generation skipping transfer, }
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5 \text { and estate taxes, and providing effective and apoiicability }
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6 \text { dates. }
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7 \text { BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA: }
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Section i. Section 98.28, Code 1989, is amended to read as Eoilows:
98.28 ASSESSMENE OF TAX BY DEPARTMENT - - ZNDEREST -PENAETV.

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Sec. 2. Section 98.46, subsection 3, Code 2989, is amended by striking the subsection and inserting in ijeu therecf tre Eollowing:
3. In addition to the tax or additional tax, the taxpayer shail pay a penalty as provided in section 421.27 .

Sec. 3. Section 324.65, unnumbered paragrapn i, code Suppiement 1989, is amenced to read as foilows:






The-penaity-imposed-under-ihis-seetion-ts-not-srojeet--o
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8 fraction of amonth as an entire monch, computed from the date
9 the return was required to be filed. If the amount of the cax 10 as determined by the appropriate state agency is less than the 1.1 amount paid, the excess shall be refunded with interest, the i2 interest to begin to accrue on the first day or the third 13 calendar month following the date of parment or the date the 24 return was due to be filed or was filed, whichever is the 15 latest, at the rate in effect under section 421.7 counting -6 each fraction of month as an entire month unde: the rules
1.7 prescribed by tre appropriate state agency. Ir lieu of a i8 refund aijowed under this section, the iicensee may request 19 that the department ailow the refunc to be reld as a credit
20 for the licensee.
21 Sec. 4. Section 324.65, unnumbered paragraph 2, Code
22 Suppiement i989, is amended to read as Eoilows:
23 The appropriate state agency shal: not remit any part of a 24 penaity for deisnquent payment if the dein inquency results fom
25 the fact that a check given in payment is not nonored because
26 of insufficient funcs in the account upon which the check was

28 that-there-hes-been-a-detiberate-attempt-gn-the-gart-es-e
29 亡teensee-өr-other-persor-te-evade-payment-ef-Eyet-taxey-there


32 deef A report required of licensees or persons operating
33 under division : If, upon which no tax is due, is subject to a
34 penaity of ten doliars if the report is not timeiy fited with
35 the state department of transportation.

SEE. 2304 He.
$\therefore$ Sec. 5. Section 421.7, subsection 2 , Code 1989 , is amended 2 to read as follows:
3 2. The rate of interest that shall be in effect during a 4 calendar year shall be the rate which is two percentage points 5 greater than the numerical average, rounded to the nearest one 6 percent, of the respective prime rates for each of the months 7 in the twelvemonth period that ends September 30 of the 8 previous calendar year. The rate of interest established by 9 this subsection takes effect January l, and applies to any io amount which is due or becomes payable on or after that date. ii Sec. 6. Section 421.27, Code Supplement 1989, is amended 12 by adding the following new suiosection: 13 NEN SUBSECTION. 6. The taxpayer was subject to the 14 pendity provision of section 422.25 subsection 2 , and was 15 eligible to compute taxable ircome under the cash receipts ard i 6 disbursements method of accounting under section 448 (b)(3) of
17 the fraternal Revenue Code. The waiver provision in this
18 paragraph applies only for tax years beginning in the 1985 and
191986 calendar years and only to the extent that the taxpayer
20 tailed to include in its net income for state tax purposes
21 interest payabie on short-term obiigations as it accrued
22 during those tax years as provided in section i28i of the
23 Internal Revenue Code and provided that an amended return is 24 filed by July $1, i 990$.
25 Sec. 7. Section 421.27, Code Supplement :989, is amended 26 by striking the section and inserting in lieu thereof the
27 following:
421.27 PENAETIES.
:. EAILURE TO TMELY EILE A RETURN OR DEPOSIE FORM. If a 30 person fails to file with the department on or before the due

31 date a return or deposit form there shall be aciced to the tax
32 shown due or required to be shown due a penalty ot ten percent
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34 penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:
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c. The death of a taxpayer, death of a member of the immediate Eamily of the taxpayer, or death of the person directiy responsible Eor Eiling the return and paying the tax, when the death interferes with timely filing.
d. The onset of serious, iong-term iliness or
hospitaiization of the taxpayer, of a member of the immeciate family of the taxpayer, or of the person directiy responsible for filing the return and paying the tax.
e. Destruction of records oy fire, fiood, or other act of God.
f. rre taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specificaily made to the taxpayer, to the taxpayer's preparer, or to an association represertative of the taxpayer fron: the department, state department of transportaticn, county treasurer, or Eederai internal revenue service, wincheve= is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicià body, or the adoption, amencment, or repeal of a rule or law.
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S.F. 2304 H.F. $\qquad$
$\therefore \quad$ : The return, deposit form, or payment is timely, but erroneousiy, mailed with adequate postage to the interna: revenue service, another state agency, or a incal government agency and the taxpayer provides proof of timely maiiing wish adequate postage.
j. The tax nas been paid by the wrong licensee and the payments were timeiy remitted $=0$ the department for one or more tax periods prior to notification by the department.
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2. FAILURE TO TIMELY PAY THE TAX SHOWN DUE, OR THE TAX REQUIRED TO BE SHOWN DUE NITH THE FILING OE A RETURN OR
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21 b. The taxpayer voluntarily files an amended recirr and 22 pays ail tax shown to be due on the return prior to any
23 contact by the department, except under a sarctioned seif-
24 audit program conducted by the department.
c. The taxpayer provides written notification to the
d. The taxpayer presents proof that the taxpayer reited 32 upon appiicabie, documented, witten advice specificaily made

34 association representative of the taxpayer Erom the depar:-
35 ment, state cepartmert of transportation, county treasurer, or
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I Eederal internai revence service, whichever is appropriate, 2 that has not been superseded by a court decision, ruling by a 3 quasi-judicial bocy, or the adcption, amendment, or repead of 4 a rule or law.
5 e. Reliance upon results in a previous audit was a cirect 6 cause for the failure to pay the tax requirec to be shown due 7 where the previous audit expressly and ciearly addressed the 8 issue and the previous audit results have not been superseded 9 by a court decision, or the adoption, amendment, or repeal of 10 a rule or law.
i: E. Uncer rules prescribed by the director, the Eaxpayer i2 presents documented proof of substantial authority to rely 13 upon a particular position or upon proof that all facts anc 14 circumstances are disclosed on a return or deposi form. 15 g. The return, deposit form, or payment is timeiy, but 16 erronecusly, maijec with adequate postage to the internai
17 revenue service, another state agency, or a locai government 18 agency and the taxpayer provides proof of timeiy mailing with 19 adequate postage.
20 h. The tax has been paid by the wrong licersee and the 2 payments were timely remitted to the department for one or 22 more tax periods prior to notificarion by the departnent.
23 3. AUDIT DEFICIENCIES. If any person fails to pay the tax
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32 b. The taxpayer presents proof that the taxpayer relied
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34 to the taxpayer, to the taxpayer's preparer, or to an
35 association representative of the raxpayer from the
S.F. 2304 R.F. $\qquad$

