

Senate Study Bill 3112 - Introduced

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

A BILL FOR

1 An Act relating to the technical administration of the tax
2 and related laws by the department of revenue, including
3 administration of income taxes, moneys and credits tax,
4 insurance premiums tax, sales and use taxes, fees for new
5 vehicle registration, franchise fees, and the environmental
6 protection charge, making penalties applicable, and
7 including retroactive applicability provisions.

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

1 Section 1. Section 15.119, subsection 1, Code Supplement
2 2009, is amended to read as follows:

3 1. Notwithstanding any provision to the contrary in
4 sections 15.327 through 15.336, section 15.393, ~~section 15A.9,~~
5 ~~subsection 8,~~ sections 15E.191 through 15E.197, 422.11E,
6 and section 422.33, subsection 9, the department shall not
7 authorize an amount of tax credits for purposes specified in
8 subsection 2 in excess of one hundred eighty-five million
9 dollars for any fiscal year. However, the department may
10 authorize an amount of tax credits in one fiscal year in excess
11 of one hundred eighty-five million, and such excess amount
12 shall be counted against the total amount of tax credits that
13 may be authorized in the next fiscal year.

14 Sec. 2. Section 15.119, subsection 2, paragraph c, Code
15 Supplement 2009, is amended by striking the paragraph.

16 Sec. 3. Section 15.293A, subsection 2, paragraph f, Code
17 2009, is amended to read as follows:

18 *f.* A tax credit shall not be claimed by a transferee
19 under this section until a replacement tax credit certificate
20 identifying the transferee as the proper holder has been
21 issued. The transferee may use the amount of the tax credit
22 transferred against the taxes imposed in chapter 422, divisions
23 II, III, and V, and in chapter 432, and against the moneys and
24 credits tax imposed in section 533.329, for any tax year the
25 original transferor could have claimed the tax credit. Any
26 consideration received for the transfer of the tax credit shall
27 not be included as income under chapter 422, divisions II, III,
28 and V, ~~under chapter 432, or against the moneys and credits tax~~
29 ~~imposed in section 533.329.~~ Any consideration paid for the
30 transfer of the tax credit shall not be deducted from income
31 under chapter 422, divisions II, III, and V, ~~under chapter~~
32 ~~432, or against the moneys and credits tax imposed in section~~
33 ~~533.329.~~

34 Sec. 4. Section 15.329, subsection 3, Code Supplement 2009,
35 is amended by striking the subsection.

1 Sec. 5. Section 15.393, subsection 2, paragraph a,
2 subparagraph (3), Code Supplement 2009, is amended to read as
3 follows:

4 (3) After verifying the eligibility for a tax credit under
5 this paragraph "a", the department of economic development
6 shall issue a film, television, and video project promotion
7 program tax credit certificate to be attached to the person's
8 tax return. The tax credit certificate shall contain the
9 taxpayer's name, address, tax identification number, the date
10 of project completion, the amount of credit, other information
11 required by the department of revenue, and a place for the name
12 and tax identification number of a transferee and the amount
13 of the tax credit being transferred. Tax credit certificates
14 issued under this paragraph "a" may be transferred to any person
15 or entity. Within ninety days of transfer, the transferee
16 shall submit the transferred tax credit certificate to the
17 department of revenue along with a statement containing the
18 transferee's name, tax identification number, and address,
19 and the denomination that each replacement tax credit
20 certificate is to carry and any other information required by
21 the department of revenue. Within thirty days of receiving
22 the transferred tax credit certificate and the transferee's
23 statement, the department of revenue shall issue one or more
24 replacement tax credit certificates to the transferee. Each
25 replacement tax credit certificate must contain the information
26 required for the original tax credit certificate and must have
27 the same expiration date that appeared in the transferred
28 tax credit certificate. Tax credit certificate amounts
29 of less than the minimum amount established by rule of the
30 department of economic development shall not be transferable.
31 A tax credit shall not be claimed by a transferee under this
32 paragraph "a" until a replacement tax credit certificate
33 identifying the transferee as the proper holder has been
34 issued. The transferee may use the amount of the tax credit
35 transferred against the taxes imposed in chapter 422, divisions

