

Senate Study Bill 3131 - 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 the administration of income taxes, sales and use taxes,
4 franchise fees, notification of annexation or severance
5 by cities, and cigarette and tobacco taxes, and including
6 retroactive applicability provisions.

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

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DIVISION I
INCOME TAXES

Section 1. Section 2.48, subsection 3, paragraph a, subparagraph (2), Code 2011, is amended to read as follows:

(2) The tax credits for increasing research activities available under sections 15.335, ~~15A.9~~, 422.10, and 422.33.

Sec. 2. Section 15.119, subsection 2, paragraph c, Code Supplement 2011, is amended by striking the paragraph.

Sec. 3. Section 15.293A, subsection 2, paragraph b, subparagraph (6), Code Supplement 2011, is amended to read as follows:

(6) A tax credit shall not be claimed by a transferee under this section until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V, ~~under chapter 432, or against the moneys and credits tax imposed in section 533.329.~~ Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V, ~~under chapter 432, or against the moneys and credits tax imposed in section 533.329.~~

Sec. 4. Section 15.329, subsection 3, Code Supplement 2011, is amended by striking the subsection.

Sec. 5. Section 15.393, subsection 2, paragraph a, subparagraph (3), Code Supplement 2011, is amended to read as follows:

(3) After verifying the eligibility for a tax credit under this paragraph "a", the economic development authority shall issue a film, television, and video project promotion

1 program tax credit certificate to be attached to the person's
2 tax return. The tax credit certificate shall contain the
3 taxpayer's name, address, tax identification number, the date
4 of project completion, the amount of credit, other information
5 required by the department of revenue, and a place for the name
6 and tax identification number of a transferee and the amount
7 of the tax credit being transferred. Tax credit certificates
8 issued under this paragraph "a" may be transferred to any person
9 or entity. Within ninety days of transfer, the transferee
10 shall submit the transferred tax credit certificate to the
11 department of revenue along with a statement containing the
12 transferee's name, tax identification number, and address,
13 and the denomination that each replacement tax credit
14 certificate is to carry and any other information required by
15 the department of revenue. Within thirty days of receiving
16 the transferred tax credit certificate and the transferee's
17 statement, the department of revenue shall issue one or more
18 replacement tax credit certificates to the transferee. Each
19 replacement tax credit certificate must contain the information
20 required for the original tax credit certificate and must have
21 the same expiration date that appeared in the transferred tax
22 credit certificate. Tax credit certificate amounts of less
23 than the minimum amount established by rule of the economic
24 development authority shall not be transferable. A tax credit
25 shall not be claimed by a transferee under this paragraph
26 "a" until a replacement tax credit certificate identifying
27 the transferee as the proper holder has been issued. The
28 transferee may use the amount of the tax credit transferred
29 against the taxes imposed in chapter 422, divisions II,
30 III, and V, and in chapter 432, and against the moneys and
31 credits tax imposed in section 533.329, for any tax year the
32 original transferor could have claimed the tax credit. Any
33 consideration received for the transfer of the tax credit shall
34 not be included as income under chapter 422, divisions II, III,
35 and V, ~~under chapter 432, or against the moneys and credits tax~~

1 ~~imposed in section 533.329.~~ Any consideration paid for the
2 transfer of the tax credit shall not be deducted from income
3 under chapter 422, divisions II, III, and V, ~~under chapter~~
4 ~~432, or against the moneys and credits tax imposed in section~~
5 ~~533.329.~~

6 Sec. 6. Section 15.393, subsection 2, paragraph b,
7 subparagraph (2), Code Supplement 2011, is amended to read as
8 follows:

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

1 shall not be claimed by a transferee under this paragraph
2 "b" until a replacement tax credit certificate identifying
3 the transferee as the proper holder has been issued. The
4 transferee may use the amount of the tax credit transferred
5 against the taxes imposed in chapter 422, divisions II,
6 III, and V, and in chapter 432, and against the moneys and
7 credits tax imposed in section 533.329, for any tax year the
8 original transferor could have claimed the tax credit. Any
9 consideration received for the transfer of the tax credit shall
10 not be included as income under chapter 422, divisions II, III,
11 and V, ~~under chapter 432, or against the moneys and credits tax~~
12 ~~imposed in section 533.329.~~ Any consideration paid for the
13 transfer of the tax credit shall not be deducted from income
14 under chapter 422, divisions II, III, and V, ~~under chapter~~
15 ~~432, or against the moneys and credits tax imposed in section~~
16 ~~533.329.~~

