

CHAPTER 131

TAXES OWED TO THE STATE

H. F. 734

AN ACT relating to taxes owed to the state, and providing for penalties and interest for delinquent monthly withholding tax payments and establishing the rate of interest payable on delinquent taxes owed to the state.

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

Section 1. Chapter 421, Code 1981, is amended by adding the following new section:

NEW SECTION. INTEREST RATE.

1. Except where a different rate of interest is stated in a provision of this title, the rate of interest on interest-bearing obligations arising under this title shall be the rate of interest in effect under this section.

2. The rate of interest that shall be in effect during a calendar year shall be the rate which is two percentage points less than the numerical average, rounded to the nearest one percent, of the respective prime rates for each of the months in the twelve-month period that ends September 30 of the previous calendar year. The rate of interest established by this subsection takes effect January 1, and applies to any amount which is due or becomes payable on or after that date.

3. Notwithstanding contrary provisions of subsection 2, the rate of interest that is in effect during a calendar year shall also be the rate of interest to be in effect for the following calendar year, unless the rate of interest as calculated under subsection 2 is at least one percentage point higher or lower than the rate then in effect.

4. In the event interest accrues or is calculated on a monthly basis, the rate of interest for each month shall be one-twelfth, rounded to the nearest one-tenth of one percent, of the rate specified in subsection 2.

5. As used in subsection 3, the term "prime rate" means the prime rate charged by banks on short-term business loans, as determined by the board of governors of the federal reserve system and published in the federal reserve bulletin.

6. In October of each year the director shall cause an advisory notice to be published in the Iowa administrative bulletin and in a newspaper of general circulation in this state, stating the rate of interest to be in effect on or after January 1 of the following year, as established by this section. The calculation and publication of the rate of interest by the director is exempt from chapter 17A.

Sec. 2. Section 324.64, Code 1981, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The director may, on his or her own motion at any time, abate any portion of tax, interest or penalties which is determined to be excessive in amount or erroneously or illegally assessed.

Sec. 3. Section 324.65, Code 1981, is amended to read as follows:

324.65 PENALTY FOR FAILURE TO PROMPTLY REPORT OR PAY FUEL TAXES. If a licensee or other person fails to file a required report with the appropriate state agency on or before the due date, unless it is shown that the failure was due to reasonable cause there shall be added to the amount required to be shown as tax due on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. If a licensee or other person fails to remit the tax due with the filing of the return on or before the due date or fails to pay any amount of the tax required to be shown on the return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent of the amount of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. The taxpayer shall also pay interest on the tax or additional tax at the rate ~~of three-fourths of one percent per month~~ in effect under section 1 of this Act counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The appropriate state agency shall not remit any part of a penalty for delinquent payment where the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon which the check was drawn. However, if it appears as a result of an investigation or from a preponderance of the evidence adduced at a hearing that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of fifty percent of the tax due. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty for failure to pay the tax due or required on the return, except in the case of a deliberate attempt on the part of the licensee or other person to evade payment of fuel taxes. Any report required of licensees or persons operating under divisions I, II and III, upon which no tax may be due, shall be subject to a penalty of ten dollars if the report is not timely filed with the appropriate state agency.

Sec. 4. Section 422.16, subsection 9, Code 1981, is amended to read as follows:

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12 hereof, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate ~~of three-fourths of one percent per~~

in effect under section 1 of this Act for each month or fraction of a month, such the interest to begin to accrue thirty days after the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if such the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by ~~means of~~ warrants drawn by the comptroller at the direction of the director, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is ~~hereby~~ appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

Sec. 5. Section 422.16, subsection 10, paragraph b, Code 1981, is amended to read as follows:

b. Any employer or withholding agent required under ~~the provisions of~~ this chapter to withhold taxes on wages or other taxable Iowa income subject to this chapter who fails to file a monthly deposit form or quarterly return for the withholding of tax with the department ~~of revenue~~ on or before the due date, unless it is shown that the failure was due to reasonable cause, ~~shall be~~ is subject to a penalty determined by adding to the amount required to be shown as tax due on the monthly deposit form or quarterly return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. If any person or withholding agent fails to remit the tax due with the filing of the monthly deposit form or quarterly return on or before the due date, or fails to pay any amount of any tax required to be shown on the monthly deposit form or quarterly return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent of the amount of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. When penalties are applicable for failure to file a monthly deposit form or quarterly return and failure to pay the tax due or required on the monthly deposit form or quarterly return, the penalty provision for failure to file ~~shall be~~ is in lieu of the penalty provision for failure to pay the tax due or required on the monthly deposit form or quarterly return. The taxpayer shall also pay interest on the tax or additional tax at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or quarterly return was required to be filed. The penalty and interest ~~shall~~ become a part of the tax due from the withholding agent.

