

House File 460 - Introduced

HOUSE FILE 460

BY JACOBY

A BILL FOR

1 An Act concerning retailers who do not collect and remit Iowa
2 sales and use tax by creating certain reporting requirements
3 and modifying the powers and duties of the director of
4 revenue.

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

1 Section 1. Section 421.17, Code 2017, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 35. To subpoena from retailers subject to
4 section 421.62 any and all records and documents necessary to
5 assist the department in administering that section. If any
6 retailer subject to section 421.62 refuses to comply with such
7 subpoena, the director may make application to the district
8 court or judicial magistrate in any county to enforce such
9 subpoena by any appropriate order, including but not limited
10 to attachment.

11 Sec. 2. NEW SECTION. **421.62 Certain retailer reporting**
12 **requirements — penalties.**

13 1. *Definitions.* For purposes of this section, unless the
14 context otherwise requires:

15 a. "*Department*" means the department of revenue.

16 b. "*Iowa purchaser*" means a person who purchases tangible
17 personal property and requests that the tangible personal
18 property be delivered to a location within Iowa.

19 c. "*Iowa sale*" means a sale of tangible personal property
20 which tangible personal property is delivered to a location
21 within Iowa. "*Iowa sale*" does not include the sale of any
22 tangible personal property to the extent that disclosure of the
23 purchaser of such tangible personal property would violate 18
24 U.S.C. §2710.

25 d. "*Purchase*" and "*purchaser*" mean the same as defined in
26 section 423.1.

27 e. "*Retailer*" means the same as defined in section 423.1,
28 except that, with respect to any calendar year, it does not
29 include any of the following:

30 (1) A retailer whose total Iowa sales to Iowa purchasers
31 during the calendar year are delivered to the purchaser
32 digitally, electronically, or utilizing cable, or by radio
33 waves, microwaves, satellites, or fiber optics.

34 (2) A retailer whose total gross Iowa sales to Iowa
35 purchasers during the calendar year are less than one hundred

1 thousand dollars. For purposes of this subparagraph, the total
2 gross Iowa sales of a retailer shall include Iowa sales made by
3 the retailer and Iowa sales made by any entity controlled by or
4 under common control with the retailer.

5 *f.* "Sale" and "tangible personal property" mean the same as
6 defined in section 423.1.

7 *2. Required notifications and statements.* Each retailer
8 who does not collect and remit sales or use tax under chapter
9 423 on Iowa sales to Iowa purchasers shall provide all of the
10 following notifications and statements:

11 *a.* A notification for each Iowa sale to the Iowa purchaser
12 containing sufficient information to alert the Iowa purchaser
13 that Iowa sales or use tax is due on certain purchases
14 made from the retailer and that the state of Iowa requires
15 purchasers to pay sales or use tax and file sales or use tax
16 returns, and including any other information required by the
17 department by rule. The notification shall be made in the
18 manner, form, and time period prescribed by the department by
19 rule.

20 *b.* (1) An annual notification to each Iowa purchaser to
21 whom Iowa sales totaling five hundred dollars or more are made
22 during the calendar year, in the manner and form prescribed by
23 the department by rule.

24 (2) The annual notification shall include all of the
25 following:

26 (a) The total amount of Iowa sales made by the retailer to
27 the Iowa purchaser during the calendar year.

28 (b) The date, amount, and description of each Iowa sale, if
29 available.

30 (c) Whether each Iowa sale is taxable or exempt from
31 taxation under chapter 423, if known by the retailer.

32 (d) Sufficient information to alert the Iowa purchaser that
33 Iowa sales or use tax is due on certain purchases made from the
34 retailer and that the state of Iowa requires purchasers to pay
35 sales or use tax and file sales or use tax returns.

1 (e) Any other information required by the department by
2 rule.

3 (3) The annual notification shall meet all of the following
4 requirements:

5 (a) It shall be sent separately by first class mail by
6 January 31 following the calendar year which is the subject of
7 the notification.

8 (b) It shall include the words "Important Tax Document
9 Enclosed" on the exterior of the mailing.

10 (c) It shall include the name of the retailer.

11 c. (1) An annual statement to the department in the manner
12 and form prescribed by the department showing the total amounts
13 paid to the retailer by each Iowa purchaser for Iowa sales
14 during the calendar year, and any other information required by
15 the department by rule. The annual statement shall be filed
16 by March 1 following the calendar year which is the subject of
17 the statement.