1
department, state department of transportation, county treasurer, or fecerai internai revenue service, whicrever is appropriate, trat has not befn siperseded by a court decision, ruiing by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
C. Reiiance upon resules in a previous audit was a direct cause for the Eailure to pay the tax shown die or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the acoption, amendment, or repeal of̃ a rule or law.
d. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particuiar position or upon proof that ail facts and circumstances are disciosed on a seturn or deposit form.
4. In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willilily filing a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in this section, a penaliv of seventi-6ive percent shais pe added to the amount shown due or required to be stown as tax on the retura or deposit form. If peraities are appiscable for failure to file a return or deposit form and failure to pay the tax shown due or required to be shown due on the retur: or ceposit form, the penaity provision for Eaiidre to file siadi be in lieu of the penalty provisions for fai..ure to pay the tax shown due or required to be shown due on the revurn or deposit form, except in the case of whinfui Eai iure to tile a retura or cieposit form or willfully Eiling a Eaise retura or deposit form with intent to evade $a x$.

The penalties imposed under this section are not subject so waiver.

Sec. 8. Section 422.16, subsection lo, paragrapn b, Coce suppiement i989, is amended $=0$ read as foilows:

$\qquad$
zeast－nithety－pereent－of－the－tax－dae－with－the－Eiting－gs－the semimonthiyォ－menthzyo－or－guateevまy－deposit－serm－sa－oz－befere


 fifteen－pescent－of－the－amount－of－tne－tax－due－－exeept－as providec－in－seetior－4zまーマ7－
£n-che-ease-of-wiまま


 otherwise－provided－in－ehis－paragrapht－ehere－ts－added－ts－the amount－ェequitrea－to－ine－sihewn－ag－tax－9n－the－genimenthiy
 the－arount－ef－the－taxt In addition to the tax or aditionai tax，any person or withholding agent shall pay a penalty as proviced in section 421．27．The taxpayer shall aiso pay interest on the tax or additional tax at the rate in efect under section 421．7，for each month courting each fraction oE a month as an entire month，computed Erom tre date the semimonthiy，monthly，or quarteriy deposit form was required to be filed．The penaity and interest become a part of the



Sec．9．Section 422．25，subsection 2，Code Suppiement 1989，is amended to read as foilows：

2．In addition to the tax or additional tax determined by the department under subsection $i$ ，the taxpayer srail pay interest on the tax or additioncl tax at the rate in effect under section $\frac{4}{7} 2 \mathrm{i} 7$ for each ronth counting each fraction of a month as an entire month，computed from the dane the teturn




S.E. $\qquad$ H. F .




 in-this-subgeetron;-there-shait-be-added-te-ere-amount
 of-the-ametnt-ef-the-tax---థhe-penaity-imposen-yneter-thts
 or additionai tax, the taxpaver snall pay a penaity as provided in section 421.27 .

Sec. 10. Section 422.58, subsection l, Code 1989, is amended so read as foijows:



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 dmoñーoEーthe-tex I In addition to the tax or additional tax, the taxpayor shail pay a penairy as provided ir section 421.27. The taxpayer shail also pay interest on rie tax or additionai tax at the rate in eEEect under section 42 . 7 Eor
$\qquad$

33 each Eraction of a month as an entire ronth, computed from the
34 date the monthiy deposit form or return was required bo be
35 Eiled. The penaity and interest siail de odid to tre12
$\qquad$
$\qquad$ under section 421.7 until paid．
Sec. 14.
Sec. 15.
Sec. 16.
Sec. 17.

ま．All taxes not paid within the time prescribed in this chapter are subject to a penaity as provided in seesection－z section 421.27 and shall draw interest at the rate in effect．

section-45月-5-faits-te-remit-at-ieast-ninety-pereent-of-the

date-or-pays-iess-than-ntnety-pereent-of-any-tax-eefutreè-to
be-shown-on-the-retarn-there-shatz-be-edded-te-the-tax-a
penatey-of-geven-and-one-haz-pereen=-of-the-amornt-sf-大he-tax

imposed-under-this-subseetion-is-not-grioject-te-waitur.
This Act takes effect January i, 1991.
Section 6 of this Act applies :etroactiveiy to tax years
beginning in the 1985 and 1986 calerdar years.
Sections 1 through 4 and 7 through 12 of this Act are
applicable to tax years beginaing on or after january $1,1991$.
Section 13 of this Act is applicable to deaths occurring on

$$
-12-\quad \text { sv/cc/26 }
$$

## SENATE FILE 2304

FISCAL NOTE

A fiscal note for Senate pile 2304 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2304 provides for revisions in interest and penalty provisions applicable to taxes administered by the Department of Revenue and Finance. The bill will provide for increases in the statutory interest rate. In addition, the penalty rates will increase or decrease depending on the tax type. The bill also provides for exceptions under which a penalty will not be assessed.

Fiscal Impact
The Department believes that overall the legislation will be approximately revenue neutral due to increases in the interest rate and adjustments to the penalty rate.

Source: Department of Revenue and Finance
(LSB 8312sv, PDD)
FILED EEBRUARY 15, 1990
BY DENNIS PROUTY, EISCAL DIRECTOR

1 Amend Senate File 2304 as follows:

1. Page 3, by inserting after line 20 , the following: "Sec. 100 . Section 421.27, Code Supplement 1989, "Sec. 100 . Section 421.27 , code new subsection: is amended by adding 6. The taxpayer was subject to the penalty provision of section 422.25 , subsection 2 , and was eligible to compute taxable income under the cash receipts and disbursements method of accounting for tax years beginning in the 1985 and 1986 calendar years and only to the extent that the taxpayer failed to include in its net income for state tax purposes interest payable on short-term obligations as it accrued during those tax years as provided in section 1281 of the Internal Revenue Code."
2. Page 11, by inserting after line 35 the following:
"Sec.
Section $\overline{10} 0$ of this Act applies retroactively to tax years beginning in the 1985 and 1986 calendar years."