Sec. 6. Section 422.16, subsection 11, paragraph e, Code 1981, is amended to read as follows:

e. Any amount of tax paid on a declaration of estimated tax shall be a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9 hereof, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under the provisions of section 422.5, to and including section 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and ~~such~~ the return shall constitute a claim for refund for this purpose. Amounts less than one dollar shall be refunded to the taxpayer only upon written application in accordance with section 422.74, but only if ~~such~~ the application is filed within twelve months after the due date for the return. The method provided by the Internal Revenue Code of 1954 for determining what ~~shall--be~~ is applicable to the addition to tax for underpayment of the tax payable ~~shall--apply~~ applies to persons required to file declarations and make payments of estimated tax under ~~the-provisions-of~~ this section except the amount to be added to the tax for underpayment of estimated tax shall be an amount determined at the rate ~~of-three-fourths-of one-percent-per-month~~ in effect under section 1 of this Act. This addition to tax specified for underpayment of the tax payable ~~shall~~ is not be subject to waiver provisions relating to reasonable cause. Underpayment of estimated tax shall be determined in the same manner as provided under ~~the--provisions of~~ the Internal Revenue Code of 1954 and the exceptions therein ~~provided shall~~ also apply.

Sec. 7. Section 422.24, subsection 2, Code 1981, is amended to read as follows:

2. When, at the request of the taxpayer, the time for filing the return is extended, interest at the rate ~~of-three-fourths--of--one--percent--per~~ in effect under section 1 of this Act for each month counting each fraction of a month as an entire month, on the total tax due, from the time when the return was required to be filed to the time of payment, shall be added and paid.

Sec. 8. Section 422.25, subsections 2 and 3, Code 1981, are amended to read as follows:

2. In addition to the tax or additional tax as determined by the department under ~~the-provisions-of~~ subsection 1 ~~of-this-section~~, the taxpayer shall pay interest on the tax or additional tax at the rate ~~of-three-fourths of-one-percent-per~~ in effect under section 1 of this Act for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In case of failure to file a return with the department on or before the due date (determined with regard to any extension of time for filing), unless it is shown that the failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, unless it is shown that the failure was due to reasonable cause, there shall be added to the tax a penalty of five percent

of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty ~~above~~ otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return fifty percent of the amount of the tax. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file ~~shall be~~ is in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.

3. If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest after thirty days from the date of payment or the date the return was due to be filed, whichever is the later at the rate ~~of three-fourths of one percent per month~~ in effect under section 1 of this Act counting each fraction of a month as an entire month under the rules prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment, for purposes of computing interest on refunds, shall be considered as having been made at the close of the taxable year in which the net operating loss or net capital loss occurred or thirty days from the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carry back to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

Sec. 9. Section 422.28, Code 1981, is amended to read as follows:

422.28 REVISION OF TAX. A taxpayer may appeal to the director for revision of the tax, interest or penalties assessed ~~against him~~ at any time within ninety days from the date of the notice of the assessment of tax, additional tax, interest or penalties. The director shall grant a hearing and if, upon the hearing, the director ~~shall determine~~ determines that the tax, interest or penalties are excessive or incorrect, the director shall revise them according to the law and the facts and adjust the computation of the tax, interest or penalties accordingly. The director shall notify the taxpayer by registered mail of the result of the hearing and shall refund to the taxpayer the amount, if any, paid in excess of the tax, interest or penalties found by the director to be due, with interest after sixty days from the date of payment by the taxpayer at the rate ~~of three-fourths of one percent--per~~ in effect under section 1 of this Act for each month or a fraction of a month. The director may, on his or her own motion at any time, abate any portion of tax, interest or penalties which ~~he~~ the director determines is excessive in amount, or erroneously or illegally assessed. The

director shall prepare quarterly reports, which shall be included in the annual statistical reports required under section 422.75, summarizing each case in which an abatement of tax, interest or penalties was made under this section, but ~~the~~ a report shall not disclose the identity of the taxpayer.

