

**House File 57 - Introduced**

HOUSE FILE 57

BY ISENHART

**A BILL FOR**

1 An Act providing for the discretionary waiver of use tax  
2 penalties and interest and including effective date and  
3 retroactive applicability provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 421.27, Code 2011, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. 1A. *Waiver of penalty and interest for*  
4 *failure to file sales or use tax return or deposit form.*

5 a. The penalty described in subsection 1, or a portion  
6 thereof, if assessed against a taxpayer, and any interest  
7 assessed pursuant to section 423.40, or a portion thereof, may  
8 be waived by the department if all of the following conditions  
9 are met:

10 (1) The taxpayer is a purchaser of tangible personal  
11 property or services which are subject to the sales and use  
12 taxes imposed under chapter 423.

13 (2) The purchaser is subject to the penalties and interest  
14 pursuant to section 423.40 as a result of a failure to file a  
15 sales or use tax return pursuant to section 423.37.

16 (3) The return the purchaser failed to file was required  
17 because of the failure of another taxpayer to pay or collect  
18 the taxes due under chapter 423.

19 (4) The purchaser did not know of the other taxpayer's  
20 failure to pay or collect the taxes due under chapter 423.

21 b. A waiver granted to a purchaser under this subsection  
22 does not apply to the taxpayer described in paragraph "a",  
23 subparagraph (3).

24 NEW SUBSECTION. 2A. *Waiver of penalty and interest for*  
25 *failure to timely pay the tax shown due, or the tax required to*  
26 *be shown due, with the filing of a return or deposit form.*

27 a. The penalty described in subsection 2, or a portion  
28 thereof, if assessed against a taxpayer, and any interest  
29 assessed pursuant to section 423.40, or a portion thereof, may  
30 be waived by the department if all of the following conditions  
31 are met:

32 (1) The taxpayer is a purchaser of tangible personal  
33 property or services which are subject to the sales and use  
34 taxes imposed under chapter 423.

35 (2) The purchaser is subject to the penalties and interest

1 pursuant to section 423.40 as a result of a failure to pay the  
2 amount shown due or required to be shown due on a sales or use  
3 tax return pursuant to section 423.37.

4 (3) The failure to pay the amount shown due or required to  
5 be shown due was the result of the failure of another taxpayer  
6 to pay or collect the taxes due under chapter 423.

7 (4) The purchaser did not know of the other taxpayer's  
8 failure to pay or collect the taxes due under chapter 423.

9 b. A waiver granted to a purchaser under this subsection  
10 does not apply to the taxpayer described in paragraph "a",  
11 subparagraph (3).

12 Sec. 2. REFUNDS. Refunds of interest or penalties which  
13 arise from claims resulting from the enactment of this Act,  
14 for the assessment of interest or penalties occurring between  
15 January 1, 2009, and the effective date of this Act, shall be  
16 limited to fifty thousand dollars in the aggregate and shall  
17 not be allowed unless refund claims are filed prior to October  
18 1, 2011, notwithstanding any other provision of law. If the  
19 amount of claims totals more than fifty thousand dollars in the  
20 aggregate, the department of revenue and finance shall prorate  
21 the fifty thousand dollars among all claimants in relation to  
22 the amounts of the claimants' valid claims.

23 Sec. 3. EFFECTIVE UPON ENACTMENT AND RETROACTIVE  
24 APPLICABILITY. This Act, being deemed of immediate importance,  
25 takes effect upon enactment and applies retroactively to  
26 January 1, 2009, for the assessment of interest or penalties  
27 on or after that date.

28 EXPLANATION

29 This bill relates to the assessment of penalties and  
30 interest for failure to comply with the sales and use tax laws  
31 in certain circumstances.

32 Currently, if a person fails to file a return or deposit  
33 form with the department of revenue when required to do so or  
34 fails to timely pay the taxes due, the department shall assess  
35 a penalty under Code section 421.27. The department can only

1 waive the penalty if certain statutory conditions are met.

2     The bill gives the department the discretion to waive the  
3 penalty, and any applicable interest pursuant to Code section  
4 423.40, for certain taxpayers who fail to file the required  
5 returns or to timely pay the taxes due. Specifically, because  
6 the use tax, if owed, is due until it is paid, under certain  
7 circumstances, it may be owed by a subsequent purchaser of  
8 tangible personal property because of a prior purchaser's  
9 failure to pay it. The bill allows the department to waive  
10 the penalty for both a failure to file a return and a failure  
11 to timely pay the taxes due if the taxpayer is a subsequent  
12 purchaser who was unaware of a prior purchaser's failure to pay  
13 the tax.

14     The bill allows refunds of past penalties and interest  
15 but limits them to \$50,000 in the aggregate and to claims  
16 for refund filed prior to October 1, 2011. If the amount of  
17 such claims is in excess of that amount, the department is to  
18 prorate the refunds.

19     The bill is effective upon enactment and applies  
20 retroactively to January 1, 2009, for the assessment of  
21 interest or penalties on or after that date.