18 (2) The department may require any retailer whose total
19 gross sales to Iowa purchasers during the calendar year exceeds
20 one hundred thousand dollars to provide the annual statement
21 required in this paragraph in an electronic format.

22 (3) A retailer who is not required to send any annual
23 notices under paragraph "b" shall be exempt from the annual
24 statement requirement in this paragraph "c".

25 3. *Penalties.*

26 a. Failure to timely provide a notice required in subsection
27 2, paragraph "a", shall subject a retailer to a penalty of
28 five dollars for each such failure, subject to the following
29 limitations:

30 (1) The total penalty imposed upon a retailer under this
31 paragraph for the first calendar year for which the retailer
32 is obligated to provide the notices shall not exceed fifty
33 thousand dollars.

34 (2) If a retailer has no actual knowledge of the notice
35 requirement before being issued a demand from the department,

1 and begins providing the required notices within sixty days of
2 being issued such demand, the total penalty imposed under this
3 paragraph for the year in which the demand was issued, and for
4 each previous year, shall not exceed five thousand dollars per
5 year. The burden of proving that the retailer had no actual
6 knowledge of the notice requirement is upon the retailer.

7 *b.* Failure to timely provide an annual notification required
8 in subsection 2, paragraph "b", shall subject the retailer to a
9 penalty of ten dollars for each such failure, subject to the
10 following limitations:

11 (1) If for any calendar year a retailer provides all the
12 required annual notifications within thirty days of the due
13 date, the total penalty imposed under this paragraph for that
14 calendar year shall not exceed one thousand dollars.

15 (2) If a retailer has no actual knowledge of the annual
16 notification requirement before being issued a demand from the
17 department, and provides the required annual notifications
18 within sixty days of being issued such demand, the total
19 penalty imposed under this paragraph for the year in which the
20 demand was issued, and for each previous year, shall not exceed
21 ten thousand dollars per year. The burden of proving that the
22 retailer had no actual knowledge of the notice requirement is
23 upon the retailer.

24 (3) The total penalty imposed upon a retailer under this
25 paragraph for the first calendar year for which the retailer is
26 obligated to provide the annual notification under subsection
27 2, paragraph "b", shall not exceed fifty thousand dollars.

28 *c.* Failure to timely provide an annual statement required
29 in subsection 2, paragraph "c", shall subject the retailer to
30 a penalty equal to the product of ten dollars multiplied by
31 the number of Iowa purchasers for which the retailer failed
32 to provide the required information in its annual statement,
33 subject to the following limitations:

34 (1) If for any calendar year a retailer provides a complete
35 annual statement within thirty days of the due date, the total

1 penalty imposed under this paragraph for that calendar year
2 shall not exceed one thousand dollars.

3 (2) If a retailer has no actual knowledge of the annual
4 statement requirement before being issued a demand from the
5 department, and provides the required annual statements within
6 sixty days of being issued such demand, the total penalty
7 imposed under this paragraph for the year in which the demand
8 was issued, and for each previous year, shall not exceed ten
9 thousand dollars per year. The burden of proving that the
10 retailer had no actual knowledge of the notice requirement is
11 upon the retailer.

12 4. *Penalty exception and waiver.*

13 a. The penalties in subsection 3 shall not apply to a
14 retailer for any calendar year in which all of the retailer's
15 Iowa sales to Iowa purchasers are exempt from the sales or use
16 tax under chapter 423.

17 b. The department may waive all or a portion of the
18 penalties imposed in subsection 3 upon a showing of reasonable
19 cause by the retailer.

20 5. *Rules.* The department shall adopt rules pursuant to
21 chapter 17A to administer this section.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill concerns retailers who do not collect and remit
26 Iowa sales and use tax (noncollecting retailer). The bill
27 creates three reporting requirements for noncollecting
28 retailers who make sales of tangible personal property that
29 are delivered to purchasers within Iowa. The bill defines
30 several terms, including "Iowa purchaser" and "Iowa sale". The
31 bill exempts from the reporting requirements any noncollecting
32 retailer whose Iowa sales during a calendar year are all
33 delivered digitally, and any noncollecting retailer whose
34 total gross Iowa sales during a calendar year are less than
35 \$100,000. For purposes of this \$100,000 threshold, total gross

1 Iowa sales includes the sales of the noncollecting retailer and
2 of any entity controlled by or under common control with the
3 noncollecting retailer.

