

twenty days' notice by certified mail to the commission and the principal. ~~In no event, shall the~~ The liability of the surety on ~~any a~~ bond required by section 543.12 does not accumulate for each successive license period during which the bond is in force. The liability of the surety ~~shall be is~~ limited in the aggregate to the face amount of the bond.

Sec. 6. Section 543.15, unnumbered paragraph 1, Code 1985, is amended to read as follows:

All agricultural products in storage in a licensed warehouse, or in a warehouse operated under temporary permit as provided in this chapter, and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouse operator for the current value of ~~such~~ the agricultural products against loss by fire, inherent explosion, or windstorm. ~~Such~~ The insurance shall be carried in an insurance company or companies authorized to do business in this state, and evidence of ~~such~~ the insurance coverage in a form ~~to be~~ approved by the commission shall be filed with the commission. ~~No~~ An insurance policy shall not be canceled by the insurance company on less than ~~fifteen~~ sixty days' notice by certified mail to the commission and the principal unless ~~such~~ the policy is being replaced with another policy and evidence of the new policy is filed with the commission at the time of cancellation of the policy on file. ~~Such~~ The insurance shall be provided by, and carried in the name of, the warehouse operator. Claimants against ~~such~~ the insurance shall have precedence in the following order:

Sec. 7. The legislature finds that there is an emergency condition confronting grain dealers and warehouse operators, as the availability of the bonding necessary for licensure has become extremely limited. Therefore, this bill applies to sureties which issue a notice of cancellation of a grain dealer's or warehouse operator's bond on or after the effective date of this Act, and applies to licensed grain dealers and licensed warehouse operators whose sureties issue a notice of bond cancellation on or after the effective date of this Act.

Sec. 8. This bill*, being deemed of immediate importance, takes effect from and after its publication in The Algona Upper Des Moines, a newspaper published in Algona, Iowa, and in the Audubon News-Advocate, a newspaper published in Audubon, Iowa.

Approved February 10, 1986

I hereby certify that the foregoing Act, Senate File 2064, was published in The Algona Upper Des Moines, Algona, Iowa on February 19, 1986 and in the Audubon News-Advocate, Audubon, Iowa on February 19, 1986.

MARY JANE ODELL, *Secretary of State*

CHAPTER 1007
IOWA TAX AMNESTY ACT
H.F. 764

AN ACT relating to unpaid taxes, tax credits and enforcement of taxes administered by the department of revenue, making an appropriation, and providing civil and criminal penalties.

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

Section 1. Sections 1 through 4 of this Act may be cited as the "Iowa Tax Amnesty Act".

Sec. 2. DEFINITIONS. When used in sections 1 through 4 of this Act, unless the context otherwise requires:

1. "Department" means the department of revenue.

*According to enrolled Act

2. "Taxpayer" means a person, corporation or other entity subject to any tax imposed by a law of this state, payable to this state, and administered by the department pursuant to chapter 98, 324, 324A, 422, 422A, 423, 450, 450A, 450B, or 451.

3. "Director" means the director of the department.

Sec. 3. AMNESTY PROGRAM.

1. The director shall establish a tax amnesty program. The amnesty program shall apply to tax liabilities delinquent as of December 31, 1985, including tax on returns not filed, tax liabilities on the books of the department as of December 31, 1985, or tax liabilities not reported nor established but delinquent as of December 31, 1985. For a taxpayer who has a tax liability, the director shall accept cash, certified check, cashier's check or money order for the full amount of the tax liability.

2. The amnesty program shall be for a period from September 2, 1986 through October 31, 1986 for any tax liabilities which are delinquent as of December 31, 1985.