Ey WILLIAM W. DIELEMAN
S-5227 FILED FEBRUARY 26, 1990

SENATE FILE 230G
S-5283
$i$ Amend Senate File 2304 as followis:

1. Page 3, by inserting after !ine 10 , the Eollowing:
"Sec. 100. Section 421.27, Code Suppiement 1989, is amended by acding the Eollowing new subsection: NEW SUBSECTION. 5. The :axpayer was subject to the penatiy provisicr of section 422.25, subsection 2 , and was eiligible to compute taxable :acome under the cish receipts and disoursements method of accounting under section $\therefore 48(b)(3)$ of the Intornal Revenue Cocie. The waiver proviston in this paragraph appiles ondy for tax years begnoning in the 1985 and ligb calendar years and only 6 the extent Erat the taxpayer failed to include in its net income for state tax purposes interest payable on short-tevm obllgations as it acciued during those tax yeazs as provided in section 1281 of the Internai Revenue Code and provided that an amended zeturn is filed by July $1,1990 .{ }^{\prime \prime}$
2. Page 11, by inserting after line 35 the following:
"Sec.
Section loo se this Act applies retroactively to tax years beginning in the 1985 and 1986 calendar years."

By william in. Dieleman

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SSH 2223
WAYS $\times$ AnEANS

