

Senate Study Bill 1268 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON DAWSON)

A BILL FOR

1 An Act relating to the administration of the tax and related
2 laws by the department of revenue by requiring composite
3 returns for pass-through entities, restricting public
4 disclosure of certain information, providing penalties, and
5 including applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

ADMINISTRATION, PENALTIES, AND CANCELLATION OF UNUSED PERMITS

Section 1. Section 421.17, subsection 13, Code 2021, is amended by striking the subsection.

Sec. 2. Section 421.27, Code 2021, is amended to read as follows:

421.27 Penalties.

1. *Failure to timely file a return or ~~deposit form~~.*

a. If a person fails to file a return with the department on or before the due date, ~~a return or deposit form~~ there shall be added to the tax ~~shown due or required to be shown due~~ remaining unpaid by the due date a penalty of ~~ten~~ five percent of the remaining unpaid tax ~~shown due or required to be shown due~~.

b. In the case of a specified business with no tax ~~shown due or required to be shown due~~ that fails to timely file an income return, the specified business shall pay the greater of the following penalty amounts:

(1) Two hundred dollars.

(2) An amount equal to ~~ten~~ five percent of the imputed Iowa liability of the specified business, not to exceed twenty-five thousand dollars.

c. The penalty, if assessed pursuant to paragraph "a" or "b", shall be in addition to any other penalty provided by law.

d. The penalty, if assessed pursuant to paragraph "a" or "b", shall be waived by the department upon a showing by the taxpayer of any of the following conditions:

(1) An amount of tax greater than zero is ~~required to be shown due~~ and at least ninety percent of the tax ~~required to be shown due~~ has been paid by the due date of the tax.

(2) (a) ~~Those taxpayers who are~~ A taxpayer who is required to file a monthly or quarterly returns, ~~or monthly or semimonthly deposit forms~~ return may have one late return or ~~deposit form~~ one late payment within a three-year period.

(b) If the taxpayer receives a waiver of a penalty under

1 this subparagraph, the taxpayer must make timely filings
2 and payments for three years prior to being eligible for
3 receiving another waiver under this subparagraph. If the
4 taxpayer receives a waiver under this subparagraph, the waiver
5 shall apply to penalties assessed under this subsection and
6 subsection 2.

7 (c) The use of any other penalty exception ~~will~~ shall
8 not count as a late return or ~~deposit form~~ late payment for
9 purposes of ~~this exception~~ receiving a waiver by the taxpayer
10 under this subparagraph.

11 (3) The death of a taxpayer, death of a member of the
12 immediate family of the taxpayer, or death of the person
13 directly responsible for filing the return and paying the tax,
14 when the death interferes with timely filing of a return or
15 timely payment of tax.

16 (4) The onset of serious, long-term illness or
17 hospitalization of the taxpayer, of a member of the immediate
18 family of the taxpayer, or of the person directly responsible
19 for filing the return and paying the tax when such illness or
20 hospitalization interferes with the timely filing of a return
21 or timely payment of tax.

22 (5) Destruction of records by fire, flood, or other act of
23 God when the destruction interferes with the timely filing of a
24 return or timely payment of tax.

25 (6) The taxpayer presents proof that the taxpayer relied
26 upon applicable, documented, written advice specifically
27 made to the taxpayer, to the taxpayer's preparer, or to an
28 association representative of the taxpayer from the department,
29 state department of transportation, county treasurer, or
30 federal internal revenue service, whichever is appropriate,
31 that the reliance was the direct cause of the failure to file
32 or failure to pay, and that the advice has not been superseded
33 by a court decision, ruling by a quasi-judicial body, or the
34 adoption, amendment, or repeal of a rule or law.

35 (7) Reliance upon results in a previous audit was a direct

1 cause for the failure to file or the failure to pay where the
2 previous audit expressly and clearly addressed the issue and
3 the previous audit results have not been superseded by a court
4 decision, or the adoption, amendment, or repeal of a rule or
5 law.

6 (8) Under rules prescribed by the director, the taxpayer
7 presents documented proof of substantial authority to rely
8 upon a particular position or upon proof that all facts and
9 circumstances are disclosed on a return ~~or deposit form~~.

10 (9) The return, ~~deposit form~~, or payment is timely, but
11 erroneously, mailed with adequate postage to the internal
12 revenue service, another state agency, or a local government
13 agency and the taxpayer provides proof of timely mailing with
14 adequate postage.

15 (10) The tax has been paid by the wrong licensee and the
16 payments were timely remitted to the department for one or more
17 tax periods prior to notification by the department.

18 (11) The failure to file was discovered through a sanctioned
19 self-audit program conducted by the department.

