

*Reprinted*

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SENATE FILE 2304

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 2223)

Passed Senate, Date 3/17/90 (P. 1673) Passed House, Date 4/2/90 (P. 1673)  
Vote: Ayes 46 Nays 0 Vote: Ayes 95 Nays 0  
Approved April 18, 1990

### A BILL FOR

1 An Act relating to penalty and interest on cigarette, tobacco,  
2 motor fuel, individual income, withholding, corporation  
3 income, franchise, sales, use, retailer's use, environmental  
4 protection charge, inheritance, generation skipping transfer,  
5 and estate taxes, and providing effective and applicability  
6 dates.

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

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SC 2304

1 Section 1. Section 98.28, Code 1989, is amended to read as  
2 follows:

3 98.28 ASSESSMENT OF TAX BY DEPARTMENT -- INTEREST --  
4 PENALTY.

5 If after any audit, examination of records, or other  
6 investigation the department finds that any person has sold  
7 cigarettes without stamps affixed thereto as required by this  
8 division ~~or that any person has failed to pay at least ninety~~  
9 ~~percent of any tax imposed upon the person~~, the department  
10 shall fix and determine the amount of tax due, and shall  
11 assess the tax against the person, together with a penalty of  
12 ~~seven and one-half percent of the amount of the tax, except as~~  
13 provided in section 421.27. The taxpayer shall pay interest  
14 on the tax or additional tax at the rate determined under  
15 section 421.7 counting each fraction of a month as an entire  
16 month, computed from the date the tax was due. If any person  
17 fails to furnish evidence satisfactory to the director showing  
18 purchases of sufficient stamps to stamp unstamped cigarettes  
19 purchased by the person, the presumption shall be that the  
20 cigarettes were sold without the proper stamps affixed  
21 thereto. Within two years after the return is filed or within  
22 two years after the return became due, whichever is later, the  
23 department shall examine it the return and determine the  
24 correct amount of tax.

25 Sec. 2. Section 98.46, subsection 3, Code 1989, is amended  
26 by striking the subsection and inserting in lieu thereof the  
27 following:

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

30 Sec. 3. Section 324.65, unnumbered paragraph 1, Code  
31 Supplement 1989, is amended to read as follows:

32 ~~If a licensee or other person fails to remit at least~~  
33 ~~ninety percent of the tax due with the filing of the return on~~  
34 ~~or before the due date or pays less than ninety percent of any~~  
35 ~~tax required to be shown on the return, there shall be added~~

1 to-the-tax-a-penalty-of-seven-and-one-half-percent-of-the  
2 amount-of-the-tax-due,-except-as-provided-in-section-421.27.  
3 The-penalty-imposed-under-this-section-is-not-subject-to  
4 waiver. In addition to the tax or additional tax, the  
5 taxpayer shall pay a penalty as provided in section 421.27.  
6 The taxpayer shall also pay interest on the tax or additional  
7 tax at the rate in effect under section 421.7 counting each  
8 fraction of a month as an entire month, computed from the date  
9 the return was required to be filed. If the amount of the tax  
10 as determined by the appropriate state agency is less than the  
11 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 following the date of payment or the date the  
14 return was due to be filed 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  
18 refund allowed under this section, the licensee may request  
19 that the department allow the refund to be held as a credit  
20 for the licensee.

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

23 The appropriate state agency shall not remit any part of a  
24 penalty for delinquent payment if the delinquency results from  
25 the fact that a check given in payment is not honored because  
26 of insufficient funds in the account upon which the check was  
27 drawn. ~~However, if it appears as a result of an investigation~~  
28 ~~that there has been a deliberate attempt on the part of a~~  
29 ~~licensee or other person to evade payment of fuel taxes there~~  
30 ~~shall be added to the assessment against the offending person~~  
31 ~~and collected a penalty of seventy-five percent of the tax~~  
32 ~~due.~~ A report required of licensees or persons operating  
33 under division III, upon which no tax is due, is subject to a  
34 penalty of ten dollars if the report is not timely filed with  
35 the state department of transportation.

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.

5263, 5327  
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 penalty of ten percent  
19 of the tax shown due or required to be shown due. The  
20 penalty, 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.

29 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 paying the tax,  
32 when the death interferes with timely filing.

33 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 responsible

1 for filing the return and paying the tax

2     a. Destruction of records by fire, flood, or other act of  
3 God.

4     b. 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.

13     c. Reliance upon results in a previous audit was a direct  
14 cause for the failure to file where the previous audit  
15 expressly and clearly addressed the issue and the previous  
16 audit results have not been superseded by a court decision, or  
17 the adoption, amendment, or repeal of a rule or law.

18     d. Under rules prescribed by the director, the taxpayer  
19 presents documented proof of substantial authority to rely  
20 upon a particular position or upon proof that all facts and  
21 circumstances are disclosed on a return or deposit form.

22     e. The return, deposit form, or payment is timely, but  
23 erroneously, mailed with adequate postage to the internal  
24 revenue service, another state agency, or a local government  
25 agency and the taxpayer provides proof of timely mailing with  
26 adequate postage.

27     f. The tax has been paid by the wrong licensee and the  
28 payments were timely remitted to the department for one or  
29 more tax periods prior to notification by the department.

30     g. The failure to file was discovered through a sanctioned  
31 self-audit program conducted by the department.

32     2. FAILURE TO TIMELY PAY THE TAX SHOWN DUE, OR THE TAX  
33 REQUIRED TO BE SHOWN DUE WITH THE FILING OF A RETURN OR  
34 DEPOSIT FORM. If a person fails to pay the tax shown due or  
35 required to be shown due on a return or deposit form on or

1 before the due date there shall be added to the tax shown due  
2 or required to be shown due a penalty of five percent of the  
3 tax due. The penalty, if assessed, shall be waived by the  
4 department upon a showing of any of the following conditions:

5 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 self-  
10 audit program conducted by the department.

11 c. The taxpayer provides written notification to the  
12 department of a federal 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 final disposition  
16 of the federal government's audit.

17 d. The taxpayer presents proof that the taxpayer relied  
18 upon applicable, 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 depart-  
21 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 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 expressly 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 repeal of  
31 a rule or law.

32 f. Under rules prescribed by the director, the taxpayer  
33 presents documented proof of substantial authority to rely  
34 upon a particular position or upon proof that all facts and  
35 circumstances are disclosed on a return or deposit form.

1 g. The return, deposit form, or payment is timely, but  
2 erroneously, mailed with adequate postage to the internal  
3 revenue service, another state agency, or a local government  
4 agency and the taxpayer provides proof of timely mailing with  
5 adequate postage.

6 h. The tax has been paid by the wrong licensee and the  
7 payments were timely remitted to the department for one or  
8 more tax periods prior to notification by the department.

9 3. AUDIT DEFICIENCIES. If any person fails to pay the tax  
10 required to be shown due with the filing of a return or  
11 deposit and the department discovers the underpayment, there  
12 shall be added to the tax required to be shown due a penalty  
13 of five percent of the tax required to be shown due. The  
14 penalty, if assessed, shall be waived by the department upon a  
15 showing of any of the following conditions:

16 a. At least ninety percent of the tax required to be shown  
17 due has been paid by the due date.

18 b. The taxpayer presents proof that the taxpayer relied  
19 upon applicable, documented, written advice specifically made  
20 to the taxpayer, to the taxpayer's preparer, or to an  
21 association representative of the taxpayer from the  
22 department, state department of transportation, county  
23 treasurer, or federal internal revenue service, whichever is  
24 appropriate, that has not been superseded by a court decision,  
25 ruling by a quasi-judicial body, or the adoption, amendment,  
26 or repeal of a rule or law.

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

33 d. Under rules prescribed by the director, the taxpayer  
34 presents documented proof of substantial authority to rely  
35 upon a particular position or upon proof that all facts and

1 circumstances are disclosed on a return or deposit form.

2 4. In case of willful failure to file a return or deposit  
3 form with the intent to evade tax, or in case of willfully  
4 filing a false return or deposit form with the intent to evade  
5 tax, in lieu of the penalties otherwise provided in this  
6 section, a penalty of seventy-five percent shall be added to  
7 the amount shown due or required to be shown as tax on the  
8 return or deposit form. If penalties are applicable for  
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 for failure to file 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.

