

3 of said section which follows the period after the word "provided"  
4 in line fifteen thereof.

1 SEC. 2. This act, being deemed of immediate importance, shall be  
2 in full force and effect from and after its passage and publication  
3 in the Taylor County Herald, a newspaper published at Bedford, Iowa,  
4 and in the Waterloo Daily Courier, a newspaper published at Water-  
5 loo, Iowa.

Senate File 528. Approved May 1, 1937.

I hereby certify that the foregoing act was published in the Taylor County Herald,  
May 20, 1937, and the Waterloo Daily Courier, May 19, 1937.

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

## CHAPTER 198

### USE TAX ACT

#### S. F. 317

AN ACT to impose a tax on the use in this state of tangible personal property, as such terms are defined herein, including gas, electricity, and water; to provide certain exemptions therefrom; to provide for the collection of such tax and the administration of this act; to fix interest, fines and penalties for the violation of the provisions of this act; to provide for the disposition of the revenues derived from said tax; to appropriate funds for the administration of this act; to exempt from the tax imposed by Senate File 316, acts of the Forty-seventh General Assembly, gross receipts from the sale of new motor vehicles and trailers; and to amend section five thousand ninety-three-f twenty-nine (5093-f29), code, 1935, relating to the refund of the motor vehicle fuel tax, to forbid such refund for fuel used in certain machinery for which the tax imposed by this act or by Senate File 316, acts of the Forty-seventh General Assembly, has not been paid.

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

1 SECTION 1. The following words, terms and phrases when used in  
2 this act shall have the meanings ascribed to them in this section:  
3 1. "Use" means and includes the exercise by any person of any  
4 right or power over tangible personal property incident to the owner-  
5 ship of that property, except that it shall not include processing, or  
6 the sale of that property in the regular course of business. Prop-  
7 erty used in "processing" within the meaning of this subsection shall  
8 mean and include (1) any tangible personal property including con-  
9 tainers which it is intended shall, by means of fabrication, compound-  
10 ing, manufacturing, or germination, become an integral part of other  
11 tangible personal property intended to be sold ultimately at retail, (2)  
12 fuel which is consumed in creating power, heat or steam for process-  
13 ing or for generating electric current, (3) industrial materials and  
14 equipment, which are not readily obtainable in Iowa, and which are  
15 directly used in the actual fabricating, compounding, manufacturing  
16 or servicing of tangible personal property intended to be sold  
17 ultimately at retail.  
18 2. "Purchase" means any transfer, exchange or barter, conditional  
19 or otherwise, in any manner or by any means whatsoever, for a con-  
20 sideration.  
21 3. "Purchase price" means the total amount for which tangible per-  
22 sonal property is sold, valued in money, whether paid in money or

23 otherwise; provided that cash discounts allowed and taken on sales  
24 shall not be included.

25 4. "*Tangible personal property*" means tangible goods, wares, and  
26 merchandise, and gas, electricity, and water when furnished or de-  
27 livered to consumers or users within this state.

28 5. "*Retailer*" means and includes every person engaged in the busi-  
29 ness of selling tangible personal property for use within the mean-  
30 ing of this act; provided, however, that when in the opinion of the  
31 board it is necessary for the efficient administration of this act to re-  
32 gard any salesmen, representatives, truckers, peddlers or canvassers  
33 as the agents of the dealers, distributors, supervisors, employers or  
34 persons under whom they operate or from whom they obtain the  
35 tangible personal property sold by them, irrespective of whether they  
36 are making sales on their own behalf or on behalf of such dealers,  
37 distributors, supervisors, employers, or persons, the board may so  
38 regard them and may regard the dealers, distributors, supervisors,  
39 employers, or persons as retailers for purposes of this act.

40 6. "*Retailer maintaining a place of business in this state*" or any  
41 like term, shall mean and include any retailer having or maintaining  
42 within this state, directly or by a subsidiary, an office, distribution  
43 house, sales house, warehouse or other place of business, or any agent  
44 operating within this state under the authority of the retailer or its  
45 subsidiary, irrespective of whether such place of business or agent is  
46 located here permanently or temporarily, or whether such retailer or  
47 subsidiary is admitted to do business within this state pursuant to  
48 chapter three hundred eighty-six (386), code, 1935.

49 7. "*Motor vehicle*" shall mean every motor vehicle, as is now or  
50 may hereafter be so defined by the motor vehicle law of this state,  
51 which is required to be registered under such motor vehicle law.

52 8. "*Person*", "*board*", and "*taxpayer*" shall have the same meaning  
53 as defined in section one of senate file 316, acts of the Forty-seventh  
54 General Assembly.

