

1 SEC. 23. If any portion of this act should be declared unconstitu-
 2 tional, such invalidity shall not be construed to affect any other portion
 3 of this act which can be given force and effect without said invalid
 4 portion.

1 SEC. 24. This act, being deemed of immediate importance, shall
 2 be in full force and effect after its passage and publication in the
 3 Pocahontas Record-Democrat, a newspaper published at Pocahontas,
 4 Iowa, and in the Sigourney Review, a newspaper published at Sig-
 5 ourney, Iowa.

Senate File 184. Approved March 20, 1937.

I hereby certify that the foregoing act was published in the Sigourney Review, March 24, 1937, and the Pocahontas Record Democrat, March 25, 1937.

ROBERT E. O'BRIAN, *Secretary of State.*

CHAPTER 196

SALES TAX ACT

S. F. 316

AN ACT to impose a tax on the gross receipts from retail sales as defined herein; to provide for the collection of such taxes and the administration of said act; to fix fines and penalties for the violation of the provisions of this act; to provide for the apportionment of the revenues derived from said tax; to appropriate funds for the administration of this act; and to repeal all laws or parts of laws in conflict herewith.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Definitions. The following words, terms, and phrases,
 2 when in this act, have the meanings ascribed to them in this section,
 3 except where the context clearly indicates a different meaning:

4 a. "Person" includes any individual, firm, copartnership, joint ad-
 5 venture, association, corporation, municipal corporation, estate, trust,
 6 business trust, receiver, or any other group or combination acting as
 7 a unit and the plural as well as the singular number.

8 b. "Sales" means any transfer, exchange, or barter, conditional or
 9 otherwise, in any manner or by any means whatsoever, for a consider-
 10 ation.

11 c. "Retail sale" or "sale at retail" means the sale to a consumer
 12 or to any person for any purpose, other than for processing or for
 13 resale of tangible personal property and the sale of gas, electricity,
 14 water, and communication service to retail consumers or users, but
 15 does not include commercial fertilizer or agricultural limestone.
 16 Tangible personal property is sold for processing within the meaning
 17 of this subsection only when it is intended that such property shall
 18 by means of fabrication, compounding, manufacturing, or germination
 19 become an integral part of other tangible personal property intended
 20 to be sold ultimately at retail, or shall be consumed as fuel in creating
 21 power or steam for processing or for generating electric current.

22 d. "Business" includes any activity engaged in by any person or
 23 caused to be engaged in by him with the object of gain, benefit, or
 24 advantage, either direct or indirect.

25 e. "*Retailer*" includes every person engaged in the business of sell-
 26 ing tangible goods, wares, or merchandise at retail, or the furnishing
 27 of gas, electricity, water and communication service, and tickets or
 28 admissions to places of amusement and athletic events as provided
 29 in this act; provided, however, that when in the opinion of the board
 30 it is necessary for the efficient administration of this act to regard
 31 any salesmen, representatives, truckers, peddlers or canvassers, as
 32 agents of the dealers, distributors, supervisors, employers, or persons
 33 under whom they operate or from whom they obtain tangible personal
 34 property sold by them irrespective of whether or not they are making
 35 sales on their own behalf or on behalf of such dealers, distributors,
 36 supervisors, employers, or persons, the board may so regard them,
 37 and may regard such dealers, distributors, supervisors, employers, or
 38 persons as retailers for the purposes of this act.

39 f. "*Gross receipts*" means the total amount of the sales of retailers,
 40 valued in money, whether received in money or otherwise, provided,
 41 however, that discounts for any purpose allowed and taken on sales
 42 shall not be included, nor shall the sale price of property returned
 43 by customers when the full sale price thereof is refunded either in
 44 cash or by credit. Provided further, that on all sales of retailers,
 45 valued in money, when such sales are made under conditional sales
 46 contract, or under other forms of sale wherein the payment of the
 47 principal sum thereunder be extended over a period longer than sixty
 48 days from the date of sale thereof that only such portion of the sale
 49 amount thereof shall be accounted, for the purpose of imposition of
 50 tax imposed by this act, as has actually been received in cash by the
 51 retailer during each quarterly period as defined herein.

52 g. "*Relief agency*" means the state, any county, city and county,
 53 city or district thereof, or any agency engaged in actual relief work.

