

Senate Study Bill 1190

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
REVENUE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the administration of the tax and related laws
2 by the department of revenue, including the administration of
3 the income tax, the franchise tax, the motor fuel tax, and of
4 fees for new vehicle registration, providing civil and
5 criminal penalties, and including effective date, retroactive
6 applicability date, and other applicability date provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 1363XD 83
9 tw/mg:sc/14

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1 1 DIVISION I
1 2 HOUSING ASSISTANCE WITHHOLDING CREDITS
1 3 Section 1. Section 15E.196, subsection 1, paragraph b,
1 4 Code 2009, is amended by striking the paragraph.
1 5 DIVISION II
1 6 ENDOW IOWA DONATIONS
1 7 Sec. 2. Section 15E.305, subsection 1, Code 2009, is
1 8 amended to read as follows:
1 9 1. For tax years beginning on or after January 1, 2003, a
1 10 tax credit shall be allowed against the taxes imposed in
1 11 chapter 422, divisions II, III, and V, and in chapter 432, and
1 12 against the moneys and credits tax imposed in section 533.329
1 13 equal to twenty percent of a taxpayer's endowment gift to an
1 14 endow Iowa qualified community foundation. An individual may
1 15 claim a tax credit under this section of a partnership,
1 16 limited liability company, S corporation, estate, or trust
1 17 electing to have income taxed directly to the individual. The
1 18 amount claimed by the individual shall be based upon the pro
1 19 rata share of the individual's earnings from the partnership,
1 20 limited liability company, S corporation, estate, or trust. A
1 21 tax credit shall be allowed only for an endowment gift made to
1 22 an endow Iowa qualified community foundation for a permanent
1 23 endowment fund established to benefit a charitable cause in
1 24 this state. The amount of the endowment gift for which the
1 25 tax credit is claimed shall not be deductible in determining
1 26 taxable income for state income tax purposes. Any tax credit
1 27 in excess of the taxpayer's tax liability for the tax year may
1 28 be credited to the tax liability for the following five years
1 29 or until depleted, whichever occurs first. A tax credit shall
1 30 not be carried back to a tax year prior to the tax year in
1 31 which the taxpayer claims the tax credit.
1 32 Sec. 3. EFFECTIVE AND APPLICABILITY DATES. This division
1 33 of this Act takes effect January 1, 2010, and applies to tax
1 34 years beginning on or after that date.
1 35 DIVISION III
2 1 FAILURE TO COLLECT NEW REGISTRATION FEES
2 2 Sec. 4. Section 321.2, subsection 4, Code 2009, is amended
2 3 to read as follows:
2 4 4. The director of revenue shall administer and enforce
2 5 the collection of the fee and related penalties for new
2 6 registration as provided in section 321.105A.
2 7 Sec. 5. Section 321.105A, Code 2009, is amended by adding
2 8 the following new subsection:
2 9 NEW SUBSECTION. 5A. CIVIL PENALTIES AGAINST LICENSED
2 10 DEALERS.
2 11 a. The following civil penalties shall be assessed against
2 12 a licensed dealer who fails, at the time of sale or transfer
2 13 of a vehicle, to collect or forward the fee for new
2 14 registration as required pursuant to subsection 5, paragraph
2 15 "a":

2 16 (1) A five hundred dollar penalty for the first violation.
2 17 (2) A one thousand dollar penalty for the second violation
2 18 if that violation occurs within three years of the first
2 19 violation.
2 20 (3) A two thousand dollar penalty for the third violation,
2 21 and for each subsequent violation, if such violations occur
2 22 within three years of the first violation.
2 23 b. The county treasurer shall, within thirty calendar days
2 24 after the date of sale or transfer, or as soon as is
2 25 reasonably practicable, notify the department of revenue of a
2 26 licensed dealer in violation of subsection 5, paragraph "a".
2 27 c. The department of revenue shall collect and enforce all
2 28 penalties due against a licensed dealer who violates
2 29 subsection 5, paragraph "a".
2 30 d. All penalties collected pursuant to this subsection
2 31 shall be deposited into the road use tax fund.