20 (12) If the availability of funds in payment of tax required
21 to be made through electronic funds transfer is delayed and the
22 delay of availability is due to reasons beyond the control of
23 the taxpayer. "*Electronic funds transfer*" means any transfer
24 of funds, other than a transaction originated by check, draft,
25 or similar paper instrument, that is initiated through an
26 electronic terminal telephone, computer, magnetic tape, or
27 similar device for the purpose of ordering, instructing, or
28 authorizing a financial institution to debit or credit an
29 account.

30 ~~(13) The failure to file a timely inheritance tax return~~
31 ~~resulting solely from a disclaimer that required the personal~~
32 ~~representative to file an inheritance tax return. The penalty~~
33 ~~shall be waived if such return is filed and any tax due is paid~~
34 ~~within the later of nine months from the date of death or sixty~~
35 ~~days from the delivery or filing of the disclaimer pursuant to~~

1 ~~section 633E.12.~~

2 ~~(14)~~ That an Iowa inheritance tax return is filed for
3 an estate within the later of nine months from the date of
4 death or sixty days from the filing of a disclaimer by the
5 beneficiary of the estate refusing to take the property or
6 right or interest in the property.

7 2. ~~Failure to timely pay the tax shown due, or the tax~~
8 ~~required to be shown due, with the filing of a return or deposit~~
9 ~~form.~~ If a person fails to pay the tax shown due ~~or required~~
10 ~~to be shown due, on a return or deposit form~~ on or before the
11 due date, there shall be added to the tax shown due ~~or required~~
12 ~~to be shown due~~ remaining unpaid by the due date a penalty of
13 five percent of the unpaid tax due. The penalty shall be in
14 addition to any other penalty provided by law. The penalty, if
15 assessed, shall be waived by the department upon a showing by
16 the taxpayer of any of the following conditions:

17 a. ~~At least ninety percent of the tax required to be~~
18 ~~shown due has been paid by the due date of the tax~~ Any reason
19 listed under subsection 1, paragraph "d", except subsection 1,
20 paragraph "d", subparagraph (11).

21 b. The taxpayer voluntarily files an amended return and pays
22 all tax shown to be due on the return prior to any contact by
23 the department, except under a sanctioned self-audit program
24 conducted by the department.

25 c. (1) Except in the case of a final federal partnership
26 adjustment governed by subparagraph (2), the taxpayer
27 voluntarily files an amended return which includes a copy of
28 the federal document showing the final disposition or final
29 federal adjustments and pays any additional Iowa tax due within
30 one hundred eighty days of the final determination date of the
31 federal government's audit. For purposes of this subparagraph,
32 "*final determination date*" means the same as defined in section
33 422.25.

34 (2) (a) In the case of a final federal partnership
35 adjustment arising from a partnership level audit, with respect

1 to the audited partnership or a direct partner or indirect
2 partner of the audited partnership, the audited partnership,
3 direct partner, or indirect partner voluntarily and timely
4 complies with its reporting and payment requirements under
5 section 422.25A, subsection 4 or 5.

6 (b) As used in this subparagraph, all words and phrases
7 defined in [section 422.25A](#) shall have the same meaning given
8 them by that section.

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

18 ~~e. Reliance upon results in a previous audit was a direct
19 cause for the failure to pay the tax required to be shown due
20 where the previous audit expressly and clearly addressed the
21 issue and the previous audit results have not been superseded
22 by a court decision, or the adoption, amendment, or repeal of
23 a rule or law.~~

24 ~~f. Under rules prescribed by the director, the taxpayer
25 presents documented proof of substantial authority to rely
26 upon a particular position or upon proof that all facts and
27 circumstances are disclosed on a return or deposit form.~~

28 ~~g. The return, deposit form, or payment is timely, but
29 erroneously, mailed with adequate postage to the internal
30 revenue service, another state agency, or a local government
31 agency and the taxpayer provides proof of timely mailing with
32 adequate postage.~~

33 ~~h. The tax has been paid by the wrong licensee and the
34 payments were timely remitted to the department for one or more
35 tax periods prior to notification by the department.~~

1 ~~*i.* That an Iowa inheritance tax return is filed for an~~
2 ~~estate within the later of nine months from the date of~~
3 ~~death or sixty days from the filing of a disclaimer by the~~
4 ~~beneficiary of the estate refusing to take the property or~~
5 ~~right or interest in the property.~~

6 3. *Audit and examination deficiencies.* If any person
7 fails to pay the tax required to be shown due with the filing
8 of a return or deposit and the department discovers the
9 underpayment, there shall be added to the tax required to be
10 shown due a penalty of five percent of the unpaid tax required
11 to be shown due, which shall be in lieu of the penalty in
12 subsection 2. The penalty, if assessed, shall be waived by
13 the department upon a showing by the taxpayer of any of the
14 following conditions:

15 a. At least ninety percent of the tax ~~required to be shown~~
16 due has been paid by the due date.