3. The amnesty program shall provide that upon written application by a taxpayer and payment by the taxpayer of amounts due from the taxpayer to this state for a tax covered by the amnesty program plus interest equal to fifty percent of the interest that would have been owed through December 31, 1985, the department shall not seek to collect any other interest or penalties which may be applicable and the department shall not seek civil or criminal prosecution for a taxpayer for the period of time for which amnesty has been granted to the taxpayer. Failure to pay all taxes delinquent as of December 31, 1985 and due to this state except those adjustments made pursuant to a federal audit completed after the effective date of this Act shall invalidate any amnesty granted pursuant to this Act. Amnesty shall be granted for only the taxable periods specified in the application and only if all amnesty conditions are satisfied by the taxpayer.

4. Amnesty shall not be granted to a taxpayer who is a party to an active criminal investigation or to a criminal litigation which is pending in a district court, the court of appeals, or the supreme court of this state for nonpayment or fraud in relation to any state tax imposed by a law of this state.

5. The director shall prepare and make available amnesty application forms which contain requirements for approval of an application. The director may deny any application inconsistent with sections 1 through 4 of this Act.

Sec. 4. Sections 1 through 3 of this Act are exempt from the rulemaking process of the Iowa administrative procedure Act.

Sec. 5. Section 98.13, subsection 2, Code 1985, is amended to read as follows:

2. ISSUANCE.

a. The department shall issue state permits to distributors, wholesalers, and cigarette vendors subject to the conditions provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities. Upon issuance of a retail permit by a city council or board of supervisors, the council or board shall forthwith certify to the department the action taken.

b. The department may deny the issuance of a permit to a distributor, wholesaler, vendor or retailer who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent on any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

Sec. 6. Section 98.22, subsection 1, Code 1985, is amended to read as follows:

1. If any a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated the provisions of section 98.2, the department shall revoke the permit issued the person upon notice and hearing. If the person violates any other provision of this division, or any a rule promulgated adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing shall be held in the county of the permit holder's place of business, or in a county in or through which it transacts business. The notice shall be given by mailing a copy by certified mail to the permit holder's place of business as the same it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

Sec. 7. Section 98.28, Code 1985, is amended to read as follows:

98.28 ASSESSMENT OF TAX BY DEPARTMENT — INTEREST — PENALTY.

If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed thereto as required by this division or that any person has failed to pay at least ninety percent of any tax imposed upon the person, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty of five seven and one-half percent of the amount of the tax, except as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed thereto. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it and determine the correct amount of tax.

Sec. 8. Section 98.29, Code 1985, is amended to read as follows:

98.29 NOTICE AND APPEAL.

The department shall notify any person assessed pursuant to section 98.28 by sending a written notice of such the determination and assessment by certified mail to the principal place of business of such the person as shown on the person's application for permit, if any, and in case no such application was filed by such the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of tax, penalty, and interest 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. Judicial review of action of the ~~department~~ director may be sought in accordance with the terms of the Iowa administrative procedure Act and section 422.29.

Sec. 9. Section 98.46, subsection 6, Code 1985, is amended to read as follows:

6. The director in issuing the final assessment pursuant to subsection 3 shall add to the amount of tax found due and unpaid a penalty of five seven and one-half percent of the tax if less than ninety percent of the tax has been paid, except as provided in section 421.27, except that, if the director finds that the taxpayer has made a false and fraudulent return with intent

to evade the tax imposed by this division, the penalty shall be fifty seventy-five percent of the entire tax as shown by the return as corrected. The director in assessing a tax on the basis of a return made pursuant to subsection 4 shall add to the amount of tax found due and unpaid a penalty of fifty seventy-five percent of the tax. The penalty imposed under this subsection is not subject to waiver.

Sec. 10. Section 324.4, unnumbered paragraph 2, Code 1985, is amended to read as follows:

A license shall not be issued if the applicant is a foreign corporation, unless it is at the time properly qualified under the laws of this state to do business ~~therein~~ in this state. The department may deny the issuance of a license to an applicant who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department of revenue. If the applicant is a partnership, a license may be denied if a partner owes any delinquent tax, penalty or interest. If the applicant is a corporation, a license may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

Sec. 11. Section 324.65, unnumbered paragraph 1, Code 1985, is amended to read as follows:

If a licensee or other person 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, there shall be added to the tax a penalty of five seven and one-half percent of the amount of the tax due, except as provided in section 421.27. The penalty imposed under this section is not subject to waiver. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed.