SENATE FILE


BY（PROPOSED COMMITTEE ON WAYS AND MEANS BILL BY CHAIR－ PERSON DIELEMAN）

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Passed Senate，Date
``` \(\qquad\) Nays \(\qquad\)
\(\qquad\) Vote：Ayes Passed House，Date \(\qquad\)

Approved \(\qquad\) Vote：Ayes＿＿Nays \(\qquad\)

\section*{A BILL FOR}

1 An Act relating to penalty and interest on cigarette，tobacco，

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

S．F． \(\qquad\) H．F．

Section 1．Section 98．28，Code 1989，is amended to read as Eollows：

98．28 ASSESSMENT OF TAX BY DEPARTMENT－－INTEREST－－ PENALTY．

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－faiłed－to－pay－at－łeast－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 of seven－and－one－hatf－pereent－of－the－amount－of－Ehe－tax－－exeept as provided in section 421．27．The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a montin as an entire month，computed from the date the tax was due．If any person fails to Eurnish 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 the return and determine the correct amount of tax．

Sec．2．Section 98．46，subsection 3，Code 1989，is amended by striking the subsection and inserting in lieu thereof the following：

3．In addition to the tax or additional tax，the taxpayer shali pay a penalty as provided in section 421.27.

Sec．3．Section 324．65，unnumbered paragraph 1，Code Supplement 1989 ，is amended to read as follows：

まぁ－e－まicensee－or－other－person－faits－to－remit－at－łeast ninety－percent－of－the－tax－due－with－the－fifing－of－the－return－on or－before－the－due－date－or－pays－tess－than－ninety－percent－of－any tax－required－to－be－shown－on－the－returnt－there－shata－be－adejed
\(\qquad\) H.F.
to-the-tax-a-penatey-of-seven-and-one-nazf-percent-of-the ameunt-of-the-tax-deer-except-as-provided-in-seetion-4zł-z7-甲he-penaity-imposed-ander-this-section-is-not-subject-to vaiver: In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect uncer section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If the amount of the tax as determined by the appropriate state agency is less than the amount paid, the excess shall be refunded with interest, the interest \(=0\) begin to accrue on the first day of the third calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the appropriate state agency. In lieu of a refund allowed under this section, the licensee may request that the department allow the refund to be held as a credit Eor the licensee.

Sec. 4. Section 324.65, unnumbered paragraph 2, Code Supplement 1989, is amended to read as follows:

The appropriate state agency shall not remit any part of a penalty for delinquent payment if 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. Howeveri-if-it-appears-as-a-resutt-of-an-investigation thet-there-has-been-a-dełiberate-attempt-on-the-part-of-a まieensee-or-other-person-to-evade-payment-of-£uez-taxes-there shał̀-be-added-to-the-assessment-against-the-offending-person and-cołłected-a-penałty-of-seventy-five-pereent-of-the-tax due- A report required of 1 icensees or persons operating under division III, upon which no tax is due, is subject to a penalty of ten dollars if the report is not timely filed with the state department of transportation.
S.F. \(\qquad\) H.F.

1 Sec. 5. Section 421.7, subsection 2, Code 1989, is amended 2 to read as follows:

3 2. The rate of interest that shall be in effect during a 4 calendar year shall be the rate which is two percentage points 5 greater than the numerical average, rounded to the nearest one 6 percent, of the respective prime rates for each of the months 7 in the twelve-month period that ends September 30 of the 8 previous calendar year. The rate of interest established by 9 this subsection takes effect January 1 , and applies to any 10 amount which is due or becomes payable on or after that date.
11 Sec. 6. Section 421.27, Code Supplement 1989, is amended 12 by striking the section and inserting in lieu thereof the 13 following:
14 421.27 PENALTIES.
15 1. FAILURE TO TIMELY FILE A RETURN OR DEPOSIT FORM. If a 16 person fails to file with the department on or before the due 17 date a return or deposit form there shall be added to the tax 18 shown due or required to be shown due a penaity of ten percent 19 of the tax shown due or required to be shown due. The 20 penaity, if assessed, shall be waived by the department upon a 21 showing of any of the following conditions:
22 a. At least ninety percent of the tax required to be shown 23 due has been paid by the due date of the tax.
24 b. Those taxpayers who are required to file quarterly
25 returns, or monthly or semimonthly deposit forms may have one 26 late return or deposit form within a three-year period. The 27 use of any other penalty exception will not count as a late 28 return or deposit form for purposes of this exception.
c. The death of a taxpayer, death of a member of the 30 immediate family of the taxpayer, or death of the person 31 directly responsible for filing the return and payirg the tax, 32 when the. death interferes with timely filing.
d. The onset of serious, long-term illness or

34 hospitalization of the taxpayer, of a member of the immediate 35 family of the taxpayer, or of the person directly responsibie
\(\qquad\) H.F. \(\qquad\)

1 for filing the return and paying the tax.
2 e. Destruction of records by fire, flood, or other act of 3 God.

4 f. The taxpayer presents proof that the taxpayer relied 5 upon applicable, documented, written advice specifically made
6 to the taxpayer, to the taxpayer's preparer, or to an
7 association representative of the taxpayer from the
8 department, state department of transportation, county
9 treasurer, or federal internal revenue service, whichever is 10 appropriate, that has not been superseded by a court decision, 11 ruling by a quasi-judicial body, or the adoption, amendment, 12 or repeal of a rule or law.
\(\qquad\) H.F. \(\qquad\)
\(l\) before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the 3 tax die. The penalty, if assessed, shali be waived by the 4 department upon a showing of any of the following conditions:
a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.
7 b. The taxpayer voluntarily files an amended return and 8 pays all tax shown to be due on the return prior to any 9 cortact by the department, except under a sanctioned self10 audit program conducted by the department.
c. The taxpayer provides written notification to the 12 department of a sederal audit while it is in progress and 13 voluntarily files an amended retura which includes a copy of 14 the federal document showing the final disposition or final 15 federal adjustments within sixty days of the final disposition 16 of the federal government's audit.
17 d. The taxpayer presents proof that the taxpayer relied i8 upon applicable, documented, written advice specifically mace
i9 to the taxpayer, to the taxpayer's preparer, or to an
20 association representative of the taxpayer from the depart-
21 ment, state department of transportation, county treasurer, or
22 federai internal revenue service, whichever is appropriate,
23 that has not been superseded by a court decision, ruling by a 24 quasi-judicial body, or the adoption, amendment, or repeal of 25 a rule or law.

26 e. Reliance upon results in a previous audit was a direct 27 cause for the failure to pay the tax required to be shown due 28 where the previous audit expressiy and clearly addressed the

29 30 issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a ruie or law.
f. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.
\(\qquad\) H.E. \(\qquad\)
g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.
h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.
3. AUDIT DEFICIENCIES. If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax required to be shown due a penalty of five percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:
a. At least ninety percent of the tax required to be shown due has been paid by the due date.