17 b. The taxpayer presents proof that the taxpayer relied upon
18 applicable, documented, written advice specifically made to
19 the taxpayer, to the taxpayer's preparer, or to an association
20 representative of the taxpayer from the department, state
21 department of transportation, county treasurer, or federal
22 internal revenue service, whichever is appropriate, that the
23 reliance was the direct cause for the failure to pay, and that
24 the advice has not been superseded by a court decision, ruling
25 by a quasi-judicial body, or the adoption, amendment, or repeal
26 of a rule or law.

27 c. Reliance upon results in a previous audit was a direct
28 cause for the failure to pay the tax ~~shown due or required to~~
29 ~~be shown due~~ where the previous audit expressly and clearly
30 addressed the issue and the previous audit results have
31 not been superseded by a court decision, or the adoption,
32 amendment, or repeal of a rule or law.

33 d. Under rules prescribed by the director, the taxpayer
34 presents documented proof of substantial authority to rely
35 upon a particular position or upon proof that all facts and

1 circumstances are disclosed on a return ~~or deposit form~~.

2 4. *Willful failure to file or deposit pay.*

3 a. (1) In case of willful failure to file a return
4 ~~or deposit form~~ with the intent to evade tax or a filing
5 requirement, willful failure to pay with the intent to evade
6 tax, or in case of willfully filing a false return ~~or deposit~~
7 ~~form~~ with the intent to evade tax, in lieu of the penalties
8 otherwise provided in this section, there shall be added to the
9 tax remaining unpaid by the due date a penalty of seventy-five
10 percent ~~shall be added to the amount shown due or required to~~
11 ~~be shown as tax on the return or deposit form~~ of the unpaid tax.

12 (2) In case of a willful failure by a specified business to
13 file an income return with no tax ~~shown due or required to be~~
14 ~~shown~~ due with intent to evade a filing requirement, or in case
15 of willfully filing a false income return with no tax ~~shown due~~
16 ~~or required to be shown~~ due with the intent to evade reporting
17 of Iowa-source income, the penalty imposed shall be the greater
18 of the following amounts:

19 (a) One thousand five hundred dollars.

20 (b) An amount equal to seventy-five percent of the imputed
21 Iowa liability of the specified business.

22 ~~(3) If penalties are applicable for failure to file a~~
23 ~~return or deposit form and failure to pay the tax shown due or~~
24 ~~required to be shown due on the return or deposit form, the~~
25 ~~penalty provision for failure to file shall be in lieu of the~~
26 ~~penalty provisions for failure to pay the tax shown due or~~
27 ~~required to be shown due on the return or deposit form, except~~
28 ~~in the case of willful failure to file a return or deposit form~~
29 ~~or willfully filing a false return or deposit form with intent~~
30 ~~to evade tax.~~

31 b. The penalties imposed under this subsection are not
32 subject to waiver.

33 5. *Failure to remit on extension.* If a person fails to
34 remit at least ninety percent of the tax ~~required to be shown~~
35 due by the time an extension for further time to file a return

1 is made, there shall be added to the tax ~~shown due or required~~
2 ~~to be shown~~ due a penalty of ten percent of the unpaid tax due.

3 6. *Liability — fraudulent practice.* A person who makes
4 an erroneous application for refund, credit, reimbursement,
5 rebate, or other payment shall be liable for any overpayment
6 received or tax liability reduced plus interest at the rate in
7 effect under section 421.7.

8 a. In addition, a person commits a fraudulent practice and
9 is liable for a penalty equal to seventy-five percent of the
10 refund, credit, exemption, reimbursement, rebate, or other
11 payment or benefit being claimed if the person does any of the
12 following:

13 (1) Willfully makes a false or frivolous application for
14 refund, credit, exemption, reimbursement, rebate, or other
15 payment or benefit with intent to evade tax or with intent to
16 receive a refund, credit, exemption, reimbursement, rebate, or
17 other payment or benefit, to which the person is not entitled.

18 (2) Willfully submits any false information, document,
19 or document containing false information in support of an
20 application for refund, credit, exemption, reimbursement,
21 rebate, or other payment or benefit with the intent to evade
22 tax or with intent to receive a refund, credit exemption,
23 reimbursement, rebate, or other payment or benefit, to which
24 the person is not entitled.

25 (3) Willfully submits with any false information, document,
26 or document containing false information in support of an
27 application for refund with the intent to evade tax or with
28 intent to receive a refund, credit, exemption, reimbursement,
29 rebate, or other payment benefit, to which the person is not
30 entitled.

31 b. Payments, penalties, and interest due under this
32 subsection may be collected and enforced in the same manner as
33 the tax imposed.

