

**Senate Study Bill 3036 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ZAUN)

**A BILL FOR**

1 An Act relating to the costs of litigation in administrative  
2 hearings or court proceedings involving the collection of  
3 tax penalties and interest by the department of revenue.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 421.60, subsection 4, paragraph a, Code  
2 2024, is amended by striking the paragraph and inserting in  
3 lieu thereof the following:

4 a. (1) A prevailing taxpayer in an administrative hearing  
5 or a court proceeding related to the determination, collection,  
6 or refund of a tax, penalty, or interest may be awarded  
7 reasonable litigation costs by the department or a court that  
8 are incurred subsequent to the issuance of the notice of  
9 assessment or denial of claim for refund in the proceeding,  
10 based upon the following:

11 (a) Reasonable court costs.

12 (b) Reasonable prevailing market rates based upon the  
13 services provided including but not limited to:

14 (i) Expert witnesses.

15 (ii) The cost of a study, engineering report, test,  
16 analysis, or project that is found by the director of revenue  
17 or court to be necessary for the preparation of the case of the  
18 taxpayer.

19 (iii) Fees paid or incurred by the taxpayer for the services  
20 of an independent attorney or accountant including fees paid or  
21 incurred in obtaining costs under this subsection.

22 (2) The dollar amount of the award for reasonable litigation  
23 costs shall be determined by the director of revenue or the  
24 court within its discretion.

25 Sec. 2. Section 421.60, subsection 4, paragraph c, Code  
26 2024, is amended to read as follows:

27 c. For purposes of [this section](#), "*prevailing taxpayer*" means  
28 a taxpayer ~~who establishes that the position of the state was~~  
29 ~~not substantially~~ justified and who has substantially prevailed  
30 with respect to the amount in controversy or has substantially  
31 prevailed with respect to the most significant issue or set of  
32 issues presented. The determination of whether a taxpayer is  
33 a prevailing taxpayer is to be determined in accordance with  
34 chapter 17A. If the taxpayer establishes that the taxpayer  
35 has substantially prevailed with respect to the amount in

1 controversy or has substantially prevailed with respect to the  
2 most significant issue set of issues presented, the burden of  
3 proof shifts to the department of revenue to prove that the  
4 position taken by the department was substantially justified.  
5 If the department meets the burden by proving the position of  
6 the department was substantially justified, the taxpayer shall  
7 not be considered a prevailing taxpayer.

8

EXPLANATION

9

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

10

11 This bill relates to the costs of litigation in  
12 administrative hearings or court proceedings involving the  
13 collection of tax penalties and interest (dispute) by the  
14 department of revenue (department).

15 The bill changes the costs allowed to be recovered in the  
16 dispute. The costs allowed to be recovered under the bill  
17 include reasonable court costs; reasonable prevailing market  
18 rates for expert witnesses, studies, tests, analysis, or  
19 special projects; and reasonable attorney or accountant fees  
20 including fees related to the recovery of costs allowed under  
21 the bill.

22 The bill strikes the current \$25,000 cap recoverable by a  
23 taxpayer in a dispute and provides that the dollar amount of an  
24 award in a dispute be determined within the discretion of the  
25 director of revenue or court, as applicable.

26 Under the bill, if the taxpayer substantially prevails in  
27 the dispute relating to the amount in controversy or issues  
28 involved, the burden of proof shifts to the department to  
29 prove that the position of the department was substantially  
30 justified. If the department proves the position of the  
31 department was substantially justified, the bill prohibits  
32 the taxpayer from recovering an award in the dispute. Under  
33 current law, the taxpayer must prove the position of the  
34 department was not substantially justified in addition to the  
35 amount in controversy and issues involved.