17 The penalties imposed under this section are not subject to  
18 waiver.

19 Sec. 7. Section 422.16, subsection 10, paragraph b, Code  
20 supplement 1989, is amended to read as follows:

21 ~~b. If any person or withholding agent fails to remit at~~  
22 ~~least ninety percent of the tax due with the filing of the~~  
23 ~~semimonthly, monthly, or quarterly deposit form on or before~~  
24 ~~the due date, or pays less than ninety percent of any tax~~  
25 ~~required to be shown on the semimonthly, monthly, or quarterly~~  
26 ~~deposit form, there shall be added to the tax a penalty of~~  
27 ~~fifteen percent of the amount of the tax due, except as~~  
28 ~~provided in section 421.27.~~

29 ~~In the case of willful failure to file a semimonthly,~~  
30 ~~monthly, or quarterly deposit form with intent to evade tax or~~  
31 ~~willful filing of a false semimonthly, monthly, or quarterly~~  
32 ~~deposit form with intent to evade tax, in lieu of the penalty~~  
33 ~~otherwise provided in this paragraph, there is added to the~~  
34 ~~amount required to be shown as tax on the semimonthly,~~  
35 ~~monthly, or quarterly deposit form, seventy-five percent of~~



1 ~~the amount of the tax.~~ In addition to the tax or additional  
2 tax, any person or withholding agent shall pay a penalty as  
3 provided in section 421.27. The taxpayer shall also pay  
4 interest on the tax or additional tax at the rate in effect  
5 under section 421.7, for each month counting each fraction of  
6 a month as an entire month, computed from the date the  
7 semimonthly, monthly, or quarterly deposit form was required  
8 to be filed. The penalty and interest become a part of the  
9 tax due from the withholding agent. ~~The penalty imposed under~~  
10 ~~this subsection is not subject to waiver.~~

11 Sec. 8. Section 422.25, subsection 2, Code Supplement  
12 1989, is amended to read as follows:

13 2. In addition to the tax or additional tax determined by  
14 the department under subsection 1, the taxpayer shall pay  
15 interest on the tax or additional tax at the rate in effect  
16 under section 421.7 for each month counting each fraction of a  
17 month as an entire month, computed from the date the return  
18 was required to be filed. ~~If any person fails to remit at~~  
19 ~~least ninety percent of the tax due with the filing of the~~  
20 ~~return on or before the due date, or pays less than ninety~~  
21 ~~percent of any tax required to be shown on the return, there~~  
22 ~~shall be added to the tax a penalty of seven and one-half~~  
23 ~~percent of the tax due, except as provided in section 421.27.~~  
24 ~~In case of willful failure to file a return with intent to~~  
25 ~~evade tax, or in case of willfully filing a false return with~~  
26 ~~intent to evade tax, in lieu of the penalty otherwise provided~~  
27 ~~in this subsection, there shall be added to the amount~~  
28 ~~required to be shown as tax on the return seventy-five percent~~  
29 ~~of the amount of the tax.--The penalty imposed under this~~  
30 ~~subsection is not subject to waiver.~~ In addition to the tax  
31 or additional tax, the taxpayer shall pay a penalty as  
32 provided in section 421.27.

33 Sec. 9. Section 422.58, subsection 1, Code 1989, is  
34 amended to read as follows:

35 1. If a person or permit holder fails to remit at least

1 ninety-percent-of-the-tax-due-with-the-filing-of-the  
 2 semimonthly-or-monthly-tax-deposit-form-or-return-on-or-before  
 3 the-due-date,or-pays-less-than-ninety-percent-of-any-tax  
 4 required-to-be-shown-on-the-return,excepting-the-period  
 5 between-the-completion-of-an-examination-of-the-books-and  
 6 records-of-a-taxpayer-and-the-giving-of-notice-to-the-taxpayer  
 7 that-a-tax-or-additional-tax-is-due,there-shall-be-added-to  
 8 the-tax-a-penalty-of-fifteen-percent-of-the-amount-of-the-tax  
 9 due,except-as-provided-in-section-421.27.--In-case-of-willful  
 10 failure-to-file-a-semimonthly-or-monthly-tax-deposit-form-or  
 11 return,willful-filing-of-a-false-semimonthly-or-monthly-tax  
 12 deposit-form-or-return-or-willful-filing-of-a-false-or  
 13 fraudulent-semimonthly-or-monthly-tax-deposit-form-or-return  
 14 with-intent-to-evade-tax,in-lieu-of-the-penalty-otherwise  
 15 provided-in-this-subsection,there-shall-be-added-to-the  
 16 amount-required-to-be-shown-as-tax-on-the-semimonthly-or  
 17 monthly-tax-deposit-form-or-return-seventy-five-percent-of-the  
 18 amount-of-the-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 tax or  
 21 additional tax at the rate in effect under section 421.7 for  
 22 each month counting each fraction of a month as an entire  
 23 month, computed from the date the semimonthly or monthly tax  
 24 deposit form or return was required to be filed. The penalty  
 25 and interest shall be paid to the department and disposed of  
 26 in the same manner as other receipts under this division.  
 27 Unpaid penalties and interest may be enforced in the same  
 28 manner as the tax imposed by this division. ~~The penalty~~  
 29 ~~imposed under this subsection is not subject to waiver.~~  
 30 Sec. 10. Section 423.18, subsection 1, Code 1989, is  
 31 amended to read as follows:  
 32 1. If-a-person-or-permit-holder-fails-to-remit-at-least  
 33 ninety-percent-of-the-tax-due-with-the-filing-of-the-monthly  
 34 deposit-form-or-return-on-or-before-the-due-date,or-pays-less  
 35 than-ninety-percent-of-any-tax-required-to-be-shown-on-the

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

27 Sec. 11. Section 424.17, subsection 1, Code Supplement  
28 1989, is amended to read as follows:

29 1. If a depositor fails to remit at least ninety percent  
30 of the charge due with the filing of the return on or before  
31 the due date, or pays less than ninety percent of any charge  
32 required to be shown on the return, excepting the period  
33 between the completion of an examination of the books and  
34 records of a charge payer and the giving of notice to the  
35 charge payer that a charge or additional charge is due, there

1 shall-be-added-to-the-charge-a-penalty-of-fifteen-percent-of  
2 the-amount-of-the-charge-due,-except-as-provided-in-section  
3 421.27,-In-case-of-willful-failure-to-file-a-return-or  
4 willful-filing-of-a-false-return-with-intent-to-evade-charges,  
5 in-lieu-of-the-penalty-otherwise-provided-in-this-subsection,  
6 there-shall-be-added-to-the-amount-required-to-be-shown-as-a  
7 charge-on-the-return-seventy-five-percent-of-the-amount-of-the  
8 charge. 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  
16 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.

19 Sec. 12. Section 450.63, Code 1989, is amended to read as  
20 follows:

21 450.63 MATURITY OF TAX -- INTEREST -- PENALTY.

22 1- All taxes not paid within the time prescribed in this  
23 chapter are subject to a penalty as provided in subsection-2.  
24 section 421.27 and shall draw interest at the rate in effect  
25 under section 421.7 until paid.

26 2---If-a-person-labile-for-the-payment-of-tax-as-stated-in  
27 section-450.5-fails-to-remit-at-least-ninety-percent-of-the  
28 tax-due-with-the-filing-of-the-return-on-or-before-the-due  
29 date-or-pays-less-than-ninety-percent-of-any-tax-required-to  
30 be-shown-on-the-return,-there-shall-be-added-to-the-tax-a  
31 penalty-of-seven-and-one-half-percent-of-the-amount-of-the-tax  
32 due,-except-as-provided-in-section-421.27,-The-penalty  
33 imposed-under-this-subsection-is-not-subject-to-waiver.

34 Sec. 13.

35 This Act takes effect January 1, 1991.

1 Sec. 14.

2 Sections 1 through 4 and 6 through 11 of this Act are  
3 applicable to tax years beginning on or after January 1, 1991.