54 h. The word "*board*" means the state board of assessment and
 55 review.

56 i. The word "*taxpayer*" includes any person within the meaning of
 57 subsection "a" hereof, who is subject to a tax imposed by this act,
 58 whether acting for himself or as a fiduciary.

1 SEC. 2. Tax imposed. There is hereby imposed, beginning the first
 2 day of April, 1937, a tax of two percent upon the gross receipts from
 3 all sales of tangible personal property, consisting of goods, wares, or
 4 merchandise, except as otherwise provided in this act, sold at retail
 5 in the state to consumers or users; a like rate of tax upon the gross
 6 receipts from the sales, furnishing or service of gas, electricity, water
 7 and communication service, including the gross receipts from such
 8 sales by any municipal corporation furnishing gas, electricity, water
 9 and communication service to the public in its proprietary capacity,
 10 except as otherwise provided in this act, when sold at retail in the
 11 state to consumers or users; and a like rate of tax upon the gross
 12 receipts from all sales of tickets or admissions to places of amusement
 13 and athletic events, except as otherwise provided in this act.

14 The tax herein levied shall be computed and collected as hereinafter
 15 provided.* The owner of every new motor vehicle or new trailer pur-
 16 chased within sixty days previous to an application for original regis-
 17 tration in this state shall furnish to the county treasurer a sworn

* Note: Amended by S. F. 528, acts 47th G. A.

18 statement from the firm, person, or corporation from which such
19 vehicle was purchased, stating that the Iowa state sales tax has been
20 paid thereon. In the absence of said sworn statement the county treas-
21 urer shall refuse registration until the applicant pays to the treasurer
22 a sum equal to the Iowa state sales tax on a like vehicle when purchased
23 in this state. The county treasurer shall remit all sums collected under
24 this section to the board.

1 **SEC. 3. Exemptions.** There are hereby specifically exempted from
2 the provisions of this act and from the computation of the amount of
3 tax imposed by it, the following:

4 a. The gross receipts from sales of tangible personal property which
5 this state is prohibited from taxing under the constitution or laws
6 of the United States or under the constitution of this state.

7 b. The gross receipts from the sales, furnishing or service of trans-
8 portation service.

9 c. The gross receipts from sales of tangible personal property used
10 for the performance of a contract on public works executed prior to
11 the ninth day of March, 1934.

12 d. The gross receipts from sales of tickets or admissions to state,
13 county, district and local fairs, and the gross receipts from educa-
14 tional, religious, or charitable activities, where the entire net proceeds
15 therefrom are expended for educational, religious or charitable pur-
16 poses.

1 **SEC. 4. Credit on tax.** A credit shall be allowed against the amount
2 of tax computed to be due and payable on the gross receipts from
3 sales at retail of any tangible personal property upon which the state
4 now imposes a special tax, whether in the form of a license tax, stamp
5 tax, or otherwise, to the extent of the amount of such tax imposed
6 and paid. Taxes paid on gross receipts represented by accounts found
7 to be worthless and actually charged off for income tax purposes may
8 be credited upon a subsequent payment of the tax herein provided;
9 provided, that if such accounts are thereafter collected by the retailer,
10 a tax shall be paid upon the amount so collected.

1 **SEC. 5. Credit to relief agency.**

2 1. A relief agency may apply to the board for the refund of the
3 amount of tax imposed hereunder and paid upon sales to it of any
4 goods, wares, or merchandise used for free distribution to the poor
5 and needy.

6 2. Such refunds may be obtained only in the following amounts
7 and manner and only under the following conditions:

8 a. On forms furnished by the board, and filed within such time as
9 the board shall provide by regulation, the relief agency shall report
10 to the board the total amount or amounts, valued in money, expended
11 directly or indirectly for goods, wares, or merchandise used for free
12 distribution to the poor and needy.

13 b. On these forms the relief agency shall separately list the persons
14 making the sales to it or to its order, together with the dates of the
15 sales, and the total amount so expended by the relief agency.

16 c. The relief agency must prove to the satisfaction of the board
17 that the person making the sales has included the amount thereof in
18 the computation of the gross receipts of such person and that such

19 person has paid the tax levied by this act, based upon such computation
20 of gross receipts.