2 32 DIVISION IV

2 33 FINANCIAL ACCOUNT MATCHING SYSTEM

2 34 Sec. 6. Section 421.17, Code 2009, is amended by adding
2 35 the following new subsection:

3 1 NEW SUBSECTION. 27A. a. To establish and administer a
3 2 system and process for matching and comparing obligor
3 3 information from the department's centralized debt collection
3 4 data bank described in subsection 27 with account information
3 5 from financial institutions.

3 6 b. For purposes of this subsection, the terms "account",
3 7 "bank", "credit union", "facility", "financial institution",
3 8 "obligor", "savings and loan association", and "working days"
3 9 have the same meaning as defined in section 421.17A,
3 10 subsection 1.

3 11 c. Financial institutions doing business in Iowa shall
3 12 provide to the department information on all individuals who
3 13 hold one or more accounts with the financial institution and
3 14 upon whom a levy may be issued by the facility. The
3 15 department shall enter into agreements with financial
3 16 institutions for the provision of such information.

3 17 d. An agreement between a financial institution and the
3 18 department shall provide for the quarterly delivery of the
3 19 following information for each individual identified through
3 20 the matching and comparison system:

3 21 (1) Name.
3 22 (2) Address.
3 23 (3) Account numbers.
3 24 (4) Social security number or tax identification number,
3 25 whichever is applicable.

3 26 e. Each agreement shall require the financial institution
3 27 to obtain and deliver the information by one of the following
3 28 means:

3 29 (1) Comparing an individual's name and social security
3 30 number or tax identification number with the name and social
3 31 security number or tax identification number provided by the
3 32 department.

3 33 (2) Providing reports containing the information required
3 34 under paragraph "d" to the department. The reports shall be
3 35 used only in tax judgment and levy administration.

4 1 f. If, as a result of the matching and comparison process,
4 2 the facility determines that the information described in
4 3 paragraph "d" matches the information of an obligor, the
4 4 facility may initiate an administrative action under section
4 5 421.17A to levy against an account held by the obligor.

4 6 g. The facility may pay a reasonable fee to a financial
4 7 institution, not to exceed the actual costs incurred, for the
4 8 delivery of information provided quarterly pursuant to
4 9 paragraph "e". A reasonable fee for costs incurred includes
4 10 payment for the programming and development of a system for
4 11 automating the provision of information or a payment for
4 12 another method of compiling and providing the information
4 13 described in paragraph "e". Notwithstanding any other
4 14 provision of law to the contrary, an agreement with a
4 15 financial institution pursuant to this subsection shall
4 16 specify a date by which the financial institution shall submit
4 17 a claim for the fee described in this paragraph.

4 18 h. This subsection shall not be construed to preclude a
4 19 financial institution from recouping a deposit made to an
4 20 individual's account to which the financial institution is
4 21 lawfully entitled or from collecting any of the regularly
4 22 scheduled account activity fees necessary to maintain the
4 23 account during the period the account is blocked or
4 24 encumbered.

4 25 i. The information provided by a financial institution
4 26 under this subsection shall be confidential and shall be

4 27 available exclusively to the department and only for use in
4 28 levy collection activities.
4 29 j. A financial institution providing information pursuant
4 30 to this subsection shall not be held liable for blocking or
4 31 surrendering an individual's assets in response to a levy
4 32 under this subsection or for any other action taken in good
4 33 faith to comply with this subsection.

4 34 k. This subsection shall not be construed to preclude the
4 35 department from encumbering an obligor's account with a
5 1 financial institution by any other remedy available under the
5 2 law.

5 3 l. The director shall promulgate rules specifying an
5 4 implementation and administration plan for the system
5 5 described in this subsection. The plan shall, to the extent
5 6 possible, take into consideration any similar existing systems
5 7 utilized by financial institutions, multi-state financial data
5 8 clearinghouses, or other state agencies.

5 9 DIVISION V

5 10 ASSISTIVE DEVICE TAX CREDIT

5 11 Sec. 7. Section 422.33, subsection 9, Code 2009, is
5 12 amended by striking the subsection.

5 13 Sec. 8. Section 422.11E, Code 2009, is repealed.