55 9. "*Trailer*" shall mean every trailer, as is now or may be hereafter  
56 so defined by the motor vehicle law of this state, which is required to  
57 be registered under such motor vehicle law.

1 SEC. 2. An excise tax is hereby imposed on the use in this state  
2 of tangible personal property purchased on or after the effective date  
3 of this act for use in this state, at the rate of two percent of the pur-  
4 chase price of such property. Said tax is hereby imposed upon every  
5 person using such property within this state until such tax has been  
6 paid directly to the county treasurer, to a retailer, or to the board as  
7 hereinafter provided.

1 SEC. 3. The use in this state of the following tangible personal  
2 property is hereby specifically exempted from the tax imposed by this  
3 act:

4 1. Tangible personal property, the gross receipts from the sale of  
5 which are required to be included in the measure of the tax imposed  
6 by senate file 316, acts of the Forty-seventh General Assembly, and  
7 any amendments made or which may hereafter be made thereto. This  
8 exemption does not include new motor vehicles as defined herein.

9 2. Tangible personal property used (a) in interstate transportation  
10 or interstate commerce, or (b) for the performance of a building or  
11 construction contract executed prior to the effective date of this act.

12 3. Tangible personal property upon which the state now imposes  
13 and collects a special tax, whether in the form of a license tax, stamp  
14 tax, or otherwise.

15 4. All articles of tangible personal property brought into the state  
16 of Iowa by a non-resident individual thereof for his or her use or  
17 enjoyment while within the state.

18 5. Tangible personal property not readily obtainable in Iowa and  
19 used in the operation of street railways.

1 SEC. 4. For the purpose of the proper administration of this act  
2 and to prevent evasion of the tax, evidence that tangible personal  
3 property was sold by any person for delivery in this state shall be  
4 prima facie evidence that such tangible personal property was sold  
5 for use in this state.

1 SEC. 5. The tax herein imposed shall be collected in the following  
2 manner:

3 1. The tax upon the use of all new motor vehicles and new trailers  
4 shall be collected by the county treasurer pursuant to the provisions  
5 of section six hereof.

6 2. The tax upon the use of all tangible personal property other  
7 than that enumerated in subsection one hereof, which is sold by a  
8 retailer maintaining a place of business in this state, or by such other  
9 retailer as the board shall authorize pursuant to section nine, shall be  
10 collected by such retailer and remitted to the state board, pursuant  
11 to the provisions of sections eight to twelve inclusive.

12 3. The tax upon the use of all tangible personal property not paid  
13 pursuant to subsections one and two hereof shall be paid to the board  
14 directly by any person using such property within this state, pursuant  
15 to the provisions of section thirteen hereof.

1 SEC. 6. The tax hereby imposed upon the use of new motor vehicles  
2 and new trailers shall be paid by the owner thereof to the county  
3 treasurer from whom the original certificate of registration for such  
4 motor vehicle or trailer is obtained. No original certificate of regis-  
5 tration for any new motor vehicle or new trailer shall be issued until  
6 said tax has been so paid. The county treasurer shall require every  
7 applicant for an original certificate of registration for any new motor  
8 vehicle or new trailer to supply such information as he or the board  
9 may deem necessary as to the time of purchase, the purchase price,  
10 and other information relative to the purchase of said motor vehicle  
11 or trailer. On or before the tenth day of each month the county treas-  
12 urer shall remit to the board the amount of the taxes so collected dur-  
13 ing the preceding month, together with an itemized statement on  
14 forms furnished by the board showing the name of each taxpayer,  
15 the make and purchase price of each motor vehicle or trailer, the  
16 amount of tax paid in each case, and such other information as the  
17 board shall require.

1 SEC. 7. Motor vehicle or trailer dealers, in making their reports  
2 and returns to the board for the purpose of paying the retail sales tax  
3 imposed by senate file 316, acts of the Forty-seventh General Assembly,  
4 shall be permitted to deduct all gross receipts from retail sales of new

5 motor vehicles and new trailers. Gross receipts from such new motor  
6 vehicle and new trailers sales are hereby expressly exempted from  
7 the tax imposed by senate file 316, acts of the Forty-seventh General  
8 Assembly, but, if required by the board, such gross receipts shall be  
9 included in the returns made by motor vehicle or trailer dealers under  
10 said act, and proper deductions taken pursuant to this section.