1 II, III, and V, and in chapter 432, and against the moneys and
2 credits tax imposed in section 533.329, for any tax year the
3 original transferor could have claimed the tax credit. Any
4 consideration received for the transfer of the tax credit shall
5 not be included as income under chapter 422, divisions II, III,
6 and V, ~~under chapter 432, or against the moneys and credits tax~~
7 ~~imposed in section 533.329.~~ Any consideration paid for the
8 transfer of the tax credit shall not be deducted from income
9 under chapter 422, divisions II, III, and V, ~~under chapter~~
10 ~~432, or against the moneys and credits tax imposed in section~~
11 ~~533.329.~~

12 Sec. 6. Section 15.393, subsection 2, paragraph b,
13 subparagraph (2), Code Supplement 2009, is amended to read as
14 follows:

15 (2) After verifying the eligibility for a tax credit under
16 this paragraph "b", the department of economic development
17 shall issue a film, television, and video project promotion
18 program tax credit certificate to be attached to the person's
19 tax return. The tax credit certificate shall contain the
20 taxpayer's name, address, tax identification number, the date
21 of project completion, the amount of credit, other information
22 required by the department of revenue, and a place for the name
23 and tax identification number of a transferee and the amount
24 of the tax credit being transferred. Tax credit certificates
25 issued under this paragraph "b" may be transferred to any person
26 or entity. Within ninety days of transfer, the transferee
27 shall submit the transferred tax credit certificate to the
28 department of revenue along with a statement containing the
29 transferee's name, tax identification number, and address,
30 and the denomination that each replacement tax credit
31 certificate is to carry and any other information required by
32 the department of revenue. Within thirty days of receiving
33 the transferred tax credit certificate and the transferee's
34 statement, the department of revenue shall issue one or more
35 replacement tax credit certificates to the transferee. Each

1 replacement tax credit certificate must contain the information
2 required for the original tax credit certificate and must have
3 the same expiration date that appeared in the transferred
4 tax credit certificate. Tax credit certificate amounts
5 of less than the minimum amount established by rule of the
6 department of economic development shall not be transferable.
7 A tax credit shall not be claimed by a transferee under this
8 paragraph "b" until a replacement tax credit certificate
9 identifying the transferee as the proper holder has been
10 issued. The transferee may use the amount of the tax credit
11 transferred against the taxes imposed in chapter 422, divisions
12 II, III, and V, and in chapter 432, and against the moneys and
13 credits tax imposed in section 533.329, for any tax year the
14 original transferor could have claimed the tax credit. Any
15 consideration received for the transfer of the tax credit shall
16 not be included as income under chapter 422, divisions II, III,
17 and V, ~~under chapter 432, or against the moneys and credits tax~~
18 ~~imposed in section 533.329.~~ Any consideration paid for the
19 transfer of the tax credit shall not be deducted from income
20 under chapter 422, divisions II, III, and V, ~~under chapter~~
21 ~~432, or against the moneys and credits tax imposed in section~~
22 ~~533.329.~~

23 Sec. 7. Section 364.2, subsection 4, paragraph f, Code
24 Supplement 2009, is amended to read as follows:

25 *f.* (1) A franchise fee assessed by a city may be based
26 upon a percentage of gross revenues generated from sales of the
27 franchisee within the city not to exceed five percent, without
28 regard to the city's cost of inspecting, supervising, and
29 otherwise regulating the franchise. Franchise fees collected
30 pursuant to an ordinance in effect on May 26, 2009, shall be
31 deposited in the city's general fund and such fees collected
32 in excess of the amounts necessary to inspect, supervise, and
33 otherwise regulate the franchise may be used by the city for
34 any other purpose authorized by law. Franchise fees collected
35 pursuant to an ordinance that is adopted or amended on or

1 after May 26, 2009, to increase the percentage rate at which
2 franchise fees are assessed shall be credited to the franchise
3 fee account within the city's general fund and used pursuant
4 to section 384.3A. If a city franchise fee is assessed to
5 customers of a franchise, the fee shall not be assessed to the
6 city as a customer. Before a city adopts or amends a franchise
7 fee rate ordinance or franchise ordinance to increase the
8 percentage rate at which franchise fees are assessed, a revenue
9 purpose statement shall be prepared specifying the purpose or
10 purposes for which the revenue collected from the increased
11 rate will be expended. If property tax relief is listed as
12 a purpose, the revenue purpose statement shall also include
13 information regarding the amount of the property tax relief to
14 be provided with revenue collected from the increased rate.
15 The revenue purpose statement shall be published as provided
16 in section 362.3.