5 14 DIVISION VI

5 15 COMPOSITE RETURNS

5 16 Sec. 9. Section 422.13, subsection 5, Code 2009, is
5 17 amended to read as follows:

5 18 5. a. Notwithstanding subsections 1 through 4 and
5 19 sections 422.15 and 422.36, a partnership, a limited liability
5 20 company whose members are taxed on the company's income under
5 21 provisions of the Internal Revenue Code, trust, or corporation
5 22 whose stockholders are taxed on the corporation's income under
5 23 the provisions of the Internal Revenue Code may, not later
5 24 than the due date for filing its return for the taxable year,
5 25 including any extension thereof, elect to file a composite
5 26 return for the nonresident partners, members, beneficiaries,
5 27 or shareholders. Nonresident trusts or estates which are
5 28 partners, members, beneficiaries, or shareholders in
5 29 partnerships, limited liability companies, trusts, or S
5 30 corporations may also be included on a composite return. The
5 31 director may require that a composite return be filed under
5 32 the conditions deemed appropriate by the director. A
5 33 partnership, limited liability company, trust, or corporation
5 34 filing a composite return is liable for tax required to be
5 35 shown due on the return.

6 1 b. Notwithstanding subsection 1 through 4 and sections
6 2 422.15 and 422.36, if the director determines that it is
6 3 necessary for the efficient administration of this chapter,
6 4 the director may require that a composite return be filed for
6 5 nonresidents other than nonresident partners, members,
6 6 beneficiaries or shareholders in partnerships, limited
6 7 liability companies, trusts, or S corporations.

6 8 c. All powers of the director and requirements of the
6 9 director apply to returns filed under this subsection
6 10 including, but not limited to, the provisions of this division
6 11 and division VI of this chapter.

6 12 DIVISION VII

6 13 UNDERPAYMENT OF ESTIMATED TAXES

6 14 Sec. 10. Section 422.88, subsections 2 and 3, Code 2009,
6 15 are amended to read as follows:

6 16 2. The amount of the underpayment shall be the excess of
6 17 the amount of the installment which would be required to be
6 18 paid if the estimated tax was equal to ~~ninety one hundred~~
6 19 percent of the tax shown on the return of the taxpayer for the
6 20 taxable year over the amount of installments paid on or before
6 21 the date prescribed for payment.

6 22 3. If the taxpayer did not file a return during the
6 23 taxable year, the amount of the underpayment shall be equal to
6 24 ~~ninety one hundred~~ percent of the taxpayer's tax liability for
6 25 the taxable year over the amount of installments paid on or
6 26 before the date prescribed for payment.

6 27 Sec. 11. RETROACTIVE APPLICABILITY. This division of this
6 28 Act applies retroactively to January 1, 2009, for tax years
6 29 beginning on or after that date.

6 30 DIVISION VIII

6 31 VIOLATIONS OF THE MOTOR FUEL TAX LAWS

6 32 Sec. 12. Section 452A.74A, subsections 1, 2, 4, and 5,
6 33 Code 2009, are amended to read as follows:

6 34 1. ILLEGAL USE OF DYED FUEL. The illegal use of dyed fuel
6 35 in the supply tank of a motor vehicle shall result in a civil
7 1 penalty assessed against the owner or operator of the motor
7 2 vehicle as follows:

7 3 a. A ~~two five~~ hundred dollar ~~fine~~ penalty for the first
7 4 violation.
7 5 b. A ~~five hundred one thousand~~ dollar ~~fine~~ penalty for a
7 6 second violation within three years of the first violation.
7 7 c. A ~~one two~~ thousand dollar ~~fine~~ penalty for third and
7 8 subsequent violations within three years of the first
7 9 violation.

7 10 2. ILLEGAL IMPORTATION OF UNTAXED FUEL. A person who
7 11 imports motor fuel or undyed special fuel without a valid
7 12 importer's license or supplier's license shall be assessed a
7 13 civil penalty as provided in this subsection. However, the
7 14 owner or operator of the importing vehicle shall not be guilty
7 15 of violating this subsection if it is shown by the owner or
7 16 operator that the owner or operator reasonably did not know or
7 17 reasonably should not have known of the illegal importation.

7 18 a. For a first violation, the importing vehicle shall be
7 19 detained and a ~~fine~~ penalty of ~~two four~~ thousand dollars shall
7 20 be paid before the vehicle will be released. The owner or
7 21 operator of the importing vehicle or the owner of the fuel may
7 22 be held liable for payment of the ~~fine~~ penalty.