17 Sec. 7. Section 422.7, subsection 9, Code Supplement 2011,
18 is amended to read as follows:

19 9. Subtract the amount of the alcohol ~~fuel~~ and cellulosic
20 biofuel fuels credit allowable for the tax year under section
21 40 of the Internal Revenue Code to the extent that the credit
22 increased federal adjusted gross income.

23 Sec. 8. Section 422.13, subsection 1, paragraph a, Code
24 2011, is amended to read as follows:

25 a. The individual has net income of more than nine thousand
26 dollars ~~or more~~ for the tax year from sources taxable under
27 this division.

28 Sec. 9. Section 422.28, Code 2011, is amended to read as
29 follows:

30 **422.28 Revision of tax.**

31 A taxpayer may appeal to the director for revision of
32 the tax, interest, or penalties assessed at any time within
33 sixty days from the date of the notice of the assessment of
34 tax, additional tax, interest, or penalties. The director
35 shall grant a hearing and if, upon the hearing, the director

1 determines that the tax, interest, or penalties are excessive
2 or incorrect, the director shall revise them according to
3 the law and the facts and adjust the computation of the tax,
4 interest, or penalties accordingly. The director shall notify
5 the taxpayer by mail of the result of the hearing and shall
6 refund to the taxpayer the amount, if any, paid in excess of
7 the tax, interest, or penalties found by the director to be
8 due, with interest ~~after sixty days~~ accruing from the ~~date of~~
9 first day of the second calendar month following the date of
10 payment by the taxpayer at the rate in effect under section
11 421.7 for each month or a fraction of a month.

12 Sec. 10. Section 422.33, subsection 5, paragraph f, Code
13 Supplement 2011, is amended by striking the paragraph.

14 Sec. 11. Section 422.33, subsection 12, paragraph b, Code
15 Supplement 2011, is amended to read as follows:

16 b. The taxes imposed under this division shall be reduced by
17 investment tax credits authorized pursuant to ~~sections~~ section
18 ~~15.333, 15A.9, subsection 4,~~ and section 15E.193B, subsection
19 6.

20 Sec. 12. Section 422.35, subsection 7, Code Supplement
21 2011, is amended to read as follows:

22 7. Subtract the amount of the alcohol ~~fuel~~ and cellulosic
23 biofuel fuels credit allowable for the tax year under section
24 40 of the Internal Revenue Code to the extent that the credit
25 increased federal taxable income.

26 Sec. 13. Section 422.36, subsection 4, Code 2011, is amended
27 to read as follows:

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

31 Sec. 14. Section 422.73, subsection 2, Code Supplement
32 2011, is amended by striking the subsection.

33 Sec. 15. Section 422.89, subsection 3, paragraph a,
34 unnumbered paragraph 1, Code Supplement 2011, is amended to
35 read as follows:

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

4 Sec. 16. REPEAL. Section 15A.9, Code Supplement 2011, is
5 repealed.

6 Sec. 17. RETROACTIVE APPLICABILITY. The following
7 provision or provisions of this division of this Act apply
8 retroactively to January 1, 2012, for tax years beginning on
9 or after that date:

10 1. The section of this Act amending section 422.89.

11 DIVISION II

12 SALES TAXES

13 Sec. 18. Section 423.3, subsection 40, Code Supplement
14 2011, is amended to read as follows:

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

29 Sec. 19. Section 423.3, Code Supplement 2011, is amended by
30 adding the following new subsection:

31 NEW SUBSECTION. 96. The sale price of fees charged for the
32 release of medical records as described in section 622.10.

33 Sec. 20. Section 423.36, subsection 3, paragraph a, Code
34 2011, is amended to read as follows:

35 a. The department shall grant and issue to each applicant

1 a permit for each place of business in this state where sales
2 or use tax is collected. A permit is not assignable and is
3 valid only for the person in whose name it is issued and for the
4 transaction of business at the place designated or at a place
5 of relocation within the state same county if the ownership
6 remains the same.