4 SALE NOTIFICATION. The bill requires a noncollecting
5 retailer to provide Iowa purchasers with a notification for
6 each sale (sale notification) that contains information as
7 described in the bill and as prescribed by the department of
8 revenue (department) by rule regarding the obligations to pay
9 applicable Iowa sales and use tax and file Iowa sales and use
10 tax returns. The bill requires each sale notification to be
11 made in the manner, form, and time period prescribed by the
12 department.

13 The bill imposes a penalty of \$5 for each failure to timely
14 provide a sale notification, but also imposes fine limits
15 under certain circumstances. First, the total amount of sale
16 notification penalties for the first year the noncollecting
17 retailer is required to provide sale notifications shall not
18 exceed \$50,000. Second, if a noncollecting retailer has no
19 actual knowledge of the sale notification requirement before
20 being issued a demand from the department, and begins providing
21 the required sale notifications within 60 days of the demand,
22 the total sale notification penalties for that year, and for
23 each previous year, shall not exceed \$5,000 per year. The
24 noncollecting retailer bears the burden of proving it did not
25 have actual knowledge.

26 ANNUAL NOTIFICATION. The bill requires a noncollecting
27 retailer to provide an annual notification to Iowa purchasers
28 who make Iowa purchases of \$500 or more from the noncollecting
29 retailer during the year. The annual notification must be made
30 by January 31 of each year summarizing the sales made to the
31 Iowa purchaser for the previous year. The annual notification
32 must also contain other information and meet other requirements
33 as described in the bill and as prescribed by the department.

34 The bill imposes a penalty of \$10 for each failure to timely
35 provide an annual notification, but also imposes fine limits

1 under certain circumstances. First, the total amount of annual
2 notification penalties for the first year the noncollecting
3 retailer is required to provide annual notifications shall
4 not exceed \$50,000. Second, if for any calendar year a
5 noncollecting retailer provides all the annual notifications
6 within 30 days of the due date, the total annual notification
7 penalties for that year shall not exceed \$1,000. Third, if a
8 noncollecting retailer has no actual knowledge of the annual
9 notification requirement before being issued a demand from the
10 department, and provides the required annual notifications
11 within 60 days of the demand, the total annual notification
12 penalties for that year, and for each previous year, shall not
13 exceed \$10,000 per year. The noncollecting retailer bears the
14 burden of proving it did not have actual knowledge.

15 ANNUAL STATEMENT. The bill requires a noncollecting
16 retailer to provide by March 31 of each year an annual
17 statement to the department showing the Iowa sales made to each
18 Iowa purchaser for the previous year, and any other information
19 prescribed by the department. Noncollecting retailers who
20 are not required to provide any annual notifications are
21 exempt from filing an annual statement with the department.
22 The department may require noncollecting retailers with over
23 \$100,000 in total gross Iowa sales during a calendar year to
24 file the annual statement in an electronic format.

25 The bill imposes a penalty for failure to timely file an
26 annual statement that is equal to the product of \$10 multiplied
27 by the number of Iowa purchasers for which the retailer failed
28 to provide the required information in the annual statement,
29 but imposes fine limits under certain circumstances. First, if
30 for any calendar year the annual statement is filed within 30
31 days of the due date, the total annual statement penalties for
32 that year shall not exceed \$1,000. Second, if a noncollecting
33 retailer has no actual knowledge of the annual statement
34 requirement before being issued a demand from the department,
35 and provides the required annual statements within 60 days of

1 the demand, the total annual statement penalties for that year,
2 and for each previous year, shall not exceed \$10,000 per year.
3 The noncollecting retailer bears the burden of proving it did
4 not have actual knowledge.

5 The bill provides that the sale notification, annual
6 notification, or annual statement penalties shall not apply to
7 a noncollecting retailer for any calendar year in which all of
8 the noncollecting retailer's Iowa sales to Iowa purchasers are
9 exempt from the Iowa sales or use tax. Also, the bill allows
10 the department to waive all or a portion of any penalty upon a
11 showing of reasonable cause by the noncollecting retailer.

12 Finally, the bill provides that the director of the
13 department shall have the power to subpoena from noncollecting
14 retailers any records and documents necessary to administer
15 the reporting requirements, and may make application to
16 any district court or judicial magistrate to enforce such
17 subpoenas.