4 Sec. 15.

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

7 EXPLANATION

8 The bill increases the interest rate on delinquent taxes to  
9 2 percentage points greater than the average prime rate for  
10 the 12-month period which ends September 30 for the previous  
11 calendar year. The same rate of interest will be paid on  
12 overpayments of tax.

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

15 The penalties created by the bill are as follows:

16 (1) A 10 percent penalty for failure to timely file a  
17 return or deposit form;

18 (2) A 5 percent penalty for failure to timely pay the tax  
19 due with a return or deposit form;

20 (3) A 5 percent penalty for a deficiency found on audit;  
21 and

22 (4) A 75 percent penalty for willful failure to file a  
23 return or deposit form or for willfully filing a false return  
24 or deposit form with the intent to evade the tax.

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

27 The bill takes effect January 1, 1991. Sections 1 through  
28 4 and 6 through 11 are applicable to tax years beginning on or  
29 after January 1, 1991. Section 12 of this bill is applicable  
30 to deaths occurring on or after January 1, 1991.

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1 Section 1. Section 98.28, Code 1989, is amended to read as  
2 follows:

3 98.28 ASSESSMENT OF TAX BY DEPARTMENT -- INTEREST --  
4 PENALTY.

5 If after any audit, examination of records, or other  
6 investigation the department finds that any person has sold  
7 cigarettes without stamps affixed thereto as required by this  
8 ~~division or that any person has failed to pay at least ninety~~  
9 ~~percent of any tax imposed upon the person~~, the department  
10 shall fix and determine the amount of tax due, and shall  
11 assess the tax against the person, together with a penalty of  
12 ~~seven and one-half percent of the amount of the tax except as~~  
13 provided in section 421.27. The taxpayer shall pay interest  
14 on the tax or additional tax at the rate determined under  
15 section 421.7 counting each fraction of a month as an entire  
16 month, computed from the date the tax was due. If any person  
17 fails to furnish evidence satisfactory to the director showing  
18 purchases of sufficient stamps to stamp unstamped cigarettes  
19 purchased by the person, the presumption shall be that the  
20 cigarettes were sold without the proper stamps affixed  
21 thereto. Within two years after the return is filed or within  
22 two years after the return became due, whichever is later, the  
23 department shall examine ~~it~~ the return and determine the  
24 correct amount of tax.

25 Sec. 2. Section 98.46, subsection 3, Code 1989, is amended  
26 by striking the subsection and inserting in lieu thereof the  
27 following:

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

30 Sec. 3. Section 324.65, unnumbered paragraph 1, Code  
31 Supplement 1989, is amended to read as follows:

32 ~~if a licensee or other person fails to remit at least~~  
33 ~~ninety percent of the tax due with the filing of the return on~~  
34 ~~or before the due date or pays less than ninety percent of any~~  
35 ~~tax required to be shown on the return, there shall be added~~

1 to-the-tax-a-penalty-of-seven-and-one-half-percent-of-the  
2 amount-of-the-tax-due-except-as-provided-in-section-421.27.  
3 The-penalty-imposed-under-this-section-is-not-subject-to  
4 waiver. In addition to the tax or additional tax, the  
5 taxpayer shall pay a penalty as provided in section 421.27.  
6 The taxpayer shall also pay interest on the tax or additional  
7 tax at the rate in effect under section 421.7 counting each  
8 fraction of a month as an entire month, computed from the date  
9 the return was required to be filed. If the amount of the tax  
10 as determined by the appropriate state agency is less than the  
11 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 following the date of payment or the date the  
14 return was due to be filed 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  
18 refund allowed under this section, the licensee may request  
19 that the department allow the refund to be held as a credit  
20 for the licensee.

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

23 The appropriate state agency shall not remit any part of a  
24 penalty for delinquent payment if the delinquency results from  
25 the fact that a check given in payment is not honored because  
26 of insufficient funds in the account upon which the check was  
27 drawn. ~~However, if it appears as a result of an investigation~~  
28 ~~that there has been a deliberate attempt on the part of a~~  
29 ~~licensee or other person to evade payment of fuel taxes there~~  
30 ~~shall be added to the assessment against the offending person~~  
31 ~~and collected a penalty of seventy-five percent of the tax~~  
32 ~~due.~~ A report required of licensees or persons operating  
33 under division III, upon which no tax is due, is subject to a  
34 penalty of ten dollars if the report is not timely filed with  
35 the state department of transportation.



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 adding the following new subsection:

13 NEW SUBSECTION. 6. The taxpayer was subject to the  
14 penalty provision of section 422.25, subsection 2, and was  
15 eligible to compute taxable income under the cash receipts and  
16 disbursements method of accounting under section 448(b)(3) of  
17 the Internal Revenue Code. The waiver provision in this  
18 paragraph applies only for tax years beginning in the 1985 and  
19 1986 calendar years and only to the extent that the taxpayer  
20 failed to include in its net income for state tax purposes  
21 interest payable on short-term obligations as it accrued  
22 during those tax years as provided in section 1281 of the  
23 Internal Revenue Code and provided that an amended return is  
24 filed by July 1, 1990.

25 Sec. 7. Section 421.27, Code Supplement 1989, is amended  
26 by striking the section and inserting in lieu thereof the  
27 following:

28 421.27 PENALTIES.

29 1. FAILURE TO TIMELY FILE A RETURN OR DEPOSIT 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 added to the tax  
32 shown due or required to be shown due a penalty of ten percent  
33 of the tax shown due or required to be shown due. The  
34 penalty, if assessed, shall be waived by the department upon a  
35 showing of any of the following conditions:

- 1     a. At least ninety percent of the tax required to be shown  
2 due has been paid by the due date of the tax.
- 3     b. Those taxpayers who are required to file quarterly  
4 returns, or monthly or semimonthly deposit forms may have one  
5 late return or deposit form within a three-year period. The  
6 use of any other penalty exception will not count as a late  
7 return or deposit form for purposes of this exception.
- 8     c. The death of a taxpayer, death of a member of the  
9 immediate family of the taxpayer, or death of the person  
10 directly responsible for filing the return and paying the tax,  
11 when the death interferes with timely filing.
- 12    d. The onset of serious, long-term illness or  
13 hospitalization of the taxpayer, of a member of the immediate  
14 family of the taxpayer, or of the person directly responsible  
15 for filing the return and paying the tax.
- 16    e. Destruction of records by fire, flood, or other act of  
17 God.
- 18    f. The taxpayer presents proof that the taxpayer relied  
19 upon applicable, documented, written advice specifically made  
20 to the taxpayer, to the taxpayer's preparer, or to an  
21 association representative of the taxpayer from the  
22 department, state department of transportation, county  
23 treasurer, or federal internal revenue service, whichever is  
24 appropriate, that has not been superseded by a court decision,  
25 ruling by a quasi-judicial body, or the adoption, amendment,  
26 or repeal of a rule or law.
- 27    g. Reliance upon results in a previous audit was a direct  
28 cause for the failure to file where the previous audit  
29 expressly and clearly addressed the issue and the previous  
30 audit results have not been superseded by a court decision, or  
31 the adoption, amendment, or repeal of a rule or law.
- 32    h. Under rules prescribed by the director, the taxpayer  
33 presents documented proof of substantial authority to rely  
34 upon a particular position or upon proof that all facts and  
35 circumstances are disclosed on a return or deposit form.

1 i. The return, deposit form, or payment is timely, but  
2 erroneously, mailed with adequate postage to the internal  
3 revenue service, another state agency, or a local government  
4 agency and the taxpayer provides proof of timely mailing with  
5 adequate postage.

6 j. The tax has been paid by the wrong licensee and the  
7 payments were timely remitted to the department for one or  
8 more tax periods prior to notification by the department.

9 k. The failure to file was discovered through a sanctioned  
10 self-audit program conducted by the department.

11 2. FAILURE TO TIMELY PAY THE TAX SHOWN DUE, OR THE TAX  
12 REQUIRED TO BE SHOWN DUE WITH THE FILING OF A RETURN OR  
13 DEPOSIT FORM. If a person fails to pay the tax shown due or  
14 required to be shown due on a return or deposit form on or  
15 before the due date there shall be added to the tax shown due  
16 or required to be shown due a penalty of five percent of the  
17 tax due. The penalty, if assessed, shall be waived by the  
18 department upon a showing of any of the following conditions:

19 a. At least ninety percent of the tax required to be shown  
20 due has been paid by the due date of the tax.