7 Sec. 21. Section 423.57, Code 2011, is amended to read as
8 follows:

9 **423.57 Statutes applicable.**

10 The director shall administer this subchapter as it relates
11 to the taxes imposed in this chapter in the same manner and
12 subject to all the provisions of, and all of the powers,
13 duties, authority, and restrictions contained in sections
14 423.14, 423.15, 423.16, 423.17, 423.19, 423.20, 423.21, 423.22,
15 423.23, 423.24, 423.25, ~~423.28~~, 423.29, 423.31, 423.32, 423.33,
16 423.34, 423.34A, 423.35, 423.37, 423.38, 423.39, 423.40,
17 423.41, and 423.42, section 423.43, subsection 1, and sections
18 423.45, 423.46, and 423.47.

19 Sec. 22. Section 622.10, subsection 6, paragraph c, Code
20 Supplement 2011, is amended to read as follows:

21 *c.* Fees charged pursuant to this subsection are ~~not subject~~
22 ~~to a sales or use tax~~ exempt from the sales tax pursuant
23 to section 423.3, subsection 96. A provider providing the
24 records or images may require payment in advance if an itemized
25 statement demanding such is provided to the requesting party
26 within fifteen days of the request. Upon a timely request
27 for payment in advance, the time for providing the records or
28 images shall be extended until the greater of thirty days from
29 the date of the original request or ten days from the receipt
30 of payment.

31 Sec. 23. REPEAL. Section 423.28, Code 2011, is repealed.

32 DIVISION III

33 MISCELLANEOUS

34 Sec. 24. Section 364.2, subsection 4, paragraph f, Code
35 2011, is amended to read as follows:

1 *f.* (1) A franchise fee assessed by a city may be based
2 upon a percentage of gross revenues generated from sales of the
3 franchisee within the city not to exceed five percent, without
4 regard to the city's cost of inspecting, supervising, and
5 otherwise regulating the franchise. Franchise fees collected
6 pursuant to an ordinance in effect on May 26, 2009, shall be
7 deposited in the city's general fund and such fees collected
8 in excess of the amounts necessary to inspect, supervise, and
9 otherwise regulate the franchise may be used by the city for
10 any other purpose authorized by law. Franchise fees collected
11 pursuant to an ordinance that is adopted or amended on or
12 after May 26, 2009, to increase the percentage rate at which
13 franchise fees are assessed shall be credited to the franchise
14 fee account within the city's general fund and used pursuant
15 to section 384.3A. If a city franchise fee is assessed to
16 customers of a franchise, the fee shall not be assessed to the
17 city as a customer. Before a city adopts or amends a franchise
18 fee rate ordinance or franchise ordinance to increase the
19 percentage rate at which franchise fees are assessed, a revenue
20 purpose statement shall be prepared specifying the purpose or
21 purposes for which the revenue collected from the increased
22 rate will be expended. If property tax relief is listed as
23 a purpose, the revenue purpose statement shall also include
24 information regarding the amount of the property tax relief to
25 be provided with revenue collected from the increased rate.
26 The revenue purpose statement shall be published as provided
27 in section 362.3.

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

31 Sec. 25. Section 368.24, Code 2011, is amended to read as
32 follows:

33 **368.24 Notification to public utilities and to the department**
34 **of revenue.**

35 Notwithstanding any other provision of law to the contrary,

1 any city that annexes territory or any city from which
2 territory is severed shall provide written notification
3 consisting of a legal description and map of the annexed or
4 severed territory, each street address within the annexed
5 or severed area, where possible, a statement containing the
6 effective date of the annexation or severance and a copy of
7 the order, resolution, or ordinance proclaiming the annexation
8 or severance to all public utilities operating in the annexed
9 or severed area and to the department of revenue. If the
10 notification of ~~the~~ an annexation is provided to a public
11 utility less than sixty days prior to the effective date of the
12 annexation, the public utility shall have sixty days from the
13 date of notification to adjust its tax and accounting records
14 to reflect the annexation for any tax purpose.