Sec. 12. Section 324.65, unnumbered paragraph 2, Code 1985, is amended to read as follows:

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 seventy-five percent of the tax due. Any report required of licensees or persons operating under divisions I, II and III, upon which no tax may be due, is subject to a penalty of ten dollars if the report is not timely filed with the appropriate state agency.

Sec. 13. Section 324.65, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a licensee or other person sells the licensee's or other person's business or stock of goods or quits the business, the licensee or other person shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the licensee or other person, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of any delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold any amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former licensee or other person, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this

paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

Sec. 14. Section 324.66, unnumbered paragraph 1, Code 1985, is amended to read as follows:

The appropriate state agency shall administer the taxes imposed by this chapter in the same manner as and subject to all the provisions of section 422.25, subsection 4 and section 422.52, subsection 3. Notwithstanding section 422.52, subsection 3, all special fuel licensees are required to file a bond with the director in an amount as established by the director.

Sec. 15. Section 324.68, unnumbered paragraph 1, Code 1985, is amended to read as follows:

If a licensee files a false report of the data or information required by this chapter, or fails, refuses, or neglects to file a report required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing and administered by the department of revenue, and interest and penalty if appropriate, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by registered mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown by a preponderance of the evidence that the failure to correctly report or pay was with intent to evade the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by registered mail to the licensee's last known address.

Sec. 16. Section 421.7, subsection 2, Code 1985, is amended to read as follows:

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.

Sec. 17. Section 421.7, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 7. If a person files a purported return of tax which does not contain information on which the substantial correctness of the self-assessment may be judged or which contains information that on its face indicates that the self-assessment is substantially incorrect and the conduct previously referred to in this paragraph is due to a position which is frivolous or a desire which appears on the purported return to delay or impede the administration of the tax laws of this state, then the person shall pay a penalty of five hundred dollars. This penalty shall be in addition to any other penalty provided by law.

Sec. 18. Section 421.17, Code Supplement 1985, is amended by adding the following new subsection:

NEW SUBSECTION. For any contested case, as defined in section 17A.2, commenced on or after the effective date of this Act, the person disputing the assessment must pay all tax, interest and penalty pertaining to the disputed assessment prior to the commencement of the contested case. Upon a showing of good cause, the hearing officer shall allow the person to post a bond in an amount established by the hearing officer, but not in excess of all tax, interest, and penalty, in lieu of paying all tax, interest and penalty.

The director shall adopt rules establishing procedures for payment of taxes under protest. If it is finally determined that the tax is not due in whole or in part, the department shall refund the part of the tax payment which is determined not to be due together with interest on the amount of the refund at the rate as determined under section 421.7.

Sec. 19. NEW SECTION. 421.26 LIABILITY FOR TAX DUE.

If a licensee or other person under section 324.65, a retailer or purchaser under section 422.52, or a retailer or purchaser under section 423.13 fails to pay a tax under those sections when due, any officer of a corporation or association, or any partner of a partnership, having control or supervision of or the authority for remitting the tax payments and having a substantial legal or equitable interest in the ownership of the corporation or partnership, who has intentionally failed to pay the tax is personally liable for the payment of the tax, interest and penalty due and unpaid. However, this section shall not apply to taxes on accounts receivable. The dissolution of a corporation, association or partnership shall not discharge a person's liability for failure to remit the tax due.

Sec. 20. NEW SECTION. 421.27 EXCEPTIONS FROM PENALTY PROVISIONS.