21 3. If the board is satisfied that the foregoing conditions and require-
22 ments have been complied with, it shall refund the amount claimed
23 by the relief agency.

1 SEC. 6. **Adding of tax.** Retailers shall, as far as practicable, add
2 the tax imposed under this act, or the average equivalent thereof, to
3 the sales price or charge and when added such tax shall constitute a
4 part of such price or charge, shall be a debt from consumer or user
5 to retailer until paid, and shall be recoverable at law in the same
6 manner as other debts.

7 Agreements between competing retailers, or the adoption of appro-
8 priate rules and regulations by organizations or associations of re-
9 tailers to provide uniform methods for adding such tax or the average
10 equivalent thereof, and which do not involve price-fixing agreements
11 otherwise unlawful, are expressly authorized and shall be held not in
12 violation of chapter 434, or other antitrust laws of this state. It
13 shall be the duty of the board to cooperate with such retailers, organi-
14 zations, or associations in formulating such agreements, rules and
15 regulations. The board shall have the power to adopt and promulgate
16 rules and regulations for adding such tax, or the average equivalent
17 thereof, by providing different methods applying uniformly to retailers
18 within the same general classification for the purpose of enabling such
19 retailers to add and collect, as far as practicable, the amount of such
20 tax.

1 SEC. 7. **Unlawful acts.** It shall be unlawful for any retailer to
2 advertise or hold out or state to the public or to any consumer, directly
3 or indirectly, that the tax or any part thereof imposed by this act
4 will be assumed or absorbed by the retailer or that it will not be
5 considered as an element in the price to the consumer, or if added,
6 that it or any part thereof will be refunded.

1 SEC. 8. **Records required.** It shall be the duty of every retailer
2 required to make a report and pay any tax under this act, to preserve
3 such records of the gross proceeds of sales as the board may require
4 and it shall be the duty of every retailer to preserve for a period of
5 five years all invoices and other records of goods, wares, or merchan-
6 dise purchased for resale; and all such books, invoices, and other
7 records shall be open to examination at any time by the board or any
8 one of its duly authorized agents, and shall be made available within
9 this state for such examination upon reasonable notice when the board
10 shall deem it advisable and shall so order.

1 SEC. 9. **Return of gross receipts.**

2 1. The retailer shall, on or before the twentieth day of the month
3 following the close of the first quarterly period as defined in section
4 10, and on or before the twentieth day of the month following each
5 subsequent quarterly period of three months, make out a return for
6 the preceding quarterly period in such form and manner as may be
7 prescribed by the board, showing the gross receipts of the retailer,
8 the amount of the tax for the period covered by such return, and such
9 further information as the board may require to enable it correctly
10 to compute and collect the tax herein levied; provided, however, that

11 the board may, upon request by any retailer and a proper showing of
 12 the necessity therefor, grant unto such retailer an extension of time
 13 not to exceed thirty days for making such return. If such extension
 14 is granted to any such retailer, the time in which he is required to
 15 make payment as provided in section ten shall be extended for the
 16 same period.

17 2. The board, if it deems it necessary or advisable in order to insure
 18 the payment of the tax imposed by this act, may require returns and
 19 payment of the tax to be made for other than quarterly periods, the
 20 provisions of section ten or elsewhere to the contrary notwithstanding.

21 3. Returns shall be signed by the retailer or his duly authorized
 22 agent, and must be duly certified by him to be correct.

1 **SEC. 10. Payment of tax-bond.**

2 1. The tax levied hereunder shall be due and payable in quarterly
 3 installments on or before the twentieth day of the month next succeed-
 4 ing each quarterly period, the first of such quarterly periods being
 5 the period commencing with April 1, 1937, and ending on the thirtieth
 6 day of June, 1937.

7 2. Every retailer, at the time of making the return required here-
 8 under, shall compute and pay to the board the tax due for the preceding
 9 period.