17 (2) If a city adopts, amends, or repeals an ordinance
18 imposing a franchise fee, the city shall promptly notify the
19 director of revenue of such action.

20 Sec. 8. Section 421.27, subsections 1 and 4, Code 2009, are
21 amended to read as follows:

22 1. *Failure to timely file a return or deposit form or to*
23 *timely remit tax.* If a person fails to file with the department
24 on or before the due date a return or deposit form or, if
25 no return is required, fails to timely remit the tax due or
26 required to be shown due, there shall be added to the tax shown
27 due or required to be shown due a penalty of ten percent of the
28 tax shown due or required to be shown due. The penalty, if
29 assessed, shall be waived by the department upon a showing of
30 any of the following conditions:

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

33 b. Those taxpayers who are required to file quarterly
34 returns, or monthly or semimonthly deposit forms may have one
35 late return or deposit form within a three-year period. The

1 use of any other penalty exception will not count as a late
2 return or deposit form for purposes of this exception.

3 *c.* The death of a taxpayer, death of a member of the
4 immediate family of the taxpayer, or death of the person
5 directly responsible for filing the return and paying the tax,
6 when the death interferes with timely filing.

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

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

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

22 *g.* Reliance upon results in a previous audit was a direct
23 cause for the failure to file where the previous audit
24 expressly and clearly addressed the issue and the previous
25 audit results have not been superseded by a court decision, or
26 the adoption, amendment, or repeal of a rule or law.

27 *h.* Under rules prescribed by the director, the taxpayer
28 presents documented proof of substantial authority to rely
29 upon a particular position or upon proof that all facts and
30 circumstances are disclosed on a return or deposit form.

31 *i.* The return, deposit form, or payment is timely, but
32 erroneously, mailed with adequate postage to the internal
33 revenue service, another state agency, or a local government
34 agency and the taxpayer provides proof of timely mailing with
35 adequate postage.

1 *j.* The tax has been paid by the wrong licensee and the
2 payments were timely remitted to the department for one or more
3 tax periods prior to notification by the department.

4 *k.* The failure to file was discovered through a sanctioned
5 self-audit program conducted by the department.

6 *l.* If the availability of funds in payment of tax required
7 to be made through electronic funds transfer is delayed and the
8 delay of availability is due to reasons beyond the control of
9 the taxpayer. "*Electronic funds transfer*" means any transfer
10 of funds, other than a transaction originated by check, draft,
11 or similar paper instrument, that is initiated through an
12 electronic terminal telephone, computer, magnetic tape, or
13 similar device for the purpose of ordering, instructing, or
14 authorizing a financial institution to debit or credit an
15 account.

16 *m.* The failure to file a timely inheritance tax return
17 resulting solely from a disclaimer that required the personal
18 representative to file an inheritance tax return. The penalty
19 shall be waived if such return is filed and any tax due is paid
20 within the later of nine months from the date of death or sixty
21 days from the delivery or filing of the disclaimer pursuant to
22 section 633E.12.

23 *n.* That an Iowa inheritance tax return is filed for an
24 estate within the later of nine months from the date of
25 death or sixty days from the filing of a disclaimer by the
26 beneficiary of the estate refusing to take the property or
27 right or interest in the property.