1 SEC. 8. Every retailer maintaining a place of business in this state  
2 and making sales of tangible personal property for use in this state,  
3 not exempted under the provisions of section three hereof nor col-  
4 lectible under the provisions of section six hereof, shall at the time of  
5 making such sales, whether within or without the state, collect the  
6 tax imposed by this act from the purchaser, and give to the purchaser  
7 a receipt therefor in the manner and form prescribed by the board, if  
8 the board shall, by regulation, require such receipt. Each such re-  
9 tailer shall list with the board the name and address of all his agents  
10 operating in this state, and the location of any and all his distribu-  
11 tion or sales houses or offices or other places of business in this state.

1 SEC. 9. The board may, in its discretion, upon application author-  
2 ize the collection of the tax herein imposed by any retailer not main-  
3 taining a place of business within this state, who, to the satisfaction  
4 of the board furnishes adequate security to insure collection and pay-  
5 ment of the tax. Such retailer shall be issued, without charge, a per-  
6 mit to collect such tax in such manner, and subject to such regula-  
7 tions and agreements as the board shall prescribe. When so author-  
8 ized, it shall be the duty of such retailer to collect the tax upon all  
9 tangible personal property sold to his knowledge for use within this  
10 state, in the same manner and subject to the same requirements as  
11 a retailer maintaining a place of business within this state. Such  
12 authority and permit may be cancelled when, at any time, the board  
13 considers the security inadequate, or that such tax can more effectively  
14 be collected from the person using such property in this state.

1 SEC. 10. It shall be unlawful for any retailer to advertise or hold  
2 out or state to the public or to any purchaser, consumer or user, di-  
3 rectly or indirectly, that the tax or any part thereof imposed by this  
4 act will be assumed or absorbed by the retailer or that it will not be  
5 added to the selling price of the property sold, or if added that it or  
6 any part thereof will be refunded. The board shall have the power  
7 to adopt and promulgate rules and regulations for adding such tax,  
8 or the average equivalent thereof, by providing different methods  
9 applying uniformly to retailers within the same general classification  
10 for the purpose of enabling such retailers to add and collect, as far  
11 as practicable, the amount of such tax. Any person violating any of  
12 the provisions of this section within this state shall be guilty of a mis-  
13 demeanor and subject to the penalties provided in section nineteen  
14 hereof.

1 SEC. 11. The tax herein required to be collected by any retailer  
2 pursuant to sections eight or nine hereof, and any tax collected by any  
3 retailer pursuant to said sections, shall constitute a debt owed by the  
4 retailer to this state.

1 SEC. 12. Each retailer required or authorized, pursuant to sections  
2 eight or nine hereof, to collect the tax herein imposed, shall be required

3 to pay to the board the amount of such tax, on or before the twentieth  
4 day of the month next succeeding each quarterly period, the first such  
5 quarterly period being the period commencing on the first day of April,  
6 1937, and ending on the thirtieth day of June, 1937. At such time,  
7 each such retailer shall file with the board a return for the preceding  
8 quarterly period in such form as may be prescribed by the board show-  
9 ing the sales price of any or all tangible personal property sold by the  
10 retailer during such preceding quarterly period, the use of which is  
11 subject to the tax imposed by this act, and such other information as  
12 the board may deem necessary for the proper administration of this  
13 act. The return shall be accompanied by a remittance of the amount  
14 of such tax, for the period covered by the return, provided that where  
15 such tangible personal property is sold under a conditional sales con-  
16 tract, or under any other form of sale wherein the payment of the  
17 principal sum, or a part thereof, is extended over a period longer than  
18 sixty days from the date of the sale thereof, the retailer may collect  
19 and remit each quarterly period that portion of the tax equal to two  
20 percent of that portion of the purchase price actually received dur-  
21 ing such quarterly period. The board, if it deems it necessary in  
22 order to insure payment to the state of the amount of such tax, may  
23 in any or all cases require returns and payments of such amount to  
24 be made for other than quarterly periods. The board may, upon re-  
25 quest and a proper showing of the necessity therefor, grant an exten-  
26 sion of time not to exceed thirty days for making any return and pay-  
27 ment. Returns shall be signed by the retailer or his duly authorized  
28 agent, and must be certified by him to be correct.

1 SEC. 13. Any person who uses any property upon which the tax  
2 herein imposed has not been paid, either to the county treasurer or to  
3 a retailer or direct to the board as herein provided, shall be liable  
4 therefor, and shall on or before the twentieth day of the month next  
5 succeeding each quarterly period pay the tax herein imposed upon all  
6 such property used by him during the preceding quarterly period in  
7 such manner and accompanied by such returns as the board shall  
8 prescribe. All of the provisions of section twelve with reference to  
9 such returns and payments shall be applicable to the returns and pay-  
10 ments herein required.