Sec. 10. Section 422.58, subsection 1, Code 1981, is amended to read as follows:

1. If any person fails to file a permit ~~holders~~ holder's monthly tax deposit or a return with the department of revenue on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the monthly tax deposit or return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. If any person or permit holder fails to remit at least ninety percent of the tax due with the filing of the monthly tax deposit or return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five percent of the amount of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month the failure continues, not exceeding twenty-five percent in the aggregate, unless it is shown that the failure was due to reasonable cause. In case of willful failure to file a return, willful filing of a false return or willful filing of a false or fraudulent return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return fifty percent of the amount of the tax. When penalties are applicable for failure to file a monthly tax deposit or return and failure to pay at least ninety percent of the tax due or required on the monthly tax deposit or return, the penalty provision for failure to file ~~shall be~~ is in lieu of the penalty provision for failure to pay at least ninety percent of the tax due or required on the monthly tax deposit or return. The taxpayer shall also pay interest on the tax or additional tax at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month counting each fraction of a month as an entire month, computed from the date the monthly tax deposit or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division.

Sec. 11. Section 423.18, subsection 1, Code 1981, is amended to read as follows:

1. If a person fails to file a return with the department on or before the due date, unless it is shown that the failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or

fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate. If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five percent of the tax due, if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate, unless it is shown that the failure was due to reasonable cause. In case of willful failure to file a return, willfully filing a false return, or willfully filing a false or fraudulent return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return fifty percent of the amount of the tax. When penalties are applicable for failure to file a return and failure to pay at least ninety percent of the tax due or required on the return, the penalty provision for failure to file is in lieu of the penalty provision for failure to pay at ~~last~~ least ninety percent of the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

Sec. 12. Section 435.4, Code 1981, is amended to read as follows:

435.4 PAYMENT OF TAX. The tax due shall be paid in full and shall accompany the return required to be filed by section 435.3. If payment does not accompany the return or payment is not in the amount shown due and payable on the return, the company ~~shall be~~ is subject to interest at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month or fraction thereof on the balance due.

Sec. 13. Section 435.6, unnumbered paragraph 1, Code 1981, is amended to read as follows:

The department ~~shall have~~ has three years from the time the return was filed or after the return became due, including any extensions of time for filing, whichever time is the later, to audit the return and determine its accuracy. If it is shown by the audit that additional tax is due, interest at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month or fraction thereof shall be added to the additional tax shown to be due.

Sec. 14. Section 435.6, unnumbered paragraph 4, Code 1981, is amended to read as follows:

If it is shown that an overpayment was made, interest at the rate ~~of three-fourths of one percent per~~ in effect under section 1 of this Act for each month or fraction thereof shall be added to the overpayment with interest commencing sixty days after the date of payment.

Sec. 15. Section 450.6, Code 1981, is amended to read as follows:

450.6 ACCRUAL OF TAX--MATURITY--EXTENSION OF TIME. The tax hereby imposed ~~shall--be--for--the--use--of--the--state,~~ shall accrue by this chapter accrues at the death of the decedent owner, and shall be paid to the department of revenue within twelve months after the death of the decedent owner except when otherwise provided in this chapter. When in the opinion of the director of revenue additional time should be granted for payment to avoid hardship, the director may extend the period to a date not exceeding ten years from the date of death of the decedent. In the case of any such extension the tax shall bear ~~six-percent~~ interest at the rate in effect under section 1 of this Act from the expiration of twelve months from the date of the decedent's death.

Sec. 16. Section 450.63, subsection 1, Code 1981, is amended to read as follows:

1. ~~All--taxes--imposed--by--this--chapter--shall--be--payable--to--the--department--of--revenue--and--except--when--otherwise--provided--in--this--chapter,~~ shall be paid within twelve months from the death of the testator or intestate. All taxes not paid within the time prescribed in this chapter ~~shall be~~ are subject to a penalty as provided in subsection 2 and shall draw interest ~~at the rate of eight-percent-per-annum~~ thereafter at the rate in effect under section 1 of this Act until paid.

Sec. 17. Section 450.94, subsection 3, Code 1981, is amended to read as follows:

3. If the amount paid is greater than the correct tax, penalty and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at ~~six-percent-per-annum~~ the rate in effect under section 1 of this Act, under the provisions of rules prescribed by the director. However, the director shall not allow a claim for refund or credit that has not been filed with the department within five years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is the later. A determination by the department of the amount of tax, penalty and interest due, or the amount of refund for excess tax paid, ~~shall be~~ is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within ninety days from the postmark date of the notice of determination of tax, penalty and interest due or refund owing. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty and interest or refund due, and notify the appellant of the decision by certified mail. The decision of the director ~~shall--be~~ is final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the postmark date of the notice of the director's decision.

Sec. 18. Section 450A.9, Code 1981, is amended to read as follows:

450A.9 DELINQUENT RETURNS. If the tax imposed by this chapter is not paid within the time prescribed by law, the tax ~~shall be deemed~~ is delinquent and shall draw interest ~~at the rate of eight-percent-per-annum~~ thereafter at the rate in effect under section 1 of this Act until paid.