28 4. *Willful failure to file a return or deposit form or to*
29 *timely remit tax.*

30 ~~*a.* In case of~~ If there is a willful failure by a taxpayer to
31 file a return or deposit form with the intent to evade tax, or
32 in case of willfully filing, if no return is required, to
33 timely remit the tax due or required to be shown due, or if the
34 taxpayer willfully files a false return or deposit form with
35 the intent to evade tax, in lieu of the penalties otherwise

1 provided in this section, a penalty of seventy-five percent
2 shall be added to the amount shown due or required to be shown
3 due as tax on the return or deposit form, or the amount due
4 if no return is required. If penalties are applicable for
5 failure to file a return or deposit form and failure to pay
6 the tax shown due or required to be shown due on the return or
7 deposit form, the penalty provision for failure to file shall
8 be in lieu of the penalty provisions for failure to pay the tax
9 shown due or required to be shown due on the return or deposit
10 form, except in the case of willful failure to file a return or
11 deposit form or willfully filing a false return or deposit form
12 with intent to evade tax.

13 b. The penalties imposed under this subsection are not
14 subject to waiver.

15 Sec. 9. Section 422.7, subsection 9, Code Supplement 2009,
16 is amended to read as follows:

17 9. Subtract the amount of the alcohol ~~fuel~~ and cellulosic
18 biofuel fuels credit allowable for the tax year under section
19 40 of the Internal Revenue Code to the extent that the credit
20 increased federal adjusted gross income.

21 Sec. 10. Section 422.33, subsection 5, paragraph f, Code
22 Supplement 2009, is amended by striking the paragraph.

23 Sec. 11. Section 422.33, subsection 12, paragraph b, Code
24 Supplement 2009, is amended to read as follows:

25 b. The taxes imposed under this division shall be
26 reduced by investment tax credits authorized pursuant to
27 ~~sections section 15.333, 15A.9, subsection 4,~~ and section
28 15E.193B, subsection 6.

29 Sec. 12. Section 422.35, subsection 7, Code Supplement
30 2009, is amended to read as follows:

31 7. Subtract the amount of the alcohol ~~fuel~~ and cellulosic
32 biofuel fuels credit allowable for the tax year under section
33 40 of the Internal Revenue Code to the extent that the credit
34 increased federal taxable income.

1 Sec. 13. Section 422.36, subsection 4, Code 2009, is amended

2 to read as follows:

3 4. Foreign and domestic corporations shall file a copy of
4 their federal income tax return for the current tax year with
5 the return required by this section.

6 Sec. 14. Section 422.89, subsection 3, unnumbered paragraph
7 1, Code 2009, is amended to read as follows:

8 An amount equal to ~~ninety~~ one hundred percent of the tax for
9 the taxable year computed by placing on an annualized basis the
10 taxable income:

11 Sec. 15. Section 423.3, subsection 40, Code Supplement
12 2009, is amended to read as follows:

13 40. The sales price from the sale of automotive fluids
14 to a retailer to be used either in providing a service which
15 includes the installation or application of the fluids in
16 or on a motor vehicle, which service is subject to section
17 423.2, subsection 6, or to be installed in or applied to a
18 motor vehicle which the retailer intends to sell, which sale
19 is subject to section ~~423.26~~ 321.105A. For purposes of this
20 subsection, automotive fluids are all those which are refined,
21 manufactured, or otherwise processed and packaged for sale
22 prior to their installation in or application to a motor
23 vehicle. They include but are not limited to motor oil and
24 other lubricants, hydraulic fluids, brake fluid, transmission
25 fluid, sealants, undercoatings, antifreeze, and gasoline
26 additives.

27 Sec. 16. Section 423.36, subsection 3, paragraph a, Code
28 2009, is amended to read as follows:

29 a. The department shall grant and issue to each applicant
30 a permit for each place of business in this state where sales
31 or use tax is collected. A permit is not assignable and is
32 valid only for the person in whose name it is issued and for the
33 transaction of business at the place designated or at a place
34 of relocation within the ~~state~~ same county, if the ownership
35 remains the same.

1 Sec. 17. Section 423.37, subsections 1 and 2, Code 2009, are

2 amended to read as follows:

3 1. As soon as practicable after a return is filed and in
4 any event within three years after the return is filed, the
5 department shall examine it, assess and determine the tax due
6 if the return is found to be incorrect, and give notice to the
7 person liable for the tax of the assessment and determination
8 as provided in subsection 2. The period for the examination
9 and determination of the correct amount of tax is unlimited in
10 the case of a false or fraudulent return made with the intent
11 to evade tax or in the case of a failure to file a return or, if
12 no return is required, in the case of a failure to pay the tax
13 due or required to be shown due.