34 c. Penalties imposed under this subsection are not subject
35 to waiver.

1 7. *Failure to use required form or manner.* If a person fails
2 to remit payment of taxes in the form or manner required by the
3 rules of the director, there shall be added to the amount of
4 the tax a penalty of five percent of the amount of ~~tax shown~~
5 ~~due or required to be shown due~~ the payment remitted in the
6 incorrect form or manner not to exceed five hundred dollars
7 per instance of incorrect form or manner of payment. The
8 penalty shall be in addition to any other penalty provided by
9 law. The penalty imposed by **this subsection** shall be waived if
10 the taxpayer did not receive notification of the requirement
11 to remit tax payments electronically or if the electronic
12 transmission of the payment was not in a format or by means
13 specified by the director and the payment was made before the
14 taxpayer was notified of the requirement to remit tax payments
15 electronically.

16 8. *Additional penalty.* In addition to the penalties imposed
17 by **this section**, if a taxpayer fails to file a return within
18 ninety days of written ~~notice~~ demand issued by the department
19 pursuant to the rules implementing this subsection that the
20 taxpayer is required to do so, there shall be added to the
21 amount ~~shown due or required to be shown due~~ a penalty in the
22 amount of one thousand dollars. The penalty shall be waived by
23 the department upon a showing of good reason as defined by the
24 department by rule.

25 9. *Definitions.* As used in **this section**:

26 a. "Imputed Iowa liability" means any of the following:

27 (1) In the case of corporations other than corporations
28 described in **section 422.34** or **section 422.36, subsection 5**,
29 the corporation's Iowa net income after the application of the
30 Iowa business activity ratio, if applicable, multiplied by the
31 top income tax rate imposed under **section 422.33** for the tax
32 year.

33 (2) In the case of financial institutions as defined in
34 **section 422.61**, the financial institution's Iowa net income
35 after the application of the Iowa business activity ratio, if

1 applicable, multiplied by the franchise tax rate imposed under
2 section 422.63 for the tax year.

3 (3) In this case of all other entities, including
4 corporations described in [section 422.36, subsection 5](#), and all
5 other entities required to file an information return under
6 section 422.15, subsection 2, the entity's Iowa net income
7 after the application of the Iowa business activity ratio, if
8 applicable, multiplied by the top income tax rate imposed under
9 section 422.5A for the tax year.

10 *b.* "Income return" means an income tax return or information
11 return required under [section 422.15, subsection 2](#), or section
12 [422.36, 422.37, or 422.62](#).

13 *c.* "Specified business" means a partnership or other entity
14 required to file an information return under section 422.15,
15 subsection 2, a corporation required to file a return under
16 section 422.36 or [422.37](#), or a financial institution required
17 to file a return under [section 422.62](#).

18 Sec. 3. Section 421.60, subsection 2, paragraph d, Code
19 2021, is amended to read as follows:

20 *d.* (1) A taxpayer is permitted to designate in writing
21 the type of tax and tax periods to which any voluntary payment
22 relates, provided that separate written instructions accompany
23 the payment. This paragraph does not apply to jeopardy
24 assessments and does not apply if the department has to enforce
25 collection of the payment.

26 (2) As used in this paragraph, "tax period" means a period
27 of time for which a return is required.

28 Sec. 4. Section 422.25, subsection 4, Code 2021, is amended
29 to read as follows:

30 4. *a.* All payments received must be credited first, to
31 the penalty and interest accrued, and then to the tax due. If
32 payments in multiple tax periods are unpaid, payments received
33 shall be credited first to the penalty and interest accrued and
34 then tax due for the earliest period, and then credited to each
35 following tax period in chronological order from the earliest

1 tax period to the latest tax period. Payments required to be
2 made within a tax period must be credited first to the earliest
3 deposit period within the tax period. For purposes of this
4 subsection, the department shall not reapply prior payments
5 made on or before the due date of the original return by the
6 taxpayer to penalty or interest determined to be due after the
7 date of those prior payments, except that the taxpayer and the
8 department may agree to apply payments in accordance with rules
9 adopted by the director when there are both agreed and unagreed
10 to items as a result of an examination.

11 b. As used in this subsection, "tax period" means a period
12 of time for which a return is required.

13 Sec. 5. Section 422.75, Code 2021, is amended to read as
14 follows:

15 **422.75 Statistics — publication.**

16 The department shall prepare and publish an annual report
17 which shall include statistics reasonably available, with
18 respect to the operation of **this chapter**, including amounts
19 collected, classification of taxpayers, and such other facts
20 as are deemed pertinent and valuable. The annual report shall
21 also include the reports and information required pursuant to
22 ~~section 421.17, subsection 13,~~ and section 421.60, subsection
23 2, paragraphs "i" and "l".