21 b. The taxpayer voluntarily files an amended return and  
22 pays all tax shown to be due on the return prior to any  
23 contact by the department, except under a sanctioned self-  
24 audit program conducted by the department.

25 c. The taxpayer provides written notification to the  
26 department of a federal audit while it is in progress and  
27 voluntarily files an amended return which includes a copy of  
28 the federal document showing the final disposition or final  
29 federal adjustments within sixty days of the final disposition  
30 of the federal government's audit.

31 d. The taxpayer presents proof that the taxpayer relied  
32 upon applicable, documented, written advice specifically made  
33 to the taxpayer, to the taxpayer's preparer, or to an  
34 association representative of the taxpayer from the depart-  
35 ment, state department of transportation, county treasurer, or

1 federal internal revenue service, whichever is appropriate,  
2 that has not been superseded by a court decision, ruling by a  
3 quasi-judicial body, or the adoption, amendment, or repeal of  
4 a rule or law.

5 e. Reliance upon results in a previous audit was a direct  
6 cause for the failure to pay the tax required to be shown due  
7 where the previous audit expressly and clearly 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.

11 f. Under rules prescribed by the director, the taxpayer  
12 presents documented proof of substantial authority to rely  
13 upon a particular position or upon proof that all facts and  
14 circumstances are disclosed on a return or deposit form.

15 g. The return, deposit form, or payment is timely, but  
16 erroneously, mailed with adequate postage to the internal  
17 revenue service, another state agency, or a local government  
18 agency and the taxpayer provides proof of timely mailing with  
19 adequate postage.

20 h. The tax has been paid by the wrong licensee and the  
21 payments were timely remitted to the department for one or  
22 more tax periods prior to notification by the department.

23 3. AUDIT DEFICIENCIES. If any person fails to pay the tax  
24 required to be shown due with the filing of a return or  
25 deposit and the department discovers the underpayment, there  
26 shall be added to the tax required to be shown due a penalty  
27 of five percent of the tax required to be shown due. The  
28 penalty, if assessed, shall be waived by the department upon a  
29 showing of any of the following conditions:

30 a. At least ninety percent of the tax required to be shown  
31 due has been paid by the due date.

32 b. The taxpayer presents proof that the taxpayer relied  
33 upon applicable, documented, written advice specifically made  
34 to the taxpayer, to the taxpayer's preparer, or to an  
35 association representative of the taxpayer from the

1 department, state department of transportation, county  
2 treasurer, or federal internal revenue service, whichever is  
3 appropriate, that has not been superseded by a court decision,  
4 ruling by a quasi-judicial body, or the adoption, amendment,  
5 or repeal of a rule or law.

6 c. Reliance upon results in a previous audit was a direct  
7 cause for the failure to pay the tax shown due or required to  
8 be shown due where the previous audit expressly and clearly  
9 addressed the issue and the previous audit results have not  
10 been superseded by a court decision, or the adoption,  
11 amendment, or repeal of a rule or law.

12 d. Under rules prescribed by the director, the taxpayer  
13 presents documented proof of substantial authority to rely  
14 upon a particular position or upon proof that all facts and  
15 circumstances are disclosed on a return or deposit form.

16 4. In case of willful failure to file a return or deposit  
17 form with the intent to evade tax, or in case of willfully  
18 filing a false return or deposit form with the intent to evade  
19 tax, in lieu of the penalties otherwise provided in this  
20 section, a penalty of seventy-five percent shall be added to  
21 the amount shown due or required to be shown as tax on the  
22 return or deposit form. If penalties are applicable for  
23 failure to file a return or deposit form and failure to pay  
24 the tax shown due or required to be shown due on the return or  
25 deposit form, the penalty provision for failure to file shall  
26 be in lieu of the penalty provisions for failure to pay the  
27 tax shown due or required to be shown due on the return or  
28 deposit form, except in the case of willful failure to file a  
29 return or deposit form or willfully filing a false return or  
30 deposit form with intent to evade tax.

31 The penalties imposed under this section are not subject to  
32 waiver.

33 Sec. 8. Section 422.16, subsection 10, paragraph b, Code  
34 supplement 1989, is amended to read as follows:

35 b. ~~if-any-person-or-withholding-agent-fails-to-remit-at~~

1 least-ninety-percent-of-the-tax-due-with-the-filing-of-the  
2 semimonthly, monthly, or quarterly deposit form on or before  
3 the due date, or pays less than ninety percent of any tax  
4 required to be shown on the semimonthly, monthly, or quarterly  
5 deposit form, there shall be added to the tax a penalty of  
6 fifteen percent of the amount of the tax due, except as  
7 provided in section 421.27.

8 In the case of willful failure to file a semimonthly,  
9 monthly, or quarterly deposit form with intent to evade tax or  
10 willful filing of a false semimonthly, monthly, or quarterly  
11 deposit form with intent to evade tax, in lieu of the penalty  
12 otherwise provided in this paragraph, there is added to the  
13 amount required to be shown as tax on the semimonthly,  
14 monthly, or quarterly deposit form, seventy-five percent of  
15 the amount of the tax. In addition to the tax or additional  
16 tax, any person or withholding agent shall pay a penalty as  
17 provided in section 421.27. The taxpayer shall also pay  
18 interest on the tax or additional tax at the rate in effect  
19 under section 421.7, for each month counting each fraction of  
20 a month as an entire month, computed from the date the  
21 semimonthly, monthly, or quarterly deposit form was required  
22 to be filed. The penalty and interest become a part of the  
23 tax due from the withholding agent. ~~The penalty imposed under~~  
24 ~~this subsection is not subject to waiver.~~

25 Sec. 9. Section 422.25, subsection 2, Code Supplement  
26 1989, is amended to read as follows:

27 2. In addition to the tax or additional tax determined by  
28 the department under subsection 1, the taxpayer shall pay  
29 interest on the tax or additional tax at the rate in effect  
30 under section 421.7 for each month counting each fraction of a  
31 month as an entire month, computed from the date the return  
32 was required to be filed. ~~If any person fails to remit at~~  
33 ~~least ninety percent of the tax due with the filing of the~~  
34 ~~return on or before the due date, or pays less than ninety~~  
35 ~~percent of any tax required to be shown on the return, there~~

1 shall-be-added-to-the-tax-a-penalty-of-seven-and-one-half  
2 percent-of-the-tax-due,-except-as-provided-in-section-421.27.  
3 In-case-of-willful-failure-to-file-a-return-with-intent-to  
4 evade-tax,-or-in-case-of-willfully-filing-a-false-return-with  
5 intent-to-evade-tax,-in-lieu-of-the-penalty-otherwise-provided  
6 in-this-subsection,-there-shall-be-added-to-the-amount  
7 required-to-be-shown-as-tax-on-the-return-seventy-five-percent  
8 of-the-amount-of-the-tax.--The-penalty-imposed-under-this  
9 subsection-is-not-subject-to-waiver: In addition to the tax  
10 or additional tax, the taxpayer shall pay a penalty as  
11 provided in section 421.27.