1 SEC. 14. The board may, when in its judgment it is necessary and  
2 advisable to do so in order to secure the collection of the tax levied  
3 under this act, authorize any person subject to such tax, and any re-  
4 tailer required or authorized to collect such tax pursuant to the pro-  
5 visions of sections eight and nine hereof, to file with it a bond, issued  
6 by a surety company authorized to transact business in this state and  
7 approved by the insurance commissioner as to solvency and responsi-  
8 bility, in such amount as the board may fix, to secure the payment of  
9 any tax, amount, and/or penalties due or which may become due  
10 from such person. In lieu of such bond, securities approved by the  
11 board, in such amount as it may prescribe, may be deposited with it,  
12 which securities shall be kept in the custody of the board and may be  
13 sold by it at public or private sale, without notice to the depositor  
14 thereof, if it becomes necessary to do so in order to recover any tax  
15 and/or penalties due. Upon any such sale, the surplus, if any, above

16 the amounts due under this act shall be returned to the person who  
17 deposited the securities.

1 SEC. 15. If any return required by this act is not filed, or if any  
2 return when filed is incorrect or insufficient, and the maker or person  
3 from whom it is due fails to file a corrected or sufficient return within  
4 twenty days after the same is required by notice from the board, the  
5 board shall have the same power to determine the amount due, as is  
6 vested in the board by sections twelve (12), thirteen (13), and fifteen  
7 (15) of senate file 316, acts of the Forty-seventh General Assembly,  
8 subject to all of the provisions, and restrictions, and rights of appeal  
9 provided in said sections.

1 SEC. 16. All of the provisions of sections fourteen (14) and fifteen  
2 (15) of senate file 316, acts of the Forty-seventh General Assembly  
3 shall apply in respect to the procedure, taxes, amounts required to be  
4 paid, and/or penalties imposed, as provided by this act.

1 SEC. 17. Any person failing to file a return or corrected return or  
2 to pay any tax and/or amount required to be paid by this act within  
3 the time required by this act, shall be subject to a penalty of five per-  
4 cent of the amount due, plus one percent of such amount for each  
5 month of delay or fraction thereof, excepting the first month after  
6 such return was required to be filed or such tax or amount became  
7 due; but the board, if satisfied that the delay was excusable, may  
8 remit all or any part of such penalty. Such penalty shall be paid to  
9 the board and disposed of in the same manner as other receipts under  
10 this act. Unpaid penalties may be enforced in the same manner as the  
11 tax imposed by this act. The certificate of the board to the effect that  
12 a tax and/or amount required to be paid by this act has not been paid,  
13 that a return has not been filed, or that information has not been sup-  
14 plied pursuant to the provisions of this act, shall be prima facie evi-  
15 dence thereof.

1 SEC. 18. Any person required to make, render, sign, or certify any  
2 return or supplementary return, who makes any false or fraudulent  
3 return with intent to defeat or evade the tax, and/or amount required  
4 to be paid by this act, shall be guilty of a felony and shall, for each  
5 such offense, be fined not less than five hundred (500) dollars and not  
6 more than five thousand (5000) dollars, or be imprisoned not exceeding  
7 one year, or be subject to both such fine and imprisonment, in the dis-  
8 cretion of the court.

1 SEC. 19. Any retailer or other person failing or refusing to fur-  
2 nish any return herein required to be made, or failing or refusing to  
3 furnish a supplemental return or other data required by the board,  
4 shall be guilty of a misdemeanor and subject to a fine or not to exceed  
5 one hundred (100) dollars for each such offense, or to imprisonment  
6 for not to exceed thirty days, or to both such fine and imprisonment,  
7 in the discretion of the court.

1 SEC. 20. Every retailer required or authorized to collect taxes im-  
2 posed by this act and every person using in this state tangible per-  
3 sonal property purchased on or after April 1, 1937, shall keep such  
4 records, receipts, invoices, and other pertinent papers as the board  
5 shall require, in such form as the board shall require. The board or

6 any of its duly authorized agents is hereby authorized to examine the  
7 books, papers, records and equipment of any person either selling  
8 tangible personal property or liable for the tax imposed by this act,  
9 and to investigate the character of the business of any such person  
10 in order to verify the accuracy of any return made, or if no return was  
11 made by such person, to ascertain and determine the amount due  
12 under the provisions of this act. Any such books, papers, and records  
13 shall be made available within this state for such examination upon  
14 reasonable notice when the board shall deem it advisable and shall  
15 so order.