b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and cleariy addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.
d. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and
\(\qquad\) H.F.
circumstances are disclosed on a return or deposit form.

9 failure to file a return or deposit form and failure to pay 10 the tax shown due or required to be shown due on the return or 11 deposit form, the penalty provision Eor Eailure to Eile shall 12 be in lieu of the penalty provisions for failure to pay the 13 tax shown due or required to be shown due on the return or 14 deposit form, except in the case of willful failure to file a 15 return or deposit form or willfully filing a false return or 16 deposit form with intent to evade tax.
4. In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willfully filing a false return or deposit form with the intent to evade tax, in iieu of the penalties otherwise provided in this section, a penalty of seventy-five percent shall be added to the amount shown due or required to be shown as tax on the return or deposit form. If penalties are applicable for

The penalties imposed under this section are not subject to

Sec. 7. Section 422.16, subsection 10 , paragraph b, Code supplement 1989, is amended to read as follows:
b. 白-any-person-or-withhoidireg-agent-faizg-to-remit-at zeast-ninety-percent-of-the-tax-due-with-the-
 the-due-datef-or-pays-łess-than-ninety-pereent-of-any-tax
 depositt-form;-there-shaiz-be-adied-to-the-tax-a-penaity-of £ifteen-percent-of-the-amount-of-the-tax-duer-except-as provided-in-seetion-4ż-z7-
 monthiyィ-or-querterły-deposit-form-with-intent-to-evaie-tax-or
 deposit-form-with-intent-to-evade-tax--in-̇iet-of-the-penazey otherwise-provided-in-this-paragraphy-there-is-aded-to-the amount-requireed-to-be-shown-as-tax-on-the-semimonthiy monthłyr-or-quasterzy-deposit-formi-seventy-five-percent-of
\(\qquad\) H．F． \(\qquad\)
the-amount-of-the-tax- In addition to the tax or additional
tax, any person or withholding agent shall pay a penalty as
provided in section 421.27. 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 Eraction of
a month as an entire month, computed from the date the
semimonchly, monthly, or quarterly deposit form was required
to be filed. The penalty and interest become a part of the
tax due Erom the withholding agent. Fhe-penatty-smposed-anèer
this-subseetion-is-noe-subjece-to-waiver -
    Sec. 8. Section 422.25, subsection 2, Code Supplement
    1989, 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 montin counting each fraction of a
    month as an entire month, computed from the date the return
    was required to be filed. 玉f-any-pessor-faiまs-to-semit-at
    まeest-ninety-percent-of-the-tax-due-with-ehe-£ìing-of-the
    return-on-or-before-the-dae-dater-or-pays-zess-than-ninety
    percent-of-any-eax-yequifed-eo-be-showr-on-ehe-returng-ehere
    shaż-be-added-to-the-tax-a-penaまty-of-seven-and-one-hatן
    percent-of-the-tax-deef-exeept-as-provided-in-section-4zさーぞアテ


    intent-to-evade-taxォ-in-titu-of-the-penazty-othervise-provided
    ェn-this-subsectionf-there-shaまま-be-added-to-the-amount
    requifed-to-be-shown-as-tax-on-the-return-seventy-five-pereent
    of-the-amotnt-of-the-tax---qhe-penȧty-imposed-ander-this
    subsection-is-not-subject-to-xaiver- In addition to the tax
    or additional tax, the taxpayer shali pay a penalty as
    provided. in section 421.27.
    Sec. 9. Section 422.58, subsection 1, Code 1989, is
    amended to read as follows:
    1. ££-\&-person-oェ-permit-hoまdeェ-faiまs-to-remit-at-まeast
\(S \cdot \bar{F}\) ． \(\qquad\) H．E．
ninety－percent－of－the－tax－dye－with－the－fizing－of－the semimonthiy－or－monthiy－tax－deposit－fomm－or－retarn－on－or－before the－dye－dater－or－pays－tess－than－ninety－pereene－of－any－tax －equised－to－be－shomn－on－the－retvint－exeepting－the－period betxeen－the－compietion－of－an－examination－of－the－books－and records－of－a－taxpayer－and－the－giving－of－notiee－to－eine－taxpayer that－a－tax－or－adèitionaz－eax－is－duef－there－shał亡－be－added－to the－tax－a－penaṫy－of－£ffteen－pereent－of－the－amoant－of－the－tax
 fai̇ure－to－fiまe－a－semimonthzy－or－monthiy－tax－deposit－form－or
 deposí－form－or－ェetarn－or－wìifyi－ fzacduiert－semimonthły－or－montíy－tax－depositeform－oz－retern with－intent－to－evade－taxゥ－in－itew－of－the－penaity－otienwise provided－in－this－subseetion－－there－shati－ise－added－so－the amount－required－to－be－sinown－as－tax－on－the－semimontiny－or month土y－tax－deposit－form－or－return－serenty－£ive－pereent－of－tine amonntof－the－taxt In addition to the tax or additional tax， the taxpayer shall pay a penal＝y as provided in section 421．27．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 ceposit 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 manrer as the tax imposed by this division．qhe－penaity imposed－under－this－subsection－is－not－subjeet－to－waiverテ

Sec．10．Section 423．18，subsection 1，Code 1989，is amended to read as follows：

1．壬－a－person－or－permit－hozdes－faizs－eo－remit－at－ieast ninety－peseent－of－the－tax－dae－with－the－fiting－of－the－monthiy deposit－£orm－or－retarn－on－or－before－the－dae－datet－or－pays－士ess than－ninety－pescent－of－eny－tax－sequised－to－be－shown－on－the
\(\qquad\) H．F．
 2 the－eompietion－of－an－examination－of－the－booins－and－zecords－of－a taxpeyer－and－the－giving－of－notice－to－the－taxpayer－that－a－tax or－additionaz－tax－is－duef－there－shazま－be－added－to－the－tax－a penazty－of－seven－and－one－hazf－pereent－of－the－tax－duef－exeepe as－provided－ir－seetien－4z亡－27－－Fer－tax－due－under－seetion 423－9；－the－pena土ty－shazま－be－fifteen－percent－－－in－ease－of

 witffetty－fiłing－a－fatse－or－£raudutent－monthty－deposit－form－or retarn－xith－intent－to－evade－tax－－in－itien－of－the－penatty otherwise－provided－in－this－subsectiont－there－shati－be－added－to the－emount－required－to－be－shown－as－tax－on－the－monthzy－deposit form－or－feturn－seventy－£ive－percent－of－the－amount－of－the－tax－ In addition to the tax or additional tax，the taxpayer shall pay a penalty as provided in section 421．27．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 coilected in the same manner as the tax imposed by this chapter．The－perałty－imposed－under－this－subseetion－is－not subject－to－waiver－

Sec．1․ Section 424．17，subsection 1，Code Supplement 1989，is amended to read as follows：

1．玉f－a－depositor－£aiまs－to－remit－at－łeast－ninety－percent of－the－charge－due－with－the－£izing－of－the－return－on－or－before
31 the－due－dater－or－pays－zess－than－ninety－percent－of－any－einazge
requiredrto-be-shown-on-the-return7-exeepting-the-period
between-the-compietion-of-an-examination-of-the-books-and
records-of-a-eharge-payer-and-the-giving-of-notice-eo-the
ehazge-payer-that-a-charge-or-additionat-charge-is-duer-there
\(\qquad\) H．F． \(\qquad\)

1

8 eherge．In addition to the charge or additional charge，the
9 charge payer shall pay a penalty as provided in section
10 421．27．The charge payer shall also pay interest on the
11 charge or additional charge at the rate in effect under
12 section 421.7 for each month counting each fraction of a month

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    shatま-be-added-to-the-charge-a-penaity-of-fifteen-pereent-of
Ehe-amount-of-the-charge-drer-except-as-provided-in-section


in-i̇ieu-of-the-penaity-otherwise-provided-in-this-subseetiont,
there-shatま-be-adied-to-the-amonnt-requized-to-be-shown-as-a
charge-on-the-seturn-seventy-£ive-pereent-of-the-amount-of-the
herge- In addition to the charge or additional charge, the
as an entire month, computed from the date the return was
required to be filed. The penalty and interest shail be paid to the depariment and disposed of in the same manner as the charge imposed under this chapter．Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter．

Sec．12．Section 450．63，Code 1989，is amended to read as follows：
450.63 MATURITY OF TAX－－INTEREST－－PENALTY．
t．All taxes not paid within the time prescribed in this chapter are subject to a penalty as provided in subsection－z section 421.27 and shall draw interest at the rate in effect under section 421.7 until paid．