15 DIVISION IV

16 CIGARETTE AND TOBACCO TAXES

17 Sec. 26. Section 453A.1, subsections 4 and 14, Code 2011,
18 are amended to read as follows:

19 4. "*Cigarette vending machine*" means any self-service device
20 offered for public use which, upon ~~insertion of a coin, coins,~~
21 ~~paper currency, or by other means~~ payment or insertion of
22 loose tobacco product, dispenses, or assembles and dispenses,
23 cigarettes or tobacco products ~~without the necessity of~~
24 ~~replenishing the device between each vending operation~~.

25 14. "*Individual packages of cigarettes*" shall mean and
26 include every package of cigarettes or quantity of cigarettes
27 assembled and ordinarily sold at retail.

28 Sec. 27. Section 453A.6, subsection 7, Code 2011, is amended
29 to read as follows:

30 7. Cigarettes shall be sold or dispensed only in packages or
31 quantities of twenty or more cigarettes.

32 8. Any permit holder owning, renting, leasing, or otherwise
33 operating a cigarette vending machine that dispenses unstamped
34 cigarettes shall pay the tax directly to the department.

35 Sec. 28. Section 453A.36, subsections 6 and 8, Code 2011,

1 are amended to read as follows:

2 6. Any sales of cigarettes or tobacco products made
3 through a cigarette vending machine are subject to rules and
4 penalties relative to retail sales of cigarettes and tobacco
5 products provided for in this chapter. Cigarettes shall not
6 be sold or dispensed through any cigarette vending machine
7 unless the cigarettes have been properly stamped or metered as
8 provided by this division, and in case of violation of this
9 provision, the permit of the dealer authorizing retail sales
10 of cigarettes shall be revoked. Payment of the permit fee as
11 provided in section 453A.13 authorizes a cigarette vendor to
12 sell cigarettes or tobacco products through vending machines.
13 However, cigarettes or tobacco products shall not be sold or
14 dispensed through a vending machine unless the vending machine
15 is located in a place where the retailer ensures that no person
16 younger than eighteen years of age is present or permitted to
17 enter at any time. Cigarettes or tobacco products shall not be
18 sold or dispensed through any cigarette vending machine if such
19 products are placed together with any nontobacco product, other
20 than matches, in the cigarette vending machine. This section
21 does not require a retail permit holder to buy a cigarette
22 vendor's permit if the retail permit holder is in fact the
23 owner of the cigarette vending machines and the machines are
24 operated in the location described in the retail permit.

25 8. It shall be unlawful for a holder of a retail permit
26 to sell, dispense, or distribute any cigarettes or tobacco
27 products, including but not limited to a single or loose
28 cigarette, that are not contained within a sealed carton, pack,
29 or package as provided by the manufacturer, which carton, pack,
30 or package bears the health warning that is required by federal
31 law.

32 EXPLANATION

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

35 Division I of the bill relates to income taxes.

1 The division repeals Code section 15A.9, the quality jobs
2 enterprise zone program. The program, commonly known as the
3 enterprise zone program, is currently administered pursuant to
4 Code sections 15E.191 through 15E.197, and the last contract
5 issued under the quality jobs enterprise zone program is now
6 expired, making Code section 15A.9 no longer necessary. The
7 bill makes changes to Code sections 2.48, 15.119, 15.329, and
8 422.33 in conformance with the repeal of Code section 15A.9.

9 The division amends Code sections 15.293A and 15.393 to
10 eliminate certain income-related references to the insurance
11 premium tax and moneys and credits tax which are not imposed
12 on an income basis. The amended Code sections relate to
13 the tax credits available for brownfield redevelopment, film
14 expenditures, and film investment.

15 The division amends Code sections 422.7 and 422.35 to update
16 the name of the individual and corporate tax credits for the
17 production of alcohol and biofuels to be the same as the name
18 of the credit available in section 40 of the federal Internal
19 Revenue Code.

20 The division amends Code section 422.13 to correct the
21 filing requirement for an Iowa individual income tax return so
22 that it is consistent with Code section 422.5.