12 Sec. 10. Section 422.58, subsection 1, Code 1989, is  
13 amended to read as follows:

14 1. If-a-person-or-permit-holder-fails-to-remit-at-least  
15 ninety-percent-of-the-tax-due-with-the-filing-of-the  
16 semimonthly-or-monthly-tax-deposit-form-or-return-on-or-before  
17 the-due-date,-or-pays-less-than-ninety-percent-of-any-tax  
18 required-to-be-shown-on-the-return,-excepting-the-period  
19 between-the-completion-of-an-examination-of-the-books-and  
20 records-of-a-taxpayer-and-the-giving-of-notice-to-the-taxpayer  
21 that-a-tax-or-additional-tax-is-due,-there-shall-be-added-to  
22 the-tax-a-penalty-of-fifteen-percent-of-the-amount-of-the-tax  
23 due,-except-as-provided-in-section-421.27.--In-case-of-willful  
24 failure-to-file-a-semimonthly-or-monthly-tax-deposit-form-or  
25 return,-willful-filing-of-a-false-semimonthly-or-monthly-tax  
26 deposit-form-or-return-or-willful-filing-of-a-false-or  
27 fraudulent-semimonthly-or-monthly-tax-deposit-form-or-return  
28 with-intent-to-evade-tax,-in-lieu-of-the-penalty-otherwise  
29 provided-in-this-subsection,-there-shall-be-added-to-the  
30 amount-required-to-be-shown-as-tax-on-the-semimonthly-or  
31 monthly-tax-deposit-form-or-return-seventy-five-percent-of-the  
32 amount-of-the-tax: In addition to the tax or additional tax,  
33 the taxpayer shall pay a penalty as provided in section  
34 421.27. The taxpayer shall also pay interest on the tax or  
35 additional tax at the rate in effect under section 421.7 for

1 each month counting each fraction of a month as an entire  
 2 month, computed from the date the semimonthly or monthly tax  
 3 deposit form or return was required to be filed. The penalty  
 4 and interest shall be paid to the department and disposed of  
 5 in the same manner as other receipts under this division.  
 6 Unpaid penalties and interest may be enforced in the same  
 7 manner as the tax imposed by this division. ~~The penalty~~  
 8 ~~imposed under this subsection is not subject to waiver.~~

9 Sec. 11. Section 423.18, subsection 1, Code 1989, is  
 10 amended to read as follows:

11 1. ~~If a person or permit holder fails to remit at least~~  
 12 ~~ninety percent of the tax due with the filing of the monthly~~  
 13 ~~deposit form or return on or before the due date, or pays less~~  
 14 ~~than ninety percent of any tax required to be shown on the~~  
 15 ~~monthly deposit form or return, excepting the period between~~  
 16 ~~the completion of an examination of the books and records of a~~  
 17 ~~taxpayer and the giving of notice to the taxpayer that a tax~~  
 18 ~~or additional tax is due, there shall be added to the tax a~~  
 19 ~~penalty of seven and one-half percent of the tax due, except~~  
 20 ~~as provided in section 421.27. For tax due under section~~  
 21 ~~423.9, the penalty shall be fifteen percent. In case of~~  
 22 ~~willful failure to file a monthly deposit form or return,~~  
 23 ~~willfully filing a false monthly deposit form or return, or~~  
 24 ~~willfully filing a false or fraudulent monthly deposit form or~~  
 25 ~~return with intent to evade tax, in lieu of the penalty~~  
 26 ~~otherwise provided in this subsection, there shall be added to~~  
 27 ~~the amount required to be shown as tax on the monthly deposit~~  
 28 ~~form or return seventy-five percent of the amount of the tax.~~  
 29 In addition to the tax or additional tax, the taxpayer shall  
 30 pay a penalty as provided in section 421.27. The taxpayer  
 31 shall also pay interest on the tax or additional tax at the  
 32 rate in effect under section 421.7, for each month counting  
 33 each fraction of a month as an entire month, computed from the  
 34 date the monthly deposit form or return was required to be  
 35 filed. The penalty and interest shall be paid to the



1 department and disposed of in the same manner as other  
2 receipts under this chapter. Unpaid penalties and interest  
3 may be collected in the same manner as the tax imposed by this  
4 chapter. ~~The penalty imposed under this subsection is not~~  
5 ~~subject to waiver.~~

6 Sec. 12. Section 424.17, subsection 1, Code Supplement  
7 1989, is amended to read as follows:

8 1. ~~If a depositor fails to remit at least ninety percent~~  
9 ~~of the charge due with the filing of the return on or before~~  
10 ~~the due date, or pays less than ninety percent of any charge~~  
11 ~~required to be shown on the return, excepting the period~~  
12 ~~between the completion of an examination of the books and~~  
13 ~~records of a charge payer and the giving of notice to the~~  
14 ~~charge payer that a charge or additional charge is due, there~~  
15 ~~shall be added to the charge a penalty of fifteen percent of~~  
16 ~~the amount of the charge due, except as provided in section~~  
17 ~~421.27. -- In case of willful failure to file a return or~~  
18 ~~willful filing of a false return with intent to evade charges,~~  
19 ~~in lieu of the penalty otherwise provided in this subsection,~~  
20 ~~there shall be added to the amount required to be shown as a~~  
21 ~~charge on the return seventy-five percent of the amount of the~~  
22 ~~charge. In addition to the charge or additional charge, the~~  
23 charge payer shall pay a penalty as provided in section  
24 421.27. The charge payer shall also pay interest on the  
25 charge or additional charge at the rate in effect under  
26 section 421.7 for each month counting each fraction of a month  
27 as an entire month, computed from the date the return was  
28 required to be filed. The penalty and interest shall be paid  
29 to the department and disposed of in the same manner as the  
30 charge imposed under this chapter. Unpaid penalties and  
31 interest may be enforced in the same manner as the charge  
32 imposed by this chapter.

33 Sec. 13. Section 450.63, Code 1989, is amended to read as  
34 follows:

35 450.63 MATURITY OF TAX -- INTEREST -- PENALTY.

1 17 All taxes not paid within the time prescribed in this  
2 chapter are subject to a penalty as provided in ~~subsection-2~~  
3 section 421.27 and shall draw interest at the rate in effect  
4 under section 421.7 until paid.

5 ~~27---If-a-person-liable-for-the-payment-of-tax-as-stated-in~~  
6 ~~section-450.5-fails-to-remit-at-least-ninety-percent-of-the~~  
7 ~~tax-due-with-the-filing-of-the-return-on-or-before-the-due~~  
8 ~~date-or-pays-less-than-ninety-percent-of-any-tax-required-to~~  
9 ~~be-shown-on-the-return,-there-shall-be-added-to-the-tax-a~~  
10 ~~penalty-of-seven-and-one-half-percent-of-the-amount-of-the-tax~~  
11 ~~due,-except-as-provided-in-section-421.27---The-penalty~~  
12 ~~imposed-under-this-subsection-is-not-subject-to-waiver.~~

13 Sec. 14.

14 This Act takes effect January 1, 1991.

15 Sec. 15.

16 Section 6 of this Act applies retroactively to tax years  
17 beginning in the 1985 and 1986 calendar years.

18 Sec. 16.

19 Sections 1 through 4 and 7 through 12 of this Act are  
20 applicable to tax years beginning on or after January 1, 1991.

21 Sec. 17.

22 Section 13 of this Act is applicable to deaths occurring on  
23 or after January 1, 1991.

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SENATE FILE 2304  
FISCAL NOTE

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A fiscal note for Senate File 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.

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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 FEBRUARY 15, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2304

S-5227

1 Amend Senate File 2304 as follows:  
2 1. Page 3, by inserting after line 10, the  
3 following:  
4 "Sec. 100. Section 421.27, Code Supplement 1989,  
5 is amended by adding the following new subsection:  
6 NEW SUBSECTION. 6. The taxpayer was subject to  
7 the penalty provision of section 422.25, subsection 2,  
8 and was eligible to compute taxable income under the  
9 cash receipts and disbursements method of accounting  
10 under section 448(b)(3) of the Internal Revenue Code.  
11 The waiver provision in this paragraph applies only  
12 for tax years beginning in the 1985 and 1986 calendar  
13 years and only to the extent that the taxpayer failed  
14 to include in its net income for state tax purposes  
15 interest payable on short-term obligations as it  
16 accrued during those tax years as provided in section  
17 1281 of the Internal Revenue Code."  
18 2. Page 11, by inserting after line 35 the  
19 following:  
20 "Sec. \_\_\_\_.  
21 Section 100 of this Act applies retroactively to  
22 tax years beginning in the 1985 and 1986 calendar  
23 years."