10 3. The board may, when in its judgment it is necessary and advis-
 11 able to do so in order to secure the collection of the tax levied under
 12 this act, require any person subject to such tax to file with it a bond,
 13 issued by a surety company authorized to transact business in this
 14 state and approved by the insurance commissioner as to solvency and
 15 responsibility, in such amount as the board may fix, to secure the pay-
 16 ment of any tax and/or penalties due or which may become due from
 17 such person. In lieu of such bond, securities approved by the board,
 18 in such amount as it may prescribe, may be deposited with it, which
 19 securities shall be kept in the custody of the board and may be sold
 20 by it at public or private sale, without notice to the depositor thereof,
 21 if it becomes necessary so to do in order to recover any tax and/or
 22 penalties due. Upon any such sale, the surplus, if any, above the
 23 amounts due under this act shall be returned to the person who de-
 24 posited the securities.

25 4. The tax by this act imposed upon those sales of motor vehicle
 26 fuel which are subject to tax and refund under chapter 251-f1 shall
 27 be collected by the state treasurer by way of deduction from refunds
 28 otherwise allowable under said chapter. The amount of such deduc-
 29 tions he shall transfer from the motor vehicle fuel fund to the special
 30 tax fund.

1 **SEC. 11. Permits—Applications for.**

2 1. Sixty days after the effective date of this act, it shall be unlawful
 3 for any person to engage in or transact business as a retailer within
 4 this state, unless a permit or permits shall have been issued to him
 5 as hereinafter prescribed. Every person desiring to engage in or
 6 conduct business as a retailer within this state shall file with the
 7 board an application for a permit or permits. Every application for
 8 such a permit shall be made upon a form prescribed by the board and
 9 shall set forth the name under which the applicant transacts or
 10 intends to transact business, the location of his place or places of

11 business, and such other information as the board may require. The
12 application shall be signed by the owner if a natural person; in the
13 case of an association or partnership, by a member or partner thereof;
14 in the case of a corporation, by an executive officer thereof or some
15 person specifically authorized by the corporation to sign the appli-
16 cation, to which shall be attached the written evidence of his authority.

17 2. At the time of making such application, the applicant shall pay
18 to the board a permit fee of fifty cents for each permit, and the appli-
19 cant must have a permit for each place of business.

20 3. Upon the payment of the permit fee or fees herein required, the
21 board shall grant and issue to each applicant a permit for each place
22 of business within the state. A permit is not assignable and shall be
23 valid only for the person in whose name it is issued and for the trans-
24 action of business at the place designated therein. It shall at all times
25 be conspicuously displayed at the place for which issued.

26 4. Permits issued under the provisions of this act shall be valid
27 and effective without further payment of fees until revoked by the
28 board.

29 5. Whenever the holder of a permit fails to comply with any of the
30 provisions of this act or any orders, rules or regulations of the board
31 prescribed and adopted under this act, the board upon hearing after
32 giving ten days' notice of the time and place of the hearing to show
33 cause why his permit should not be revoked, may revoke the permit.
34 The board shall also have the power to restore licenses after such rev-
35 ocation.

36 6. The board shall charge a fee of one dollar for the issuance of
37 a permit to a retailer whose permit has been previously revoked.

38 7. Any permits issued under the provisions of Sec. 6943-f48,
39 1935 code of Iowa and not revoked shall remain in full force and
40 effect and shall be considered sufficient under the provisions of this
41 act, subject, however, to all the limitations herein imposed; provided,
42 however, the board may by regulation require the holders of such
43 permits to obtain new permits issued pursuant to the provisions of this
44 section without the payment of any additional fee therefor.

1 SEC. 12. **Failure to file return—Incorrect return.** If a return re-
2 quired by this act is not filed, or if a return when filed is incorrect
3 or insufficient and the maker fails to file a corrected or sufficient return
4 within twenty days after the same is required by notice from the board,
5 such board shall determine the amount of tax due from such informa-
6 tion as it may be able to obtain and, if necessary, may estimate the
7 tax on the basis of external indices, such as number of employees of
8 the person concerned, rentals paid by him, his stock on hand, and/or
9 other factors. The board shall give notice of such determination to
10 the person liable for the tax. Such determination shall finally and
11 irrevocably fix the tax unless the person against whom it is assessed
12 shall, within thirty days after the giving of notice of such determina-
13 tion, apply to the board for a hearing or unless the board of its own
14 motion shall reduce the same. At such hearing evidence may be
15 offered to support such determination or to prove that it is incorrect.
16 After such hearing the board shall give notice of its decision to the
17 person liable for the tax.