24 Sec. 6. Section 423.14, subsection 2, paragraph b, Code
25 2021, is amended to read as follows:

26 *b.* The tax upon the use of all tangible personal property
27 and specified digital products other than that enumerated in
28 paragraph "a", which is sold by a seller who is a retailer or
29 its agent that is not otherwise required to collect sales tax
30 under the provisions of **this chapter**, ~~shall~~ may be collected by
31 the retailer or agent and remitted to the department, pursuant
32 to the provisions of paragraph "e", and **sections 423.24, 423.29,**
33 **423.30, 423.32, and 423.33.**

34 Sec. 7. CANCELLATION OF UNUSED PERMITS. Notwithstanding
35 any other provision of law to the contrary, from July 1, 2021,

1 through December 31, 2021, the department of revenue shall have
2 authority to cancel withholding tax permits, sales tax permits,
3 or use tax permits that the department of revenue has verified
4 are no longer in use.

5 DIVISION II

6 PASS-THROUGH ENTITIES — COMPOSITE RETURNS

7 Sec. 8. Section 29C.24, subsection 3, paragraph a,
8 subparagraph (3), Code 2021, is amended to read as follows:

9 (3) The imposition of income taxes under chapter 422,
10 subchapters II and III, including the requirement to file tax
11 returns under sections 422.13 through 422.15, section 422.16B,
12 or section 422.36, as applicable, and including the requirement
13 to withhold and remit income tax from out-of-state employees
14 under section 422.16. In addition, the performance of disaster
15 or emergency-related work during a disaster response period
16 by an out-of-state business or out-of-state employee shall
17 not require an out-of-state business to be included in a
18 consolidated return under section 422.37, and shall not
19 increase the amount of net income of the out-of-state business
20 allocated and apportioned to the state under section 422.8 or
21 422.33, as applicable.

22 Sec. 9. Section 422.9, subsection 2A, paragraph b, Code
23 2021, is amended by striking the paragraph.

24 Sec. 10. Section 422.13, subsection 5, Code 2021, is amended
25 by striking the subsection.

26 Sec. 11. Section 422.13, subsection 6, Code 2021, is amended
27 to read as follows:

28 6. Notwithstanding subsections 1 through 5 4 and sections
29 422.14 and 422.15, a return is not required by a taxpayer as
30 provided in section 29C.24.

31 Sec. 12. Section 422.16, subsection 12, paragraph a, Code
32 2021, is amended to read as follows:

33 a. In the case of nonresidents having income subject to
34 taxation by Iowa, but not subject to withholding of such tax
35 under subsection 1 hereof or subject to the provisions of

1 section 422.16B, withholding agents shall withhold from such
2 income at the same rate as provided in subsection 1 hereof, and
3 such withholding agents and such nonresidents shall be subject
4 to the provisions of this section, according to the context,
5 except that such withholding agents may be absolved of such
6 requirement to withhold taxes from such nonresident's income
7 upon receipt of a certificate from the department issued in
8 accordance with the provisions of section 422.17, as hereby
9 amended. In the case of nonresidents having income from a
10 trade or business carried on by them in whole or in part within
11 the state of Iowa, such nonresident shall be considered to be
12 subject to the provisions of this subsection unless such trade
13 or business is of such nature that the business entity itself,
14 as a withholding agent, is required to and does withhold Iowa
15 income tax from the distributions made to such nonresident from
16 such trade or business.

17 Sec. 13. Section 422.16, subsection 12, paragraph c, Code
18 2021, is amended by striking the paragraph.

19 Sec. 14. NEW SECTION. 422.16B **Pass-through entity composite**
20 **returns.**

21 1. As used in this section, unless the context otherwise
22 requires:

23 *a. "Nonresident member"* means a partner in a partnership as
24 defined in section 422.25A, a shareholder of an S corporation,
25 or a beneficiary of an estate or trust, who is any of the
26 following:

27 (1) An individual who is not a resident of this state.

28 (2) A partnership without a commercial domicile in this
29 state.

30 (3) A trust or estate without a situs in this state.

31 (4) A C corporation or S corporation without a commercial
32 domicile in this state.

33 (5) A financial institution as defined in section 422.61
34 without a commercial domicile in this state.

35 *b. "Pass-through entity"* includes any entity that is a

1 partnership or a pass-through entity as those terms are defined
2 in 422.25A.

3 *c. "Tiered pass-through entity"* means a member of a pass-
4 through entity that is itself a pass-through entity.

5 2. *a.* (1) A pass-through entity shall file a composite
6 return on behalf of all nonresident members and shall report
7 and pay the income or franchise tax imposed under this chapter
8 at the maximum state income or franchise tax rate applicable
9 to the member under section 422.5A, 422.33, or 422.63 on the
10 nonresident members' distributive shares of the income from the
11 pass-through entity.