14 2. If a return required by this subchapter is not filed,
15 or if a return when filed is incorrect or insufficient and
16 the maker fails to file a corrected or sufficient return
17 within twenty days after the same is required by notice from
18 the department, or if tax is due but no return is required,
19 the department shall determine the amount of tax due from
20 information as the department may be able to obtain and, if
21 necessary, may estimate the tax on the basis of external
22 indices, such as number of employees of the person concerned,
23 rentals paid by the person, stock on hand, or other factors.
24 The determination may be made using any generally recognized
25 valid and reliable sampling technique, whether or not the
26 person being audited has complete records, as mutually agreed
27 upon by the department and the taxpayer. The department shall
28 give notice of the determination to the person liable for the
29 tax. The determination shall fix the tax unless the person
30 against whom it is assessed shall, within sixty days after the
31 giving of notice of the determination, apply to the director
32 for a hearing or unless the taxpayer contests the determination
33 by paying the tax, interest, and penalty and timely filing a
34 claim for refund. At the hearing, evidence may be offered to
35 support the determination or to prove that it is incorrect.

1 After the hearing the director shall give notice of the

2 decision to the person liable for the tax.

3 Sec. 18. Section 423.57, Code 2009, is amended to read as
4 follows:

5 **423.57 Statutes applicable.**

6 The director shall administer this subchapter as it relates
7 to the taxes imposed in this chapter in the same manner and
8 subject to all the provisions of, and all of the powers,
9 duties, authority, and restrictions contained in sections
10 423.14, 423.15, 423.16, 423.17, 423.19, 423.20, 423.21, 423.22,
11 423.23, 423.24, 423.25, ~~423.28~~, 423.29, 423.31, 423.32, 423.33,
12 423.34, 423.34A, 423.35, 423.37, 423.38, 423.39, 423.40,
13 423.41, and 423.42, section 423.43, subsection 1, and sections
14 423.45, 423.46, and 423.47.

15 Sec. 19. Section 424.2, subsections 6, 10, and 13, Code
16 2009, are amended to read as follows:

17 6. "*Depositor*" means the person who deposits petroleum into
18 an underground storage tank subject to regulation under chapter
19 455G or an aboveground petroleum storage tank as defined
20 in section 101.21, located at a retail motor ~~vehiele~~ fuel
21 outlet if the aboveground storage tank is physically connected
22 directly to pumps which dispense petroleum that is sold at the
23 motor ~~vehiele~~ fuel outlet on a retail basis.

24 10. "*Owner or operator*" means "*owner or operator*" of an
25 underground storage tank as used in chapter 455G or the
26 "*owner*" or "*operator*" of an aboveground petroleum storage
27 tank as defined in section 101.21, located at a retail
28 motor ~~vehiele~~ fuel outlet if the aboveground storage tank is
29 physically connected directly to pumps which dispense petroleum
30 that is sold at the motor ~~vehiele~~ fuel outlet on a retail
31 basis.

32 13. "*Tank*" means an underground storage tank subject to
33 regulation under chapter 455G or an aboveground petroleum
34 storage tank as defined in section 101.21, located at a retail
35 motor ~~vehiele~~ fuel outlet if the aboveground storage tank is
1 physically connected directly to pumps which dispense petroleum

2 that is sold at the motor ~~vehicle~~ fuel outlet on a retail
3 basis.

4 Sec. 20. REPEAL. Section 423.28, Code 2009, is repealed.

5 Sec. 21. REPEAL. Section 15A.9, Code Supplement 2009, is
6 repealed.

7 Sec. 22. RETROACTIVE APPLICABILITY. The section of this
8 Act amending section 422.89 applies retroactively to January 1,
9 2010, for tax years beginning on or after that date.