\(z=--\dot{f-a-p e r s o n-\dot{y} a b i e-f o r-t h e-p a y m e n t-o f-t a x-a s-s t a t e d-i n ~}\) seetion－450－5－faits－to－remit－at－zeast－ninety－percent－of－the eax－dze－with－the－fiting－of－the－return－on－or－before－the－due date－or－pays－̇ess－than－ninety－peseent－of－any－tax－sequifed－to be－shown－on－the－returnf－there－shał亡－be－adeded－to－the－tax－a penaity－of－seven－and－one－hazf－percent－of－the－amount－of－the－tax duef－except－as－provided－in－section－4z亡－z7：－－The－penatey imposed－under－this－subsection－is－not－subject－to－waituer－

Sec． 13.
This Act takes effect January \(1,1991\).
\(\qquad\) H.F. \(\qquad\)

2 Sections 1 through 4 and 6 through 12 of this Act are 3 applicable to tax years beginning on or after january \(1,1992\). 4 Sec. 15.

5 Section 12 of this Act is applicable to deaths occurring on 6 or after January 1, 1991.

Sec. 14.

\section*{EXPIANATION}

The bill increases the interest rate on delinquent taxes to 2 percentage points greater than the average prime rate for the 12 -month period which ends September 30 for the previous calendar year. The same rate of interest will be paid on overpayments of tax.

The bill also establishes a section in chapter 421 which sets forth the penalties for all taxes.

The penalties created by the bill are as follows:
(1) A 10 percent penaity for failure to timely file a return or deposit form;
(2) A 5 percent penalty for failure to timely pay the tax due witi a return or deposit form;
(3) A 5 percent penalty for a deficiency found on audit; and
(4) A 75 percent penalty for willful failure to file a return or deposit form or for willfully filing a false return or deposit form with the intent to evade the tax.

There are circumstances set forth under which the penalty will not be assessed.

The bill takes effect January l, 1991. Sections l through 4 and 6 through 11 are applicable to tax years beginning on or after January l, 1991. Section 12 of this bill is applicable to deaths occurring on or after January \(1,1991\).

Senate File 2304, p. 2

SEMATE RILE 2304
AN ACT
belating to penalty and interest on cigarette, tobacco, motor fuel, ingividual incohe, witheoloing, corporation income, franchise, saleg, use, retailer's use, environmental protection charge, inheritance, generation skipping transfer, and estate taxes, and phoviding effective and applicability dates.
be it enacted by the general assembly of the state of iowa:

Section 1. Section 98.28, Code 1989, 1s amended to read as follows:
98.28 assesshent of tax by otparthent -- interest -penalty.

If after any audit, examination of recorde, os other investigation the departeent flinda that any person has sold cigarettes without' stamps affixed thereto as required by this division or-that-any-person-has-faiked-to-pay-at-icast-ntnety percent-ot-any-tax-taposed-upon-the-person, the department ohall fix and determine the amount of tax due, and ahall assese the tax agalnat the person, together with a penalty of eeven-and-one-hatf-percent-of-the-amount-of-the-taxp-except as provided in aection 421.27 . The taxpayer ghall pay interest on the tax or additional tax at the rate deterained under gection \(\mathbf{4 2 1 . 7}\) counting each icaction of a month as an entire month, computed fros the date the tax was due. If any person falls to furnigh evidence eatisfactory to the director showing purchases of sufficient stamps to stamp unstamped clgarettes purchased by the person, the presumption ahall be that the cigarettes were sold without the proper stamps affixed thereto. Within two years after the return is flled or within
two yeara after the seturn became due, whichever is later, the department shall examine te the return and detercoine the correct amount of tax.

Sec. 2. Section 98,46, subsection 3, Code 1989, is amended by striking the subsection and inserting in lieu chereot the following:
3. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in gection 421.27.
sec. 3. Section 324.65, unnumbered paragraph 1, Code Supplement 1989, is amended to read as tollows:

If-a-ikeensee-or-other-person-fakis-to-resit-at-keast Afnety-percent-of-the-tax-due-wth-the-ftitng-of-the-return-on or-before-the-due-date-or-payp-kess-than-ntnety-percent-of-any tax-sequired-to-be-shown-on-the-rotarny-there-shatt-be-added to-the-tex-s-penetty-of-seven-and-one-hazf-percent-of-the amount-of-the-tax-duer-except-as-provided-tn-section-4zzfitit The-penaity-imposed-under-thks-section-ty-not-aubject-to watvert In addition to the tax or additional tax, the taxpayer shall pay a penalty as proulded In section 121.27. The taxpayer shall also pay Interest on the tax or additional tax at the rate in effect under section 421.7 counting each traction of a month as an entire month, computed trom the date the return was requited to be filed. If the amount of the tax as determined by the appropriate state agency is less than the amount pald, the excess shall be refunded ulth interest, the interest to begin to accrue on the firgt day of the third calendar month following the date of payment or the date the return was due to be flied or was flled, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entlre month under the rules prescribed by the appropriate atate agency. In lieu of a refund allowed under this section, the licensee may request that the department allow the refund to be held as a credit for the licensee.

Sec. 4. Section 324.65, unnumbered paragraph 2, Code Supplement 1989, is amended to read as followa:

The dappropriate state agency shall not remit any part of a penalty for delinquent payment if the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon uhich the check was drawn. Howevertif-it-appears-as-a-eceait-of-an-tnvestigation that-there-has-been-a-dektberate-attempt-on-the-part-ot-a theensee-or-other-person-to-evade-payment-of-foet-taxts-there shatt-be-added-to-the-assesament-against-tha-offending-person and-eotifected-a-penatey-of-seventy-ftre-percent-of-the-tax due: A report sequired of licensees or persons operating under division ili, upon which no tax is due, ia aubject to a penalty of ten dollars if the report la not timely filed with the state department of eransportation.

Sec. 5. Section 121.7, subsection 2, Code 1989, 1s amended to read as follows:
2. The rate of intereat that ohall be in effect during a calendar year shall be the rate which is two percentage points greater than the numerical average, rounded to the neareat one porcent, of the respective prime rates for each of the months In the twelve-month pertod that ends September 30 of the previoua calendar year. The zate of interest establighed by this subeection takes effect January 1, and applies to any amount which to due or becomes payable on or after that date.

Bec. 6. Soction 421.27, Code Supplement 1989, to amended by adding the followlng new subeection:

HEW gUBPECTION. 6. The texpayer was subject to the penalty proviation of aection 422.25, aubaction 2, and was oligible to compute taxable sncome under the canh receipts and disbursements method of accounting under section 448(blli) of the internal Revenue code. The walver provision in this paragraph applies only for tax years beginning in the 1985 and 1986 calendar years and only to the extent that the taxpayer failed to include in ita net income for state tax purposes
interest payable on short-tera obligations as lt accrued during those tax years as proulded in section 1281 of the Internal Revenue Code and provided that an amended return la filed by July 1, 1990.

Sec. 7. Section 421.27. Code Supplement 1989, 1s amended by striking the section and ingerting in lieu thereof the following:
421.27 penalties.
1. failure to timely file a return or deposit form. it a person falls to flle with the department on or before the due date a return or deposit form there ahall be added to the tax shown due or required to be shown due a penally of cen percent of the tax ghown due or required to be shown due. The penalty, if asseased, shall be waived by the department upon a showing of any of the following condtitions:
a. Ae least ninety percent of the tax required to be ghown due has been pald by the due date of the tax.
b. Those caxpayers who are requlred to flle quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within ethree-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.
c. The death of a taxpayer, death of a member of the immedfate family of the taxpayer, or death of the person directly reaponeible for fliling the return and paying the tax. when the death Interferes with timely filing.
d. The onset of serlous, long-terd illnesa or
hoopltalization of the taxpayer, of a meaber of the immediate family of the taxpayer, of of the person directly responaible for flling the return and paying the tax.
e. Destruction of records by fira, flood, or other act of God.
f. The taxpayer presents proof that the taxpayer relled upon applicable, documented, ifitten adulce specifically mado to the taxpayer, to the taxpayer's preparer, or to an
association representative of the taxpayer from the department, state department of transportation, county treasurer, or tederal incernal revenue service, whlchever da approprlate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a zule or law.
g. Reliance upon results in a previous audit was a direct cause tor the fallure to flle where the previous audit. expressly and clearly addressed the lssue and the previous audit results have not been superseded by a court decision, or the adoption, awendment, or repeal of a rule or law.
\(h\). Under rules prescribed by the director, the taxpayer presents documented proot of substantial authority to rely upon a particular position or upon proot that all tacts and circumstances are diactosed on return or deposit form.
i. The ceturn, deposit form, or payment le timely, but erroneously, malled with adequate postage to the Internal revenue service, another state agency, of a local government agency and the taxpayer provides proof of timely malling with adequate postage.
j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the departwent.
\(k\). The fallure to file was dlacovered thzough a sanctioned self-audit prograim conducted by the department.
2. pallure to timely pay the tax showa due, or taE tax REQUIRED TO BE SHOWN DUE WITA THE EILING OF A RETURN OR DEPOSIT FORM. If a peraon talls to pay the tax shown due or required to be shown due on return or deposit fors on or before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penalty, if asaessed, shall be waived by the department upon a ghowing of any of the following conditions:
a. At least ninety percent of the tax requited to be shown due has been pald by the due date of the tax.
o. Tho taxpayer voluntarily fllea an areended return and pays all tax ghown to be due on the return prior to any contact by the department, except under a sanctioned seltaudit program conducted by the department.
c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarliy files an amended return which includes a copy of the federal document shouling the tinal dieposition or tinal Cederal adjuetmente within gixty days of the final disposition of the federal government' 3 audit.
d. The taxpayer presenta proof that the taxpayer celied upon applicable, documented, written adulce apeciflcally made to the taxpayer, to the taxpayer's preparer, or to an association repreaentative of the taxpayer from the departwent, etate department of transportation, county treasurer, or federal lnternal revenue bervice, whlchever is appropriate, that has not been superseded by a court deciston, ruling by a quasl-fudiclal body, or the adoption, amendment, or repeal of a cule or law.
-. Reliance upon results in a previous auditi was a direct cauae for the fallure to pay the tax requited to be shown due where the previous audit expressiy and clearly addressed the Issue and the previous audit rebulta have not been superseded by a court decieton, or the adoption, amendment, or repeal of a rule or law.
f. Under rules presicribed by the director, the taxpayer presents documented proot of substantial authority to rely, upon a particular position or upon proof that all tacta and circumstances are dieclosed on ceturn or deposit fort.
9. The return, depoalt Eorn, or payment is timely, but ecroneously, walled with adequate postage to the internal cevenue servica, another state agency, of a local government agency and the taxpayer providee proot of timely maling with adequate poatage.
h. The tax has been paid by the atong licensee and the payments were tiduly remitted to the department tor one or more tax pertods prior to notitication by the department.
3. audit oericiencies. If any person falls to pay the cax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax requited to be ahown due a penalty of tive percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:
a. At least ninety percent of the tax required to be shown due has been paid by the due date.
b. The eaxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the caxpayer's preparer, or to an assoclation representative of the taxpayer trom the department, stace department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court deciston, suling by a quasi-judiclal body, or the adoption, amendment. or repeal of a rule or law.
c. Reliance upon cesulte in a previous audit was a dicect cause for the fallure to pay the tax ahown due or requited to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been ouperseded by a court decioion, or the adoption, amendment, or repeal of a rule or law.
d. Under rules prescribed by the director, the taxpayer presenti documented proof of substantial authority to rely upon a particular position or upon proof that all facte and circumstances are diaclosed on a return or deposit form.
4. In case of willful fallure to tlle a recurn or deposit form with the intent to evade tax, or in case of willfully tilling a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in thla
section, a penalty of seventy-cive percent shall be added to the amount shown due or sequired to be shown as tax on the return or deposit forn. If penaletes are applicable for failure to file a return or deposit form and fallure to pay the tax shown due or requited to be ghown due on the return or deposit torm, the penalty provision for fallure to file shall be in lleu of the penalty provistons for fallure to pay the tax shown due or requited to be shown due on the return or deposit form, except in the case of willfut fallure to flle a return or deposit form or willfully tlifing a false return or deposit form with intent to evade tax.

The penalities lmposed under this section ate not subject to walver.

Sec. B. Section 422.16, subsection 10, paragraph b, Code Supplement 1989, Is amended to read as follows:
b. yf-any-parson-or-withhotding-agent-fatio-to-remtt-ac fenot-ninety-percent-of-the-tax-due-with-the-fizing-of-the semimonthiy-monthiyr-oe-quarterk-depostt-forn-on-or-before the-due-datey-or-payg-zess-than-ninety-percont-of-any-tax required-to-be-shown-on-the-seatmonthiyp-monthzyr-or-quarterty deposit-formy-thero-ahatz-be-added-to-the-tax-a-penotty-of fifteen-percent-of-the-amount-of-the-tax-duey-except-as provided-in-aection-4ztrz7t

In-the-case-of-witifut-fatiore-to-fite-a-seminonthiyy monthiyy-or-quarteriy-depoate-form-wteh-intent-to-ovade-tax-or
 deposit-form-rtth-intent-to-evade-taxp-in-kifeu-ot-the-penatty otherntse-provided-tn-thto-paragraphy-thero-io-added-to-the amount-requited-to-be-shown-ae-tox-on-tha-somimonthiyy monthiyp-or-quarteriy-deposit-formy-agenty-five-percent-of the-amount-of-the-taxt In addition to the tax or additional tax, any person or wichholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 22.7, for each month counting each Eraction of