12 (2) The tax rate applicable to a tiered pass-through entity
13 shall be the maximum state income tax rate under section
14 422.5A.

15 *b.* The composite return is due and shall be filed by the
16 due date of the pass-through entity's annual return required
17 under section 422.14, 422.15, or 422.36, including extensions.
18 The return shall be on a form prescribed by the department
19 showing the total amounts paid or credited to the pass-through
20 entity's nonresident members, the amounts of income or
21 franchise tax remitted in accordance with this section, if any,
22 and such other information as the department may require. A
23 pass-through entity shall furnish to its nonresident members a
24 record of the amount of Iowa income or franchise tax remitted
25 on behalf of such nonresident member in the manner and form
26 prescribed by the department.

27 *c.* The Iowa income or franchise tax on the composite return
28 is due on and shall be paid by the due date of the pass-through
29 entity's annual return required under section 422.14, 422.15,
30 or 422.36, without extensions.

31 3. *a.* A pass-through entity is liable to the state for
32 the payment of the tax required to be remitted under this
33 section, together with applicable interest and penalties,
34 but is not liable to any nonresident member for any amount
35 withheld from distributions to or from the distributive share

1 of such nonresident member and remitted in compliance with this
2 section.

3 *b.* If a pass-through entity fails to pay any amount of tax
4 required under this section and thereafter the tax is paid
5 by the nonresident member, the amount of tax as paid by the
6 nonresident member shall not be collected from the pass-through
7 entity, but such payment by the nonresident member shall not
8 relieve the pass-through entity from any penalty or interest
9 associated with the failure to pay.

10 4. *a.* A nonresident member that has been included on a
11 composite return filed pursuant to this section shall receive
12 credit for Iowa income or franchise tax paid on the nonresident
13 member's behalf by the pass-through entity, and any amounts in
14 excess of the nonresident member's Iowa tax liability for the
15 applicable tax period may be refunded to the nonresident member
16 with interest in accordance with section 421.60, subsection
17 2, paragraph "e". The nonresident member's Iowa return shall
18 constitute a claim for refund for this purpose. In lieu of
19 claiming a refund, the nonresident member may elect to have the
20 overpayment shown on the nonresident member's final, completed
21 return for the taxable year credited to the taxpayer's tax
22 liability for the following taxable year.

23 *b.* A tiered pass-through entity shall be subject to the
24 same requirements to file a composite return and pay tax
25 under this section with respect to the distributive shares
26 of the tiered pass-through entity's income. Any Iowa income
27 or franchise tax paid on the tiered pass-through entity's
28 behalf by another pass-through entity may be applied against
29 that tiered pass-through entity's own composite tax remittance
30 obligation imposed under this section.

31 *c.* A nonresident individual included on a composite tax
32 return filed pursuant to this section shall be relieved of
33 the requirement to file an individual income tax return under
34 section 422.13 if income from the pass-through entity is the
35 nonresident individual's only Iowa-source income.

1 5. A pass-through entity shall not be required to remit Iowa
2 income or franchise tax on behalf of a nonresident member if
3 any of the following apply:

4 a. The pass-through entity is a publicly traded partnership
5 as defined in section 7704(b) of the Internal Revenue Code,
6 provided the publicly traded partnership files with the
7 department an information return that reports the name,
8 address, taxpayer identification number, and any other
9 information requested by the department for each unit
10 holder with an income in this state from the publicly traded
11 partnership in excess of five hundred dollars.

12 b. A composite return is not required as provided in section
13 29C.24.

14 c. The department determines by rule or through a ruling
15 that the nonresident member's income should not be subject to
16 composite return reporting, such as a member that is exempt
17 from Iowa income or franchise tax.

18 6. If the director determines that it is necessary for the
19 efficient administration of this chapter, the director may
20 require that a composite return be filed for nonresidents other
21 than nonresident members of a pass-through entity.

22 7. All powers of the director and requirements of the
23 director apply to returns filed under this section including
24 but not limited to the provisions of this subchapter and
25 subchapter VI. The provisions of section 422.16, subsection
26 2, paragraph "c", and subsections 6, 10, and 14, applying
27 to withholding agents, shall apply in the same manner to
28 pass-through entities under this section.

29 8. For the efficient administration of this chapter, the
30 director may require or provide for the composite return on the
31 same form as or combined with a pass-through entity's annual
32 return required under section 422.14, 422.15, or 422.36, but in
33 such case the composite return shall be considered a separate
34 return for purposes of this chapter and section 421.27.

35 Sec. 15. APPLICABILITY. This division of this Act applies

1 to tax years beginning on or after January 1, 2022.