7 23 b. For a second violation, the importing vehicle shall be
7 24 detained and a ~~fine~~ penalty of ~~five ten~~ thousand dollars shall
7 25 be paid before the vehicle will be released. The owner or
7 26 operator of the importing vehicle or the owner of the fuel may
7 27 be held liable to pay the ~~fine~~ penalty.

7 28 c. For third and subsequent violations, the importing
7 29 vehicle and the fuel shall be seized and a ~~fine~~ penalty of ~~ten~~
7 30 ~~twenty~~ thousand dollars shall be paid before the vehicle will
7 31 be released. The owner or operator of the importing vehicle
7 32 or the owner of the fuel may be held liable to pay the ~~fine~~
7 33 penalty.

7 34 d. If the owner or operator of the importing vehicle or
7 35 the owner of the fuel fails to pay the tax and ~~fine~~ penalty
8 1 for a first or second offense, the importing vehicle and the
8 2 fuel may be seized. The department of revenue, the state
8 3 department of transportation, or any peace officer, at the
8 4 request of either department, may seize the vehicle and the
8 5 fuel.

8 6 e. If the operator or owner of the importing vehicle or
8 7 the owner of the fuel ~~move~~ moves the vehicle or the fuel after
8 8 the vehicle has been detained and a sticker has been placed on
8 9 the vehicle stating that "This vehicle cannot be moved until
8 10 the tax, penalty, and interest have been paid to the
8 11 Department of Revenue", an additional penalty of ~~five ten~~
8 12 thousand dollars shall be assessed against the operator or
8 13 owner of the importing vehicle or the owner of the fuel.

8 14 f. For purposes of this subsection, "vehicle" means as
8 15 defined in section 321.1.

8 16 4. ILLEGAL HEATING OF FUEL. The deliberate heating of
8 17 taxable motor fuel or special fuel by dealers prior to
8 18 consumer sale is a ~~simple~~ serious misdemeanor.

8 19 5. PREVENTION OF INSPECTION. The department of revenue or
8 20 the state department of transportation may conduct inspections
8 21 for coloration, markers, and shipping papers at any place
8 22 where taxable fuel is or may be loaded into transport
8 23 vehicles, produced, or stored. Any attempts by a person to
8 24 prevent, stop, or delay an inspection of fuel or shipping
8 25 papers by authorized personnel shall be subject to a civil
8 26 penalty of not more than ~~one two~~ thousand dollars per
8 27 occurrence. Any law enforcement officer or department of
8 28 revenue or state department of transportation employee may
8 29 physically inspect, examine, or otherwise search any tank,
8 30 reservoir, or other container that can or may be used for the
8 31 production, storage, or transportation of any type of fuel.

8 32 EXPLANATION

8 33 This bill relates to the administration of the tax and
8 34 related laws by the department of revenue, including the
8 35 administration of the income tax, the franchise tax, the motor
9 1 fuel tax, and of fees for new vehicle registration.

9 2 Current law provides incentives and assistance to eligible
9 3 businesses located in enterprise zones. One of these
9 4 incentives is a 1.5 percent match as part of a housing
9 5 assistance program funded through a credit from withholding
9 6 based on the wages paid to employees participating in the
9 7 program. Division I of the bill strikes the provisions of the
9 8 Code that authorize such a program.

9 9 Division II of the bill provides that charitable gifts that
9 10 are the basis for claiming a tax credit under the endow Iowa
9 11 program are not eligible for a deduction when calculating
9 12 taxable income for purposes of the state income or franchise
9 13 tax. This change takes effect January 1, 2010, and applies to

9 14 tax years beginning on or after that date.

9 15 Division III of the bill provides for civil penalties to be
9 16 assessed against a licensed dealer who fails, at the time of
9 17 sale or transfer of a vehicle, to collect or forward the fee
9 18 for new registration as required pursuant to Code section
9 19 321.105A, subsection 5. The schedule of penalties is as
9 20 follows: a \$500 penalty for the first violation; a \$1,000
9 21 penalty for the second violation within three years of the
9 22 first violation; a \$2,000 penalty for the third and for each
9 23 subsequent violation within three years of the first
9 24 violation. The department of revenue collects and enforces
9 25 the penalties and deposits them in the road use tax fund.