By WILLIAM W. DIELEMAN

S-5227 FILED FEBRUARY 26, 1990  
*2/28 3/19/90*

SENATE FILE 2304

S-5283

1 Amend Senate File 2304 as follows:  
2 1. Page 3, by inserting after line 10, the  
3 following:  
4 "Sec. 100. Section 421.27, Code Supplement 1989,  
5 is amended by adding the following new subsection:  
6 NEW SUBSECTION. 6. The taxpayer was subject to  
7 the penalty provision of section 422.25, subsection 2,  
8 and was eligible to compute taxable income under the  
9 cash receipts and disbursements method of accounting  
10 under section 448(b)(3) of the Internal Revenue Code.  
11 The waiver provision in this paragraph applies only  
12 for tax years beginning in the 1985 and 1986 calendar  
13 years and only to the extent that the taxpayer failed  
14 to include in its net income for state tax purposes  
15 interest payable on short-term obligations as it  
16 accrued during those tax years as provided in section  
17 1281 of the Internal Revenue Code and provided that an  
18 amended return is filed by July 1, 1990."  
19 2. Page 11, by inserting after line 35 the  
20 following:  
21 "Sec. \_\_\_\_.  
22 Section 100 of this Act applies retroactively to  
23 tax years beginning in the 1985 and 1986 calendar  
24 years."

By WILLIAM W. DIELEMAN

S-5283 FILED FEBRUARY 28, 1990

*Adopted 3/19 (p. 1160)*

SZYMONIAK, CH.

DIELEMAN

HOSTER

SSB 2223

WAYS & MEANS

SENATE FILE 2304

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

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

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

Approved \_\_\_\_\_

### A BILL FOR

1 An Act relating to penalty and interest on cigarette, tobacco,  
2 motor fuel, individual income, withholding, corporation  
3 income, franchise, sales, use, retailer's use, environmental  
4 protection charge, inheritance, generation skipping transfer,  
5 and estate taxes, and providing effective and applicability  
6 dates.

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

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1 Section 1. Section 98.28, Code 1989, is amended to read as  
2 follows:

3 98.28 ASSESSMENT OF TAX BY DEPARTMENT -- INTEREST --  
4 PENALTY.

5 If after any audit, examination of records, or other  
6 investigation the department finds that any person has sold  
7 cigarettes without stamps affixed thereto as required by this  
8 division ~~or-that-any-person-has-failed-to-pay-at-least-ninety~~  
9 ~~percent-of-any-tax-imposed-upon-the-person~~, the department  
10 shall fix and determine the amount of tax due, and shall  
11 assess the tax against the person, together with a penalty of  
12 ~~seven-and-one-half-percent-of-the-amount-of-the-tax~~, except as  
13 provided in section 421.27. The taxpayer shall pay interest  
14 on the tax or additional tax at the rate determined under  
15 section 421.7 counting each fraction of a month as an entire  
16 month, computed from the date the tax was due. If any person  
17 fails to furnish evidence satisfactory to the director showing  
18 purchases of sufficient stamps to stamp unstamped cigarettes  
19 purchased by the person, the presumption shall be that the  
20 cigarettes were sold without the proper stamps affixed  
21 thereto. Within two years after the return is filed or within  
22 two years after the return became due, whichever is later, the  
23 department shall examine ~~it~~ the return and determine the  
24 correct amount of tax.

25 Sec. 2. Section 98.46, subsection 3, Code 1989, is amended  
26 by striking the subsection and inserting in lieu thereof the  
27 following:

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

30 Sec. 3. Section 324.65, unnumbered paragraph 1, Code  
31 Supplement 1989, is amended to read as follows:

32 ~~If-a-licensee-or-other-person-fails-to-remit-at-least~~  
33 ~~ninety-percent-of-the-tax-due-with-the-filing-of-the-return-on~~  
34 ~~or-before-the-due-date-or-pays-less-than-ninety-percent-of-any~~  
35 ~~tax-required-to-be-shown-on-the-return~~, there shall be added

~~1 to-the-tax-a-penalty-of-seven-and-one-half-percent-of-the~~  
~~2 amount-of-the-tax-due,-except-as-provided-in-section-421.27.~~  
~~3 The-penalty-imposed-under-this-section-is-not-subject-to~~  
~~4 waiver.~~ In addition to the tax or additional tax, the  
5 taxpayer shall pay a penalty as provided in section 421.27.  
6 The taxpayer shall also pay interest on the tax or additional  
7 tax at the rate in effect under section 421.7 counting each  
8 fraction of a month as an entire month, computed from the date  
9 the return was required to be filed. If the amount of the tax  
10 as determined by the appropriate state agency is less than the  
11 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 following the date of payment or the date the  
14 return was due to be filed 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  
18 refund allowed under this section, the licensee may request  
19 that the department allow the refund to be held as a credit  
20 for the licensee.

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

23 The appropriate state agency shall not remit any part of a  
24 penalty for delinquent payment if the delinquency results from  
25 the fact that a check given in payment is not honored because  
26 of insufficient funds in the account upon which the check was  
27 drawn. ~~However,-if-it-appears-as-a-result-of-an-investigation~~  
~~28 that-there-has-been-a-deliberate-attempt-on-the-part-of-a~~  
~~29 licensee-or-other-person-to-evade-payment-of-fuel-taxes-there~~  
~~30 shall-be-added-to-the-assessment-against-the-offending-person~~  
~~31 and-collected-a-penalty-of-seventy-five-percent-of-the-tax~~  
32 due. A report required of licensees or persons operating  
33 under division III, upon which no tax is due, is subject to a  
34 penalty of ten dollars if the report is not timely filed with  
35 the state department of transportation.

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 penalty of ten percent  
19 of the tax shown due or required to be shown due. The  
20 penalty, 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.

29     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 paying the tax,  
32 when the death interferes with timely filing.

33     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 responsible



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.

13 g. Reliance upon results in a previous audit was a direct  
14 cause for the failure to file where the previous audit  
15 expressly and clearly addressed the issue and the previous  
16 audit results have not been superseded by a court decision, or  
17 the adoption, amendment, or repeal of a rule or law.

18 h. Under rules prescribed by the director, the taxpayer  
19 presents documented proof of substantial authority to rely  
20 upon a particular position or upon proof that all facts and  
21 circumstances are disclosed on a return or deposit form.

22 i. The return, deposit form, or payment is timely, but  
23 erroneously, mailed with adequate postage to the internal  
24 revenue service, another state agency, or a local government  
25 agency and the taxpayer provides proof of timely mailing with  
26 adequate postage.

27 j. The tax has been paid by the wrong licensee and the  
28 payments were timely remitted to the department for one or  
29 more tax periods prior to notification by the department.

30 k. The failure to file was discovered through a sanctioned  
31 self-audit program conducted by the department.

32 2. FAILURE TO TIMELY PAY THE TAX SHOWN DUE, OR THE TAX  
33 REQUIRED TO BE SHOWN DUE WITH THE FILING OF A RETURN OR  
34 DEPOSIT FORM. If a person fails to pay the tax shown due or  
35 required to be shown due on a return or deposit form on or

1 before the due date there shall be added to the tax shown due  
2 or required to be shown due a penalty of five percent of the  
3 tax due. The penalty, if assessed, shall be waived by the  
4 department upon a showing of any of the following conditions:

5 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 self-  
10 audit program conducted by the department.

11 c. The taxpayer provides written notification to the  
12 department of a federal 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 final disposition  
16 of the federal government's audit.

17 d. The taxpayer presents proof that the taxpayer relied  
18 upon applicable, 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 depart-  
21 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 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 expressly 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 repeal of  
31 a rule or law.

32 f. Under rules prescribed by the director, the taxpayer  
33 presents documented proof of substantial authority to rely  
34 upon a particular position or upon proof that all facts and  
35 circumstances are disclosed on a return or deposit form.

1 g. The return, deposit form, or payment is timely, but  
2 erroneously, mailed with adequate postage to the internal  
3 revenue service, another state agency, or a local government  
4 agency and the taxpayer provides proof of timely mailing with  
5 adequate postage.

6 h. The tax has been paid by the wrong licensee and the  
7 payments were timely remitted to the department for one or  
8 more tax periods prior to notification by the department.

9 3. AUDIT DEFICIENCIES. If any person fails to pay the tax  
10 required to be shown due with the filing of a return or  
11 deposit and the department discovers the underpayment, there  
12 shall be added to the tax required to be shown due a penalty  
13 of five percent of the tax required to be shown due. The  
14 penalty, if assessed, shall be waived by the department upon a  
15 showing of any of the following conditions:

16 a. At least ninety percent of the tax required to be shown  
17 due has been paid by the due date.