2

DIVISION III

3

PUBLIC AGENCY DISCLOSURE — TAX-EXEMPT ENTITIES — DEPARTMENT

4

OF REVENUE

5

Sec. 16. 2021 Iowa Acts, House File 309, if enacted, is

6

amended by adding the following new section:

7

SEC. 6A. NEW SECTION. 22A.6 **Applicability — department**

8

of revenue.

9

1. The following shall not be construed as a violation of

10

this chapter with respect to the department of revenue:

11

a. The identification of a person as a representative,

12

responsible party, employee, withholding agent, or other

13

signatory or contact of an entity exempt from taxation under

14

section 501(c) of the Internal Revenue Code on any return,

15

form, application, or other document required to be filed with

16

the department, including but not limited to a tax return or

17

tax permit.

18

b. Powers exercised under section 422.70.

19

c. Information sought pursuant to discovery in a contested

20

case proceeding.

21

d. Information that is expressly required to be provided

22

by the department by law including but not limited to section

23

422.11S.

24

2. The restrictions imposed under this chapter shall not

25

be construed to entitle any taxpayer or tax-exempt entity to

26

any deduction, exemption, credit, or other tax position which

27

the taxpayer or exempt entity is unable to substantiate with

28

sufficient evidence.

29

EXPLANATION

30

The inclusion of this explanation does not constitute agreement with

31

the explanation's substance by the members of the general assembly.

32

This bill relates to the administration of the tax and

33

related laws by the department of revenue by requiring

34

composite returns for pass-through entities, restricting public

35

disclosure of certain information, and modifying penalty

1 provisions.

2 DIVISION I. The bill updates language in Code section 421.27
3 (penalties) to enhance the readability of the Code section.

4 The bill specifies that the taxpayer has the burden to prove
5 any of the conditions necessary to waive a penalty under Code
6 section 421.27.

7 The bill modifies the penalty for the failure of a person to
8 file a return from 10 percent of the tax shown due or required
9 to be shown due to 5 percent of the unpaid tax.

10 Currently, if a business fails to file a return, the business
11 pays a penalty of \$200 or an amount equal to 10 percent of the
12 imputed Iowa liability, not to exceed \$25,000, whichever is
13 greater. The bill modifies the penalty provision to specify
14 the business pays a penalty of \$200 or an amount equal to 5
15 percent of the imputed Iowa liability, not to exceed \$25,000,
16 whichever is greater.

17 The bill specifies the penalties for failure to timely file a
18 return are in addition to any other penalty provided by law.

19 The bill specifies that a taxpayer who is required to file a
20 quarterly or monthly return may have one late return or payment
21 over a three-year period before being ineligible to receive a
22 waiver of a penalty for failing to file a return.

23 Currently, there are 14 conditions a taxpayer may raise
24 in order to be eligible to receive the waiver of a penalty
25 for failing to file a return. The bill strikes one of these
26 conditions relating to the failure to file an inheritance tax
27 return that resulted from a disclaimer, so in such a situation
28 the penalty is not waivable.

29 The penalty for failing to timely pay tax due is modified by
30 the bill by assessing a 5 percent penalty against the unpaid
31 tax due rather than 5 percent of the tax.

32 The bill allows most conditions a taxpayer may raise in order
33 to be eligible to receive a waiver of a penalty for failing to
34 file a return to apply to the waiver of the penalty for failing
35 to timely pay a tax due.

1 If any person fails to pay the tax due and the department
2 of revenue discovers the underpayment, the bill modifies the
3 penalty from 5 percent of the tax to 5 percent of the unpaid
4 tax. The bill specifies such a penalty is in lieu of the
5 penalty for failing to timely pay a tax due.

6 The bill modifies the penalty for willful failure to file a
7 return or pay a tax from 75 percent of the tax required to be
8 shown or shown due to 75 percent of the unpaid tax.

9 The bill strikes a provision specifying which penalties are
10 applicable if a person fails to file a return or fails to pay
11 the tax, and willfully fails to file a return or willfully
12 files a false return.

13 The bill modifies the criminal offense of fraudulent
14 practice relating to state taxes to include actions of a
15 taxpayer who willfully submits any false information in support
16 of the taxpayer's taxes with the intent to receive a refund,
17 credit exemption, reimbursement, rebate, or other payment or
18 benefit, to which the tax person is not entitled.

19 The bill modifies the criminal offense of fraudulent
20 practice relating to state taxes to include actions of a
21 taxpayer who willfully submits false information in support of
22 an application for a refund with the intent to evade tax or
23 receive a refund.

24 The bill provides that the criminal offense of fraudulent
25 practice is not waivable by the department of revenue.

26 The penalties for fraudulent practice range from a simple
27 misdemeanor to a class "C" felony depending upon the amount of
28 money or value of property involved.