month as an entrie month, computed trom the date the seminonthly, monchly, or quarterly deposit form was required to be flled. The penalty and Interest become a part of the tax due from the withholding agent. The-penatty-imposed-andee this-subsection-is-not-subject-eo-matver=

Sec. 9. Section 422.25, subsection 2, Code Supplement 1989, is amended to read as tollows:
2. In addition to the tax or additional tax determined by the departaent under subsection 1 , the taxpayer shall pay interest on the tax or additional tax at the rate ln effect under section 421.7 for each month counting each fraction of a month as antire month, computed trom the date the return was required to be flled. if-any-person-faike-to-renit-at zeast-ninety-percent-of-the-tax-due-wtth-the-ftiting-ot-the return-on-or-before-the-due-dater-or-pays-kees-then-ntnety percent-of-any-tax-required-to-be-shown-on-the-retarnj-there ahaiz-be-added-to-the-tax-a-penazty-of-seven-and-one-hazt percent-of-the-tax-duep-except-a*-provided-tn-section-4itizfit in-case-of-wiziful-takiure-to-ftie-a-return-with-intent-to ovade-taxy-or-in-esse-of-vilifukizfititng-a-fazso-return-with intent-to-evade-caxp-tn-zteu-of-the-penatty-otherwtae-provtded tn-this-subsectionj-there-shazz-be-added-to-the-azount required-to-be-shown-as-tan-on-the-return-seventy-five-percent of the-amount-of-tho-tan f- Phe-penatty-imposed-under-this atbsection-ke-not-subject-to-matvery In additlon to the kay or additional tax, the taxpayer ghall pay a penalty os provided in section 421.27 .

Sec. 10. Section 122.58, subgection 1. Code 1989. is amended to read as follows:
1. zf-a-person-or-pecmite-hotdor-faizs-to-remit-at-teast ninety-pereent-ot-the-tox-due-wteh-the-fiztng-ot-the seminonthiy-or-monthzy-tan-deposit-form-or-return-on-ot-betore the-due-datey-or-pays-iess-than-ntnety-percent-of-any-tax reguired-to-be-ghown-on-the-return,-excepting-the-period between-the-compietton-of-an-examination-of-the-books-and
records-of-taxpayer-and-the-gtvtng-ot-nottce-to-the-taxpayer that-a-tax-or-addittonat-tax-is-dues-there-ohati-be-added-to the-tan-a-penatty-of-fifteen-percent-of-the-manant-of-the-tor duer-except-as-provided-in-section-4ztra7t--in-ease-of-wititul fatzure-to-fite-a-seminonthiy-or-monthiy-tax-depostt-form-dr returnp-wizifut-fizing-of-a-fazie-aentaonthiy-or-monthzy-tan deposit-form-or-return-or-witifut-fityng-of-a-fatse-or fraudutent-semsmonthzy-or-monthzy-tax-deposte-form-or-return wtth-intent-to-evade-taxy-tn-tieu-of-the-penatey-otherwise provided-in-thia-aubsectiony-there-shazz-be-added-to-the amount-requifod-to-be-shown-as-tax-on-the-seminonthty-or monthiy-tax-depostt-fors-of-fetuen-seventy-ftvo-percent-of-the amount-of-the-tax In addltion to the tax or additional tax, the taxpayer shall pay a penalty as provided in gection 421.27. The taxpayer shall also pay intereat on the tax or additional tax at the rate in eftect under eection 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthiy or monthly tax deposit form or seturn was required to be clled. The penalty and interest shall be paid to the department and disposed of In the same manner as other recelpta under this division. Unpald penaltles and Interest may be enforced in the same manner as the tax lmposed by this division. The-ponatey inpoeed-under-thte-subsection-to-not-arbject-to-watvery

Sec. 11. Section 423.18, subsection 1, Code 1999, 1s amended to read as Rollows:
1. if-a-person-or-permtt-hozder-fetze-to-romit-at-keast ninety-percent-of-the-tax-due-wtth-the-ftifns-ot-the-aonthiy deposit-torm-or-return-on-or-before-the-due-dater-or-pays-ieas than-ntnety-percent-of-any-tax-requtred-to-be-shown-on-the monthiy-deposte-form-or-zeturny-exeepttng-the-peried-between the-compietion-of-an-emamination-of-the-booka-and-records-of-a tanpayer-and-the-giving-of-notice-to-the-taxpayer-tinat-a-tax or-addztionaz-tax-ts-duey-thert-shazi-be-added-to-the-tax-a penatty-of-geven-and-one-hate-percent-of-the-tax-duey-ezecpt
as-provided-in-geetion-4z \(\ddagger=27-\)--por-kax-due-ander-section 4Z3-97-the-penatey-ghatz-be-fifteen-percentr--in-ease-of Witifut-fatiure-to-fite-monthty-deposit-form-or-returny Wittfutiy-fizing-a-false-monthiy-deposit-form-or-returnj-or witzfutiy-fizing-a-fazge-or-frauduient-monthzy-deposit-form-or retorn-wtth-tntent-to-evade-taxy-in-izea-ot-the-penaity othervise-provided-in-this-subsectionj-there-shatz-be-added-to the-amount-requited-to-be-shown-as-tax-on-the-monthty-deposit form-or-return-seventy-five-percent-of-the-amount-ot-the-tax In addition to the tax or additional tax, the taxpayer ghall pay a penalty as provided in gection \(\$ 21.27\). 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 (raction of a month as an ontlre month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest ghall be paid to the department and disposed of In the same manner as other recelpts under this chapter. Unpald penalties and lnterest maly be collected in the same manner as the tax imposed by this chapter. Pho-penaity-íppoed-under-this-subecetion-is-not oubject-to-matver:

Sec. 12. Section 424.17, subsection 1, Code supplement 1989, 1s amended to read as tollows:
1. if-a-deposttor-fatis-to-remit-at-ieast-ntnety-percent of-the-charge-due-with-the-fizing-of-the-return-on-or-before the-due-dater-oe-paye-tese-than-ninety-percent-of-iny-charge required-to-be-shown-on-the-roturny-excapting-the-pertod between-the-comptotzon-of-an-examtnetzon-of-the-books-and records-of-a-eharge-peyer-and-the-giving-of-nottee-to-the charge-poyer-that-a-charge-or-additionaz-cherge-to-duep-there shatz-be-added-to-the-charge-a-ponazty-of-ctfteen-pereent-of the-amount-of-the-charge-duer-except-as-provided-in-section
 wiztfuz-fiting-of-a-fetse-retorn-mith-intent-to-evade-chargesy in-kteu-of-the-penatty-otherwise-provided-in-enta-aubsectiont
there-shat \(z\)-be-added-to-the-amornt-requitad-to-be-shown-as-a eharge-on-the-return-seventy-five-percent-of-the-amount-of-the charge \(-\quad\) In addition to the charge or additlonal charge, the charge payer shall pay a penalty as provided in aection 421: 2?. The charge payer shall also pay interest on the charge or additional charge at the cate in effect under section 421.7 for each month counting each fraction ot a month da an entire month, computed from the dace the return was requited to be filed. The penalty and interest shall be pald to the department and disposed of in the ame manner as the charge laposed under thls chapter. Unpald penalties and Interest may be onforced in the same manner as the charge lapoesed by inlo chapter.

Sec. 13. Section 450.63, Code 1989, it amended to read as fallows:
©50.63 MATURITY OF TAX -- INTEREST -- PENALTY.
if All taxes not paid within the time prescribed in this chapter are subject to a penalty as provided in absection-z gection 421.27 and shall draw interest at the rate in effect under section 421.7 until paid.
zx-fif-a-person-thabze-for-the-payment-of-tan-as-stated-in section-450г5-fatio-te-reatt-at-zeast-ntnety-percent-of-the ean-due-vtth-the-fiktng-of-the-return-on-or-before-the-dae date-or-pays-kess-than-ninety-percent-ot-any-tax-requited-to be-ghown-on-the-coturny-there-ahotz-be-added-to-the-tax-a penazty-of-acven-and-ont-hazt-percent-of-the-asount-of-the-tax
 taposed-under-thim-subsection-ky-not-mubject-to-waivery

Sec. 14.
Thie Act takes effect. January 1. 2991.
Sec. 15.
Saction 6 of thls Act applies retroactively to tax years beginning in the 1985 and 1986 calendar years.
sec. 16.

Sections 1 through 4 and 7 through 12 of this Act are applicable to tax years beginning on or after January \(1,2991\).

Sec. 17.
Section 13 of this Act is applicable to deaths occurring on or after January \(1,1991\).
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JO ANN ZIMMERMAN
President of the Senate

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DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2304, Seventy-third General Assembly.


TERRY E. BRANSTAD
Governor```