18 b. The taxpayer presents proof that the taxpayer relied  
19 upon applicable, documented, written advice specifically made  
20 to the taxpayer, to the taxpayer's preparer, or to an  
21 association representative of the taxpayer from the  
22 department, state department of transportation, county  
23 treasurer, or federal internal revenue service, whichever is  
24 appropriate, that has not been superseded by a court decision,  
25 ruling by a quasi-judicial body, or the adoption, amendment,  
26 or repeal of a rule or law.

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

33 d. Under rules prescribed by the director, the taxpayer  
34 presents documented proof of substantial authority to rely  
35 upon a particular position or upon proof that all facts and

1 circumstances are disclosed on a return or deposit form.

2 4. In case of willful failure to file a return or deposit  
3 form with the intent to evade tax, or in case of willfully  
4 filing a false return or deposit form with the intent to evade  
5 tax, in lieu of the penalties otherwise provided in this  
6 section, a penalty of seventy-five percent shall be added to  
7 the amount shown due or required to be shown as tax on the  
8 return or deposit form. If penalties are applicable for  
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 for failure to file 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.

17 The penalties imposed under this section are not subject to  
18 waiver.

19 Sec. 7. Section 422.16, subsection 10, paragraph b, Code  
20 supplement 1989, is amended to read as follows:

21 ~~b. If any person or withholding agent fails to remit at~~  
22 ~~least ninety percent of the tax due with the filing of the~~  
23 ~~semimonthly, monthly, or quarterly deposit form on or before~~  
24 ~~the due date, or pays less than ninety percent of any tax~~  
25 ~~required to be shown on the semimonthly, monthly, or quarterly~~  
26 ~~deposit form, there shall be added to the tax a penalty of~~  
27 ~~fifteen percent of the amount of the tax due, except as~~  
28 ~~provided in section 421.27.~~

29 ~~In the case of willful failure to file a semimonthly,~~  
30 ~~monthly, or quarterly deposit form with intent to evade tax or~~  
31 ~~willful filing of a false semimonthly, monthly, or quarterly~~  
32 ~~deposit form with intent to evade tax, in lieu of the penalty~~  
33 ~~otherwise provided in this paragraph, there is added to the~~  
34 ~~amount required to be shown as tax on the semimonthly,~~  
35 ~~monthly, or quarterly deposit form, seventy-five percent of~~

1 ~~the-amount-of-the-tax-~~ In addition to the tax or additional  
2 tax, any person or withholding agent shall pay a penalty as  
3 provided in section 421.27. The taxpayer shall also pay  
4 interest on the tax or additional tax at the rate in effect  
5 under section 421.7, for each month counting each fraction of  
6 a month as an entire month, computed from the date the  
7 semimonthly, monthly, or quarterly deposit form was required  
8 to be filed. The penalty and interest become a part of the  
9 tax due from the withholding agent. ~~The-penalty-imposed-under~~  
10 ~~this-subsection-is-not-subject-to-waiver-~~

11 Sec. 8. Section 422.25, subsection 2, Code Supplement  
12 1989, is amended to read as follows:

13 2. In addition to the tax or additional tax determined by  
14 the department under subsection 1, the taxpayer shall pay  
15 interest on the tax or additional tax at the rate in effect  
16 under section 421.7 for each month counting each fraction of a  
17 month as an entire month, computed from the date the return  
18 was required to be filed. ~~If-any-person-fails-to-remit-at~~  
19 ~~least-ninety-percent-of-the-tax-due-with-the-filing-of-the~~  
20 ~~return-on-or-before-the-due-date,-or-pays-less-than-ninety~~  
21 ~~percent-of-any-tax-required-to-be-shown-on-the-return,-there~~  
22 ~~shall-be-added-to-the-tax-a-penalty-of-seven-and-one-half~~  
23 ~~percent-of-the-tax-due,-except-as-provided-in-section-421.27-~~  
24 ~~In-case-of-willful-failure-to-file-a-return-with-intent-to~~  
25 ~~evade-tax,-or-in-case-of-willfully-filing-a-false-return-with~~  
26 ~~intent-to-evade-tax,-in-lieu-of-the-penalty-otherwise-provided~~  
27 ~~in-this-subsection,-there-shall-be-added-to-the-amount~~  
28 ~~required-to-be-shown-as-tax-on-the-return-seventy-five-percent~~  
29 ~~of-the-amount-of-the-tax---The-penalty-imposed-under-this~~  
30 ~~subsection-is-not-subject-to-waiver-~~ In addition to the tax  
31 or additional tax, the taxpayer shall pay a penalty as  
32 provided in section 421.27.

33 Sec. 9. Section 422.58, subsection 1, Code 1989, is  
34 amended to read as follows:

35 1. ~~If-a-person-or-permit-holder-fails-to-remit-at-least~~

1 ninety-percent-of-the-tax-due-with-the-filing-of-the  
2 semimonthly-or-monthly-tax-deposit-form-or-return-on-or-before  
3 the-due-date, or pays less than ninety-percent-of-any-tax  
4 required-to-be-shown-on-the-return, excepting-the-period  
5 between-the-completion-of-an-examination-of-the-books-and  
6 records-of-a-taxpayer-and-the-giving-of-notice-to-the-taxpayer  
7 that-a-tax-or-additional-tax-is-due, there-shall-be-added-to  
8 the-tax-a-penalty-of-fifteen-percent-of-the-amount-of-the-tax  
9 due, except-as-provided-in-section-421.27.--In-case-of-willful  
10 failure-to-file-a-semimonthly-or-monthly-tax-deposit-form-or  
11 return, willful-filing-of-a-false-semimonthly-or-monthly-tax  
12 deposit-form-or-return-or-willful-filing-of-a-false-or  
13 fraudulent-semimonthly-or-monthly-tax-deposit-form-or-return  
14 with-intent-to-evade-tax, in-lieu-of-the-penalty-otherwise  
15 provided-in-this-subsection, there-shall-be-added-to-the  
16 amount-required-to-be-shown-as-tax-on-the-semimonthly-or  
17 monthly-tax-deposit-form-or-return-seventy-five-percent-of-the  
18 amount-of-the-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 tax or  
21 additional tax at the rate in effect under section 421.7 for  
22 each month counting each fraction of a month as an entire  
23 month, computed from the date the semimonthly or monthly tax  
24 deposit form or return was required to be filed. The penalty  
25 and interest shall be paid to the department and disposed of  
26 in the same manner as other receipts under this division.  
27 Unpaid penalties and interest may be enforced in the same  
28 manner as the tax imposed by this division. The penalty  
29 imposed under this subsection is not subject to waiver.  
30 Sec. 10. Section 423.18, subsection 1, Code 1989, is  
31 amended to read as follows:  
32 1. If-a-person-or-permit-holder-fails-to-remit-at-least  
33 ninety-percent-of-the-tax-due-with-the-filing-of-the-monthly  
34 deposit-form-or-return-on-or-before-the-due-date, or pays less  
35 than-ninety-percent-of-any-tax-required-to-be-shown-on-the

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

27 Sec. 11. Section 424.17, subsection 1, Code Supplement  
28 1989, is amended to read as follows:

29 1. ~~If a depositor fails to remit at least ninety percent~~  
30 ~~of the charge due with the filing of the return on or before~~  
31 ~~the due date, or pays less than ninety percent of any charge~~  
32 ~~required to be shown on the return, excepting the period~~  
33 ~~between the completion of an examination of the books and~~  
34 ~~records of a charge payer and the giving of notice to the~~  
35 ~~charge payer that a charge or additional charge is due, there~~

1 ~~shall be added to the charge a penalty of fifteen percent of~~  
2 ~~the amount of the charge due, except as provided in section~~  
3 ~~421.27. -- In case of willful failure to file a return or~~  
4 ~~willful filing of a false return with intent to evade charges,~~  
5 ~~in lieu of the penalty otherwise provided in this subsection,~~  
6 ~~there shall be added to the amount required to be shown as a~~  
7 ~~charge on the return seventy-five percent of the amount of the~~  
8 ~~charge. 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  
16 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.