9 26 Division IV of the bill provides for the establishment and
9 27 administration of a system for matching financial account
9 28 information with obligor information in the department of
9 29 revenue's centralized debt collection facility data bank. The
9 30 director of revenue must enter into agreements with financial
9 31 institutions doing business in Iowa in order to provide for
9 32 the delivery of information on all individuals who hold one or
9 33 more accounts with a financial institution and upon whom a
9 34 levy may be issued by the facility. Each agreement must
9 35 provide for the delivery on a quarterly basis of name,
10 1 address, account number, and social security number or tax
10 2 identification number, whichever is applicable. The
10 3 information is to be provided by one of the following means:
10 4 by comparing the financial institutions' records with the name
10 5 and either a social security number or a tax identification
10 6 number provided by the department or by providing reports
10 7 containing the information. Information in the reports is
10 8 confidential and must be used only in tax judgment and levy
10 9 administration. Financial institutions providing the
10 10 information to the department may receive a reasonable fee,
10 11 not to exceed the actual costs incurred.

10 12 The provision of information under the system does not
10 13 preclude a financial institution from recouping a deposit into
10 14 an individual's account to which the financial institution is
10 15 lawfully entitled or from collecting any of the regularly
10 16 scheduled account activity fees necessary to maintain the
10 17 account during the period the account is blocked or
10 18 encumbered. A financial institution providing information
10 19 cannot be held liable for blocking or surrendering an
10 20 individual's assets in response to a levy or for any other
10 21 action taken in good faith to comply with the requirements of
10 22 providing information to the department. The director shall
10 23 promulgate rules specifying an implementation and
10 24 administration plan for the system. The plan must, to the
10 25 extent possible, take into consideration any similar existing
10 26 systems utilized by financial institutions, multi-state
10 27 financial data clearinghouses, or other state agencies.

10 28 Division V of the bill repeals the assistive device tax
10 29 credit under the individual and corporate income taxes.

10 30 Division VI of the bill provides that if the director
10 31 determines that it is necessary for the efficient
10 32 administration of the income tax, the director may require
10 33 that a composite return be filed for nonresidents other than
10 34 nonresident partners, members, beneficiaries or shareholders
10 35 in partnerships, limited liability companies, trusts, or S
11 1 corporations.

11 2 Division VII of the bill increases the standard for the
11 3 exception to the penalty for making underpayments of estimated
11 4 tax by corporations and financial institutions from 90 percent
11 5 of the tax liability to the full amount of the tax liability.
11 6 The effect of the change is to calculate underpayments under
11 7 Iowa law the same as calculating them under federal law. This
11 8 change applies retroactively to January 1, 2009, for tax years
11 9 beginning on or after that date.

11 10 Under current law, civil penalties are imposed for certain
11 11 violations of the motor fuel and special fuel tax laws in
11 12 addition to any taxes due. Division VIII of the bill
11 13 increases the penalties for the illegal use of dyed fuel in
11 14 the supply tank of a motor vehicle to \$500 for the first
11 15 violation, \$1,000 for a second violation within three years of
11 16 the first violation, and \$2,000 for the third violation, and
11 17 for each subsequent violation, within three years of the first
11 18 violation.

11 19 The division increases the penalties for the illegal
11 20 importation of untaxed fuel to \$4,000 for the first violation
11 21 and \$10,000 for a second violation, and \$20,000 for the third
11 22 violation and for each subsequent violation. The additional
11 23 penalty assessed for moving a vehicle that has been detained
11 24 for the illegal importation of untaxed fuel is increased to

11 25 \$10,000.

11 26 The division makes the illegal heating of motor fuel prior
11 27 to consumer sale by a dealer a serious misdemeanor. A serious
11 28 misdemeanor is punishable by confinement for no more than one
11 29 year and a fine of at least \$315 but not more than \$1,875.

11 30 The division increases the penalty for preventing the
11 31 inspection of fuel to \$2,000 per occurrence.

11 32 LSB 1363XD 83

11 33 tw/mg:sc/14.1