29 The bill modifies the penalty for failure to use a required
30 tax form to include failure to use the required manner to remit
31 taxes. The penalty is modified from 5 percent of the amount of
32 tax due or required to be shown due to 5 percent of the amount
33 remitted in the incorrect form or manner not to exceed \$500 per
34 instance of incorrect form or manner. The bill specifies the
35 penalty is in addition to any other penalty provided by law.

1 Currently, in addition to any other tax penalty, if a
2 taxpayer fails to file a return within 90 days of written
3 notice by the department of revenue, a \$1,000 penalty is added
4 to the amount of tax shown due or required to be shown due.
5 The bill modifies the penalty by requiring the department of
6 revenue to send a written demand to file a tax return, and if
7 the taxpayer fails to file the return under rules adopted by
8 the department, a \$1,000 penalty is assessed against the amount
9 due.

10 The bill specifies the order in which a payment will be
11 applied if a taxpayer has multiple unpaid tax periods.

12 The bill amends Code section 423.14(2)(b) by specifying
13 that a seller of tangible personal property and specified
14 digital products who is not otherwise required to collect sales
15 tax may, but is not required to, collect and remit use tax.
16 Current law requires the seller to collect and remit the use
17 tax for such sales.

18 The bill strikes the requirement that the director of
19 revenue biennially submit a report to the governor and
20 legislature containing recommendations for improvement to the
21 system of taxation in the state.

22 The bill allows the department of revenue to cancel
23 withholding tax, sales tax, or use tax permits the department
24 has verified are no longer in use. The department may cancel
25 the permits from July 1, 2021, through December 31, 2021.

26 DIVISION II. The bill establishes procedures and
27 requirements for filing a composite return by a pass-through
28 entity. A composite return is a single income tax return that
29 reports the state income of numerous nonresident owners. The
30 bill requires a pass-through entity to file a composite return
31 on behalf of all nonresident owners of the pass-through entity
32 based upon the nonresident owner's Iowa-source income from
33 the pass-through entity at the top individual, corporate, or
34 franchise state tax rate, as applicable. The bill strikes
35 provisions requiring a pass-through entity to withhold and

1 remit taxes on nonresident distributions made during the
2 course of the tax year. If a nonresident individual owner of
3 a pass-through entity has only Iowa-source income from the
4 pass-through entity and a composite return is filed, the bill
5 relieves the individual of the obligation to file an individual
6 income tax return, though the individual may choose to file
7 such a return.

8 The bill amends Code section 29C.24(3)(a)(3) by exempting
9 a pass-through entity from filing a composite return in this
10 state if the contact with this state is to conduct business
11 in this state solely for the purpose of performing disaster
12 relief.

13 The bill specifies that a nonresident that has been included
14 on a composite return shall receive credit for Iowa income
15 or franchise tax paid on the nonresident member's behalf by
16 the pass-through entity, and any amounts in excess of the
17 nonresident member's Iowa tax liability for the applicable tax
18 period may be refunded to the nonresident member.

19 The bill provides that a tiered pass-through entity is
20 subject to the same requirements to file a composite return and
21 pay tax on the distributive shares of the tiered pass-through
22 entity's income. The bill defines a tiered pass-through entity
23 to mean a member of a pass-through entity that is itself a
24 pass-through entity.

25 If the director of revenue determines it necessary for
26 efficient administration, the director may require a pass-
27 through entity to file a composite return for nonresidents
28 other than nonresident members of the pass-through entity.

29 The bill makes the due date of a composite return coincide
30 with the pass-through entity's regular annual tax return due
31 date.

32 The bill specifies certain circumstances when a pass-
33 through entity is not required to remit Iowa income or
34 franchise tax on behalf of a nonresident member.

35 DIVISION III. The bill amends new Code chapter 22A, if

1 enacted by 2021 Iowa Acts, House File 309, relating to the
2 public disclosure of information relating to a tax-exempt
3 entity by a public agency. The bill provides that a violation
4 of Code chapter 22A does not occur if the department of
5 revenue does any of the following: identifies a person as a
6 representative, responsible party, employee, withholding agent,
7 or other signatory or contact of an entity exempt from taxation
8 on any return, form, application, or other document required
9 to be filed with the department; exercises powers under
10 Code section 422.70 (general powers — hearings); discloses
11 information sought pursuant to a contested case; or discloses
12 information expressly required by law including disclosures
13 pursuant to Code section 411.11S (student tuition organization
14 tax credit). The bill states disclosure restrictions imposed
15 under Code chapter 22A, if enacted, shall not be construed to
16 entitle any taxpayer or tax-exempt entity to any deduction,
17 exemption, credit, or other tax position which the taxpayer
18 or exempt entity is unable to substantiate with sufficient
19 evidence.