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WAYS AND MEANS

HOUSE FILE 2278
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Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the abatement of state sales tax and local
2 option sales and services tax owed by a retailer as a result
3 of reliance upon erroneous written advice received from the
4 department of revenue and finance and including an effective
5 date.

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

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HF 2278

1 Section 1. Section 421.60, subsection 2, Code 1999, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. m. (1) The director may abate unpaid
4 state sales and use taxes and local sales and services taxes
5 owed by a retailer in the event that the retailer failed to
6 collect tax from the purchaser as a result of erroneous
7 written advice issued by the department that was specially
8 directed to the retailer by the department and the retailer is
9 unable to collect the tax, interest, or penalties from the
10 purchaser. Before the tax, interest, and penalties shall be
11 abated on the basis of erroneous written advice, the retailer
12 must present a copy of the retailer's request for written
13 advice to the department and a copy of the department's reply.
14 The department shall not maintain a position against the
15 retailer that is inconsistent with the erroneous written
16 advice, except on the basis of subsequent written advice sent
17 by the department to that retailer, or a change in state or
18 federal law, a reported court case to the contrary, a contrary
19 rule adopted by the department, a change in material facts or
20 circumstances relating to the retailer, or the retailer's
21 misrepresentation or incomplete or inadequate representation
22 of material facts and circumstances in requesting the written
23 advice.

24 (2) The director shall abate the unpaid state sales and
25 use taxes and any local sales and services taxes owed by a
26 retailer where the retailer failed to collect the tax from the
27 purchaser on the charges paid for access to on-line computer
28 services as a result of erroneous written advice issued by the
29 department regarding the taxability of charges paid for access
30 to on-line computer services. To qualify for the abatement
31 under this subparagraph, the erroneous written advice shall
32 have been issued by the department prior to July 1, 1999, and
33 shall have been specially directed to the retailer by the
34 department.

35 (3) The director shall prepare quarterly reports

1 summarizing each case in which abatement of tax, interest, or
2 penalties was made. However, the report shall not disclose
3 the identity of the taxpayer. An abatement authorized by this
4 paragraph to a retailer shall not preclude the department from
5 proceeding to collect the liability from a purchaser.

6 Sec. 2. Section 422.52, subsection 6, paragraph a, Code
7 Supplement 1999, is amended to read as follows:

8 a. If a purchaser fails to pay tax imposed by this
9 division to the retailer required to collect the tax, then in
10 addition to all of the rights, obligations, and remedies
11 provided, the tax is payable by the purchaser directly to the
12 department, and sections 422.50, 422.51, 422.52, 422.54,
13 422.55, 422.56, 422.57, 422.58, and 422.59 apply to the
14 purchaser. For failure, the retailer and purchaser are
15 liable, unless the circumstances described in section 421.60,
16 subsection 2, paragraph "m", or section 422.47, subsection 3,
17 paragraph "b" or "e" or subsection 4, paragraph "b" or "d" or
18 are applicable.

19 Sec. 3. EFFECTIVE DATE. This Act, being deemed of
20 immediate importance, takes effect upon enactment.

21 EXPLANATION

22 This bill extends the director of revenue and finance's
23 authority to abate unpaid state sales and use taxes and local
24 option sales and services taxes to situations in which a
25 retailer who is responsible for collecting these taxes fails
26 to do so in reliance on erroneous written advice specially
27 issued to the retailer by the department of revenue and
28 finance, and the retailer is unable to collect the unpaid
29 taxes from purchasers. The bill authorizes the director to
30 hold the retailer harmless by abating the uncollected amount
31 owing. The bill further provides that subsequent written
32 advice sent by the department of revenue and finance to the
33 retailer, or a change in state or federal law, a reported
34 contrary court case, a contrary rule adopted by the
35 department, or the retailer's misrepresentation or incomplete

1 or inadequate representation of material facts and
2 circumstances in requesting the written advice, shall preclude
3 the abatement. An abatement of the unpaid tax by a retailer
4 under the circumstances provided in the bill does not preclude
5 the department of revenue and finance from collecting the tax
6 from the purchaser.

7 The bill requires the abatement of taxes not collected as a
8 result of certain erroneous written advice issued by the
9 department to a retailer prior to July 1, 1999, relating to
10 sales and use taxes on charges for access to on-line computer
11 services.

12 The bill takes effect upon enactment.

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