10 EXPLANATION

11 This bill relates to the technical administration of the tax
12 and related laws by the department of revenue.

13 The bill amends Code sections 15.293A and 15.393 to
14 eliminate certain income-related references to the insurance
15 premium tax and moneys and credits tax which are not imposed
16 on an income basis. The amended Code sections relate to the
17 tax credits available for brownfields redevelopment, film
18 expenditures, and film investment.

19 The bill repeals Code section 15A.9, which is the quality
20 jobs enterprise zone program. The program commonly known as
21 the enterprise zone program is currently administered pursuant
22 to Code sections 15E.191 through 15E.198, and the last contract
23 issued under the quality jobs enterprise zone program is now
24 expired making Code section 15A.9 no longer necessary. The
25 bill makes changes to Code sections 15.119, 15.329, and 422.33
26 in conformance with the repeal of this Code section.

27 The bill amends Code section 364.2, relating to franchise
28 fees imposed by cities, to require a city to notify the
29 department whenever an ordinance imposing a franchise fee is
30 adopted, amended, or repealed. Because the imposition of
31 a franchise fee requires utilities to stop collecting the
32 local option sales and services tax and instead collect the
33 franchise fee, the adoption, amendment, or repeal of such a fee
34 impacts the department's distribution of local option sales and
35 services tax revenue to local governments.

1 The bill amends Code section 421.27 to clarify existing

2 departmental policy regarding the penalty that applies not only
3 for failure to timely file a return but also for a failure
4 to timely remit taxes to the department. By operation of
5 law, the changes to Code section 421.27 also apply to Code
6 sections 423.40, 424.17, 437A.13, 450.63, 452A.65, 453A.28, and
7 453A.46(3).

8 The bill amends Code sections 422.7 and 422.35 to update
9 the name of the individual and corporate tax credits for the
10 production of alcohol and biofuels to be the same as the name
11 of the credit available in section 40 of the federal Internal
12 Revenue Code.

13 The bill amends Code section 422.36 to provide that domestic
14 corporations must provide a copy of their federal income tax
15 return when filing their Iowa corporation income tax return.
16 Currently, foreign corporations are subject to the same
17 requirement and this change reflects the current practices of
18 the department.

19 In 2009, certain provisions were amended to increase the
20 standard for the exception to the underpayment of estimated
21 tax penalty for Iowa corporation income tax for annualization
22 of income from 90 percent of the tax liability to 100 percent
23 of the tax liability. Code section 422.89, which contains a
24 similar provision, was not amended at that time. The bill
25 amends Code section 422.89 to reflect the substance of the
26 changes made in 2009. This provision of the bill applies
27 retroactively to January 1, 2010, for tax years beginning on
28 or after that date.

29 Code section 423.3 is amended to correct an internal
30 reference to Code section 321.105A relating to the sale of a
31 motor vehicle and the fee for a new vehicle registration.

32 Code section 423.28 required motor vehicle dealers to file
33 reports related to the paying of the sales tax for the sale of
34 motor vehicles. Because such sales are now subject to the fee
35 for new vehicle registration and such reports are no longer
1 required, the bill repeals Code section 423.28. The bill makes

2 a conforming amendment to Code section 423.57.

3 The bill amends Code section 423.36 to provide that a new
4 sales tax permit must be obtained if a place of business is
5 relocated to a new county. This change reflects the current
6 practice of the department and impacts the distribution of
7 local option sales tax revenue.

8 The bill amends Code section 423.37 to specify that the
9 period for examination and determination of the correct amount
10 of tax is unlimited, not only for failure to timely file a
11 return but also for failure to timely remit the tax due when
12 no return is required to be filed. Code section 423.37 is
13 further amended to specify that certain authority related
14 to determining the amount of tax due applies not only to an
15 incorrectly or insufficiently filed return, or to a failure to
16 timely file a return, but also to a failure to timely remit
17 taxes when no return is required to be filed.

18 The bill amends Code section 424.2, pertaining to the
19 environmental protection charge, by correcting out-of-date
20 language relating to motor fuel outlets. The amendment makes
21 language in Code section 424.2 consistent with similar language
22 used in Code chapter 452A, relating to motor fuel and special
23 fuel taxes.