1 SEC. 13. Appeals.

2 1. An appeal may be taken by the taxpayer to the district court of
3 the county in which he resides, or in which his principal place of
4 business is located, within sixty days after he shall have received
5 notice from the board of its determination as provided for in section
6 12.

7 2. The appeal shall be taken by a written notice to the chairman
8 of the board and served as an original notice. When said notice is
9 so served it shall, with the return thereon, be filed in the office of the
10 clerk of said district court, and docketed as other cases, with the tax-
11 payer as plaintiff and the board as defendant. The plaintiff shall file
12 with such clerk a bond for the use of the defendant, with sureties
13 approved by such clerk, in penalty at least double the amount of tax
14 appealed from, and in no case shall the bond be less than fifty dollars,
15 conditioned that the plaintiff shall perform the orders of the court.

16 3. The court shall hear the appeal in equity and determine anew
17 all questions submitted to it on appeal from the determination of the
18 board. In such appeal, the burden of proof shall be upon the taxpayer.
19 The court shall render its decree thereon and a certified copy of said
20 decree shall be filed by the clerk of said court with the board who
21 shall then correct the assessment in accordance with said decree. An
22 appeal may be taken by the taxpayer or the board to the supreme
23 court of this state in the same manner that appeals are taken in suits
24 in equity, irrespective of the amount involved.

1 **SEC. 14. Statute applicable to sales tax.** All the provisions of
2 section 6943-f22 of the 1935 code of Iowa shall apply in respect to
3 the taxes and/or penalties imposed by this act, excepting that, as
4 applied to any tax imposed by this act, the lien therein provided shall
5 be prior and paramount over all subsequent liens upon any personal
6 property within this state, or right to such personal property, belong-
7 ing to the taxpayer without the necessity of recording as therein pro-
8 vided. The requirements for recording shall, as applied to the tax
9 imposed by this act, apply only to the liens upon real property. When
10 requested to do so by any person from whom a taxpayer is seeking
11 credit, or with whom the taxpayer is negotiating the sale of any per-
12 sonal property, or by any other person having a legitimate interest
13 in such information, the board shall, upon being satisfied that such a
14 situation exists, inform such person as to the amount of unpaid taxes
15 due by such taxpayer under the provisions of this act. The giving of
16 such information under such circumstances shall not be deemed a vio-
17 lation of section six thousand four hundred forty-three-f fifty-nine
18 (6443-f59) as applied to this act.

1 SEC. 15. Service of notices.

2 1. Any notice, except notice of appeal, authorized or required under
3 the provisions of this act may be given by mailing the same to the
4 person for whom it is intended by registered mail, addressed to such
5 person at the address given in the last return filed by him pursuant
6 to the provisions of this act, or if no return has been filed, then to
7 such address as may be obtainable. The mailing of such notice shall
8 be presumptive evidence of the receipt of the same by the person to
9 whom addressed. Any period of time which is determined according

10 to the provisions of this act by the giving of notice shall commence
11 to run from the date of registration and posting of such notice.

12 2. The provisions of the code relative to the limitation of time for
13 the enforcement of a civil remedy shall not apply to any preceeding*
14 or action taken to levy, appraise, assess, determine or enforce the
15 collection of any tax or penalty provided by this act.

1 **SEC. 16. Penalties—Offenses.**

2 1. Any person failing to file a return or corrected return or to pay
3 any tax within the time required by this act, shall be subject to a pen-
4 alty of five per cent of the amount of tax due, plus one per cent of
5 such tax for each month of delay or fraction thereof, excepting the
6 first month after such return was required to be filed or such tax
7 became due; but the board, if satisfied that the delay was excusable,
8 may remit all or any part of such penalty. Such penalty shall be
9 paid to the board and disposed of in the same manner as other receipts
10 under this act. Unpaid penalties may be enforced in the same manner
11 as the tax imposed by this act.

12 2. Any person who shall sell tangible personal property, tickets or
13 admissions to places of amusement and athletic events, or gas, water,
14 electricity and communication service at retail in this state after his
15 license shall have been revoked, or without procuring a license within
16 sixty days after the effective date of this act, as provided in section 11
17 of this act, or who shall violate the provisions of section 7 of this act,
18 and the officers of any corporation who shall so act, shall be guilty of
19 a misdemeanor, punishment for which shall be a fine of not more than
20 one thousand dollars or imprisonment for not more than one year,
21 or both such fine and imprisonment, in the discretion of the court.