1 SEC. 21. Whenever any retailer maintaining a place of business in  
2 this state, or authorized to collect the tax herein imposed pursuant to  
3 section nine hereof, fails to comply with any of the provisions of this  
4 act or any orders, rules, or regulations of the board prescribed and  
5 adopted under this act, the board may, upon notice and hearing as  
6 hereinafter provided, by order revoke the permit, if any, issued to such  
7 retailer under section eleven (11) of senate file 316, acts of the Forty-  
8 seventh General Assembly, or if such retailer is a corporation author-  
9 ized to do business in this state under chapter three hundred eighty-  
10 six (386), code, 1935, may certify to the secretary of state a copy of  
11 an order finding that such retailer has failed to comply with certain  
12 specified provisions, orders, rules or regulations. The secretary of  
13 state shall, upon receipt of such certified copy, revoke the permit  
14 authorizing said corporation to do business in this state, and shall  
15 issue a new permit only when such corporation shall have obtained  
16 from the board an order finding that such corporation has complied  
17 with its obligations under this act. No order authorized in this sec-  
18 tion shall be made until the retailer is given an opportunity to be heard  
19 and to show cause why such order should not be made, and he shall  
20 be given ten days notice of the time, place, and purpose of such hear-  
21 ing. The board shall have the power in its discretion to issue a new  
22 permit pursuant to section eleven of senate file 316, acts of the Forty-  
23 seventh General Assembly, after such revocation.

1 SEC. 22. The board is hereby charged with the enforcement of the  
2 provisions of this act, and the board and its employees shall administer  
3 this act and the taxes imposed by this act in the same manner and sub-  
4 ject to all of the provisions of, and all of the powers, duties, authority,  
5 and restrictions contained in sections six thousand nine hundred forty-  
6 three-fifty-four (6943-f54) to six thousand nine hundred forty-three-  
7 f sixty-two (6943-f62), inclusive, code, 1935, or any amendments which  
8 may hereafter be made thereto, all of which sections are by this refer-  
9 ence incorporated herein.

1 SEC. 23. All revenues arising under the operation of this act, less  
2 cost of collection and administration, shall be paid into the general  
3 fund of the state of Iowa.

1 SEC. 24. Section six thousand nine hundred forty-three-f sixty-five  
2 (6943-f65), code, 1935, as amended by senate file 316, acts of the Forty-  
3 seventh General Assembly, is hereby amended by inserting after the  
4 words and figures "senate file 316" wherever they appear in said sec-  
5 tion, the words and figures "and senate file 317".

1 SEC. 25. Section five thousand ninety-three-f twenty-nine (5093-  
2 f29), code, 1935, is hereby amended by inserting after line forty there-  
3 of a new paragraph, which shall read as follows:

4 If the gross receipts from or the use of any stationary engine, trac-  
5 tor, boat, aircraft, or other type of power driven machinery consti-  
6 tuting with the engine one unit, are subject to the tax imposed by  
7 senate file 316 or senate file 317, acts of the Forty-seventh General  
8 Assembly, no refund for motor vehicle fuel used in operating or pro-  
9 pelling such machinery shall be made until the person claiming such  
10 refund has established to the satisfaction of the treasurer that such  
11 tax for such machinery has been paid.

1 SEC. 26. If any article of tangible personal property has already  
2 been subjected to a tax by any other state in respect to its sale or use  
3 in an amount less than the tax imposed by this title, the provisions  
4 of this title shall apply, but at a rate measured by the difference only  
5 between the rate herein fixed and the rate by which the previous tax  
6 upon the sale or use was computed. If such tax imposed in such other  
7 state is two per cent (2%) or more, then no tax shall be due on such  
8 articles.

1 SEC. 27. If any section, subsection, clause, sentence, or phrase of  
2 this act or the application thereof to any person or set of circumstances  
3 is for any reason held to be unconstitutional or invalid, such decision  
4 shall not affect the validity of the remaining portions of this act, or  
5 its application to any other person or set of circumstances. The legis-  
6 lature hereby declares that the provisions of this act are severable, and  
7 that it would have passed this act and each section, subsection, clause,  
8 sentence, or phrase hereof, irrespective of whether any one or more  
9 of the sections, subsections, clauses, sentences, or phrases be declared  
10 unconstitutional, and irrespective of whether it be declared unconsti-  
11 tutional or invalid as applied to any person or set of circumstances.

1 SEC. 28. This act, being deemed of immediate importance, shall be  
2 in full force and effect from and after its passage and publication in  
3 The Times-Republican, a newspaper published at Corydon, Iowa, and  
4 in the Spencer News-Herald, a newspaper published at Spencer, Iowa.

Senate File 317. Approved April 12, 1937.

I hereby certify that the foregoing act was published in Times Republican, Corydon,  
April 15, 1937, and the News Herald, Spencer, April 15, 1937.

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