23 The division amends Code section 422.28 to provide that
24 interest on a refund of the individual or corporate income tax,
25 or the franchise tax, begins to accrue from the first day of
26 the second month following the date of payment. By operation
27 of Code sections 428A.8 and 453B.14, this change also applies
28 to the real estate transfer tax and the excise tax on unlawful
29 dealing in certain substances.

30 The division amends Code section 422.36 to provide that
31 domestic corporations must provide a copy of their federal
32 income tax return when filing their Iowa corporation income tax
33 return.

34 The division strikes Code section 422.73, subsection 2,
35 which is an obsolete provision relating to refunds claimed on

1 or before June 30, 1999, because of provisions in the federal
2 Taxpayer Relief Act of 1997.

3 In 2009, certain provisions were amended to increase the
4 standard for the exception to the underpayment of estimated
5 tax penalty for Iowa corporation income tax for annualization
6 of income from 90 percent of the tax liability to 100 percent
7 of the tax liability. Code section 422.89, which contains a
8 similar provision, was not amended at that time. The bill
9 amends Code section 422.89 to reflect the substance of the
10 changes made in 2009. This provision of the bill applies
11 retroactively to January 1, 2012, for tax years beginning on
12 or after that date.

13 Division II of the bill relates to sales taxes.

14 The division amends Code section 423.3, relating to sales
15 and use tax exemptions, to correct an internal reference
16 relating to the sale of a motor vehicle and the fee for a new
17 vehicle registration.

18 The division also amends Code section 423.3 to add the sales
19 tax exemption for fees charged for the release of medical
20 records, which is currently provided for in Code section
21 622.10.

22 Under current law, Code section 423.28 requires motor
23 vehicle dealers to file reports related to the payment of sales
24 tax for the sale of motor vehicles. Because such sales are now
25 subject to the fee for new vehicle registration, such reports
26 are no longer required, and the division repeals Code section
27 423.28 and makes a conforming amendment to Code section 423.57.

28 The division amends Code section 423.36 to provide that a
29 new sales tax permit must be obtained if a place of business is
30 relocated from one county to another rather than from within
31 the state. Without updated sales tax permit information, the
32 distribution of local option sales tax revenue may be impacted.

33 Division III of the bill contains miscellaneous changes.

34 The division amends Code section 364.2, relating to
35 franchise fees imposed by cities, to require a city to notify

1 the department whenever an ordinance imposing a franchise fee
2 is adopted, amended, or repealed. Because the imposition of
3 a franchise fee requires utilities to stop collecting the
4 local option sales and services tax and instead collect the
5 franchise fee, the adoption, amendment, or repeal of such a fee
6 impacts the department's distribution of local option sales and
7 services tax revenue to local governments.

8 The division amends Code section 368.24 to require cities
9 that annex or sever territory to also notify the department of
10 revenue, in addition to notifying public utilities, in order to
11 facilitate the department's distribution of local option sales
12 and service tax revenue to local governments.

13 Division IV of the bill relates to cigarette and tobacco
14 taxes.

15 The division amends the definitions in Code section
16 453A.1 for "cigarette vending machine" to include a machine
17 that assembles and dispenses cigarettes after payment or
18 the insertion of loose tobacco product, and for "individual
19 packages of cigarettes" to include a quantity of cigarettes
20 assembled and ordinarily sold at retail.

21 The division amends Code section 453A.6 to provide that
22 cigarettes shall only be dispensed in quantities of 20 or
23 more, and to provide that any permit holder owning, renting,
24 leasing, or otherwise operating a cigarette vending machine
25 that dispenses unstamped cigarettes shall pay the tax directly
26 to the department.

27 The division amends Code section 453A.36, relating to
28 unlawful acts, to include cigarettes dispensed from cigarette
29 vending machines within the scope of various unlawful acts.

30 Any dealer who operates a vending machine that dispenses
31 cigarettes shall have their retail permit revoked if the
32 cigarettes are not properly stamped or metered, if the vending
33 machine is located in a place where the dealer cannot ensure
34 that persons younger than 18 are not present or permitted,
35 or if the cigarettes are placed together with any nontobacco

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1 product other than matches. Also, any permit holder who
2 dispenses cigarettes or tobacco products that are not contained
3 within a sealed package containing the federally required
4 health warning shall have their permit revoked.