19 Sec. 12. Section 450.63, Code 1989, is amended to read as  
20 follows:

21 450.63 MATURITY OF TAX -- INTEREST -- PENALTY.

22 1. All taxes not paid within the time prescribed in this  
23 chapter are subject to a penalty as provided in subsection 2  
24 section 421.27 and shall draw interest at the rate in effect  
25 under section 421.7 until paid.

26 2. ~~--- If a person liable for the payment of tax as stated in~~  
27 ~~section 450.5 fails to remit at least ninety percent of the~~  
28 ~~tax due with the filing of the return on or before the due~~  
29 ~~date or pays less than ninety percent of any tax required to~~  
30 ~~be shown on the return, there shall be added to the tax a~~  
31 ~~penalty of seven and one-half percent of the amount of the tax~~  
32 ~~due, except as provided in section 421.27. -- The penalty~~  
33 ~~imposed under this subsection is not subject to waiver.~~

34 Sec. 13.

35 This Act takes effect January 1, 1991.



1     Sec. 14.

2     Sections 1 through 4 and 6 through 11 of this Act are  
3 applicable to tax years beginning on or after January 1, 1991.

4     Sec. 15.

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

7                                 EXPLANATION

8     The bill increases the interest rate on delinquent taxes to  
9 2 percentage points greater than the average prime rate for  
10 the 12-month period which ends September 30 for the previous  
11 calendar year. The same rate of interest will be paid on  
12 overpayments of tax.

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

15    The penalties created by the bill are as follows:

16    (1) A 10 percent penalty for failure to timely file a  
17 return or deposit form;

18    (2) A 5 percent penalty for failure to timely pay the tax  
19 due with a return or deposit form;

20    (3) A 5 percent penalty for a deficiency found on audit;  
21 and

22    (4) A 75 percent penalty for willful failure to file a  
23 return or deposit form or for willfully filing a false return  
24 or deposit form with the intent to evade the tax.

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

27    The bill takes effect January 1, 1991. Sections 1 through  
28 4 and 6 through 11 are applicable to tax years beginning on or  
29 after January 1, 1991. Section 12 of this bill is applicable  
30 to deaths occurring on or after January 1, 1991.

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SENATE FILE 2304

AN ACT

RELATING TO PENALTY AND INTEREST ON CIGARETTE, TOBACCO, MOTOR FUEL, 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 APPLICABILITY DATES.

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

Section 1. Section 98.28, Code 1989, is amended to read as follows:

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 failed to pay at least ninety percent of any tax imposed upon the person, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty of seven-and-one-half-percent-of-the-amount-of-the-tax-except 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 month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed thereto. Within two years after the return is filed or within

two years after the return became due, whichever is later, the department shall examine it 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 shall 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:

~~If a licensee or other person fails to remit at least ninety-percent-of-the-tax-due-with-the-filing-of-the-return-on or-before-the-due-date-or-pays-less-than-ninety-percent-of-any tax-required-to-be-shown-on-the-return, there shall be added to the tax a penalty of seven-and-one-half-percent-of-the amount-of-the-tax-due, except as provided in section 421.27. The penalty imposed under this section is not subject to waiver.~~ 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 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 to 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 for 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. However, if it appears as a result of an investigation that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of seventy-five percent of the tax due. A report required of licensees 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.

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

2. The rate of interest that shall be in effect during a calendar year shall be the rate which is two percentage points greater 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 421.27, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 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 under section 448(b)(3) of the Internal Revenue Code. The waiver 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 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 and provided that an amended return is filed by July 1, 1990.

Sec. 7. Section 421.27, Code Supplement 1989, is amended by striking the section and inserting in lieu thereof the following:

#### 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 directly responsible for filing the return and paying the tax, when the death interferes with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or other act of God.

f. 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.

g. Reliance upon results in a previous audit was a direct cause for the failure to file 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 adoption, amendment, or repeal of a rule or law.

h. 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.

i. 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.

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 RETURN OR DEPOSIT FORM. If a person fails to pay the tax shown due or required to be shown due on a return or deposit form 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 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. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within sixty days of the final disposition of the federal government's audit.

d. 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.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax 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 adoption, amendment, or repeal of a rule 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.

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 clearly 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 circumstances are disclosed on a return 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 willfully filing a false return or deposit form with the intent to evade tax, in lieu 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 failure to file a return or deposit form and failure to pay the tax shown due or required to be shown due on the return or deposit form, the penalty provision for failure to file shall be in lieu of the penalty provisions for failure to pay the tax shown due or required to be shown due on the return or deposit form, except in the case of willful failure to file a return or deposit form or willfully filing a false return or deposit form with intent to evade tax.

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

Sec. 8. Section 422.16, subsection 10, paragraph b, Code Supplement 1989, is amended to read as follows:

b. ~~if any person or withholding agent fails to remit at least ninety percent of the tax due with the filing of the semimonthly, monthly, or quarterly deposit form on or before the due date or pays less than ninety percent of any tax required to be shown on the semimonthly, monthly, or quarterly deposit form, there shall be added to the tax a penalty of fifteen percent of the amount of the tax due, except as provided in section 421.27:~~

~~In the case of willful failure to file a semimonthly, monthly, or quarterly deposit form with intent to evade tax or willful filing of a false semimonthly, monthly, or quarterly deposit form with intent to evade tax, in lieu of the penalty otherwise provided in this paragraph, there is added to the amount required to be shown as tax on the semimonthly, monthly, or quarterly deposit form, seventy-five percent of 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 fraction of~~

a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent. The penalty imposed under this subsection is not subject to waiver.

Sec. 9. 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 month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. ~~If any person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, 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; in case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return seventy-five percent of the amount of the tax.~~ The penalty imposed under this subsection is not subject to waiver. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

Sec. 10. Section 422.50, subsection 1, Code 1989, 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 semimonthly or monthly tax deposit form or return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and

~~records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of fifteen percent of the amount of the tax due, except as provided in section 421.27; in case of willful failure to file a semimonthly or monthly tax deposit form or return, willful filing of a false semimonthly or monthly tax deposit form or return, or willful filing of a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the semimonthly or monthly tax deposit form or return seventy-five 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 semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division. ~~The penalty imposed under this subsection is not subject to waiver.~~

Sec. 11. Section 423.18, subsection 1, Code 1989, 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 423.97 the penalty shall be 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. 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 collected in the same manner as the tax imposed by this chapter. The penalty imposed under this subsection is not subject to waiver.

Sec. 12. Section 424.17, subsection 1, Code Supplement 1989, is amended to read as follows:

1. If a depositor fails to remit at least ninety percent of the charge due with the filing of the return on or before the due date, or pays less than ninety percent of any charge required to be shown on the return, excepting the period between the completion of an examination of the books and records of a charge payer and the giving of notice to the charge payer that a charge or additional charge is due, there shall be added to the charge a penalty of fifteen percent of the amount of the charge due, except as provided in section 421.27. -- In case of willful failure to file a return or willful filing of a false return with intent to evade charges, in lieu of the penalty otherwise provided in this subsection,

there shall be added to the amount required to be shown as a charge on the return seventy-five percent of the amount of the charge. In addition to the charge or additional charge, the charge payer shall pay a penalty as provided in section 421.27. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department 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. 13. Section 450.63, Code 1989, is amended to read as follows:

450.63 MATURITY OF TAX -- INTEREST -- PENALTY.

1. All taxes not paid within the time prescribed in this chapter are subject to a penalty as provided in subsection 2 section 421.27 and shall draw interest at the rate in effect under section 421.7 until paid.

2. If a person liable for the payment of tax as stated in section 458.5 fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date or pays less than ninety percent of any tax required to be shown on the return, there shall be added to the tax a penalty of seven and one-half percent of the amount of the tax due, except as provided in section 421.27. -- The penalty imposed under this subsection is not subject to waiver.

Sec. 14.

This Act takes effect January 1, 1991.

Sec. 15.

Section 6 of this 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, 1991. 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.

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JOHN F. DWYER  
Secretary of the Senate

Approved April 18, 1990

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TERRY E. BRANSTAD  
Governor

**SF 2304**