22 3. Any person required to make, render, sign, or certify any return
23 or supplementary return, who makes any false or fraudulent return
24 with intent to defeat or evade the assessment required by law to be
25 made, shall be guilty of a felony and shall, for each such offense, be
26 fined not less than five hundred dollars and not more than five thousand
27 dollars, or be imprisoned not exceeding one year, or be subject to both
28 such fine and imprisonment, in the discretion of the court.

29 4. The certificate of the board to the effect that a tax has not been
30 paid, that a return has not been filed, or that information has not been
31 supplied pursuant to the provisions of this act, shall be prima facie
32 evidence thereof.

1 **SEC. 17.** The board and its employees shall administer the taxes
2 imposed by this act in the same manner and subject to all of the pro-
3 visions of, and all of the powers, duties, authority, and restrictions
4 contained in sections six thousand nine hundred forty-three-f fifty-
5 four (6943-f54) to six thousand nine hundred forty-three-f sixty-two
6 (6943-f62) inclusive, code, 1935, or any amendments which may here-
7 after be made thereto, all of which sections are by this reference in-
8 corporated herein.

1 **SEC. 18.** Section six thousand nine hundred forty-three-f sixty-five
2 (6943-f65) code, 1935, is hereby amended by inserting after the
3 word "chapter" in line three (3) thereof the following: "and senate
4 file 316, acts of the Forty-seventh General Assembly"; and by insert-

*Note: In accordance with enrolled bill.

5 ing after the word "chapter" in line nine (9) thereof, the following:
6 "and under senate file 316, acts of the Forty-seventh General As-
7 sembly".

1 **SEC. 19. Constitutionality.** If any section, subsection, clause, sen-
2 tence, or phrase of this act is for any reason held to be unconstitu-
3 tional and invalid, such decision shall not affect the validity of the re-
4 maining portions of this act. The legislature hereby declares that
5 it would have passed this act and each section, subsection, clause,
6 sentence, or phrase hereof, irrespective of whether any one or more
7 of the sections, subsections, clauses, sentences, or phrases be declared
8 unconstitutional.

1 **SEC. 20. Repealing clause.** All laws and parts of laws in conflict
2 with this act, and section twenty-two (22) of senate file one hundred
3 eighty-four (184) acts of the Forty-seventh General Assembly, are
4 hereby repealed.

1 **SEC. 21. Apportionment of revenue.** All revenues arising under
2 the operation of this act and carried by the treasurer of state in the
3 special tax fund shall be apportioned as provided for by section six
4 thousand nine hundred forty-three-f sixty-three (6943-f63), code,
5 1935, as amended by senate file 184, acts of the 47th General Assembly,
6 and as is further provided for by senate file 184, acts of the 47th Gen-
7 eral Assembly of the state of Iowa, provided further, however, that
8 if for any reason the revenues derived under the operation of this act
9 can not be apportioned for homestead relief as provided for by senate
10 file 184, acts of the 47th General Assembly, then that portion of such
11 revenues as is apportioned to homestead relief by said senate file 184
12 shall be retained in such special tax fund and shall not be disbursed
13 for any purpose without the further direction of the legislature of the
14 state of Iowa.

1 **SEC. 22.** This act, being deemed of immediate importance, shall
2 be in full force and effect after its publication in the Grundy Register,
3 a newspaper published at Grundy Center, Iowa, and the Daily News, a
4 newspaper published at Cedar Falls, Iowa.

Senate File 316. Approved March 26, 1937.

I hereby certify that the foregoing act was published in the Cedar Falls Daily News,
March 30, 1937, and the Grundy Register, March 31, 1937.

ROBERT E. O'BRIAN, *Secretary of State.*

CHAPTER 197

SALES TAX ACT

S. F. 528

AN ACT to amend section two of senate file 316, acts of the Forty-seventh General Assembly, to strike that portion of said section relating to payment of the sales tax on motor vehicles.

Be It Enacted by the General Assembly of the State of Iowa:

1 **SECTION 1.** Section two of Senate File 316, acts of the Forty-seventh
2 General Assembly, is hereby amended by striking all of that portion