The penalty provided for failure to remit at least ninety percent of the tax due or of the tax due with the filing of the deposit form or return or to pay at least ninety percent of the tax required to be shown on the return under section 98.28, 98.46, 324.65, 422.16, 422.25, 422.58, 422.66, 423.18, 435.5, 450.63, 450A.12, or 451.12 shall not be assessed by the department under any of the following conditions:

1. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department.
2. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return within sixty days of the final disposition of the federal government's audit.
3. The return is timely, but erroneously, mailed with adequate postage to the internal revenue service or another state agency and the taxpayer provides proof of timely mailing with adequate postage.
4. The return is timely mailed with adequate postage to the department of revenue and the taxpayer provides proof of timely mailing with adequate postage.
5. The taxpayer presents proof that the taxpayer relied upon documented written erroneous advice from the department, county treasurer, or federal internal revenue service, whichever is appropriate.

Sec. 21. NEW SECTION. 421.28 EXCEPTIONS TO SUCCESSOR LIABILITY.

The immediate successor to a licensee's or retailer's business or stock of goods under section 324.65, 422.52, or 423.13 is not personally liable for the amount of delinquent tax, interest, or penalty due and unpaid if the immediate successor shows that the purchase of the business or stock of goods was made in good faith that no delinquent tax, interest, or penalty was due and unpaid. For purposes of this section the immediate successor shows good faith by evidence that no tax liens were filed, that the department had informed the immediate successor that no delinquent tax, interest, or penalty is unpaid, or that the immediate successor had taken in good faith a certified statement from the licensee or retailer that no delinquent tax, interest, or penalty is unpaid. When requested to do so by a person with whom the licensee or retailer is negotiating the sale of the business or stock of goods, the director of revenue shall, upon being satisfied that such a situation exists, inform that person as to the amount of unpaid delinquent tax, interest, or penalty due by the licensee or the retailer. The giving of the information under this circumstance is not a violation of section 324.63, 422.20, or 422.72.

Sec. 22. Section 422.10, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state. For individuals, the credit shall equal six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. For purposes of this section, an individual may claim a research credit for qualifying research expenditures incurred by a partnership, subchapter S corporation, and estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, subchapter S corporation, or estate or trust. For purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities computed which would be allowable under section 30 of the Internal Revenue Code of 1954, as amended to and including in effect on January 1, 1983 1985. The research activities credit is applicable for taxable years beginning after December 31, 1985 to the same extent that the credit is applicable for federal income tax purposes for taxable years beginning after December 31, 1985.

Sec. 23. Section 422.16, subsection 10, paragraph b, unnumbered paragraph 1, Code 1985, is amended to read as follows:

If any person or withholding agent fails to remit at least ninety percent of the tax due with the filing of the semimonthly, monthly, or quarterly deposit form on or before the due date, or pays less than ninety percent of any tax required to be shown on the semimonthly, monthly, or quarterly deposit form, there shall be added to the tax a penalty of ~~ten~~ fifteen percent of the amount of the tax due, except as provided in section 421.27.

Sec. 24. Section 422.16, subsection 10, paragraph b, unnumbered paragraph 2, Code 1985, is amended to read as follows:

In the case of willful failure to file a semimonthly, monthly, or quarterly deposit form with intent to evade tax or willful filing of a false semimonthly, monthly, or quarterly deposit form with intent to evade tax, in lieu of the penalty otherwise provided in this paragraph, there is added to the amount required to be shown as tax on the semimonthly, monthly, or quarterly deposit form, ~~fifty~~ seventy-five percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent. The penalty imposed under this subsection is not subject to waiver.

Sec. 25. Section 422.16, subsection 14, Code 1985, is amended to read as follows:

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require a ~~nonresident~~ an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in ~~such~~ an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon ~~any such~~ a sale, any surplus above the amounts due under this section shall be returned to the ~~nonresident~~ employer or withholding agent who deposited the securities.

Sec. 26. Section 422.25, subsection 2, Code 1985, is amended to read as follows:

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If any person 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, there shall be added to the tax a penalty of five seven and one-half percent of the tax due, except as provided in section 421.27. 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 otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the return fifty seventy-five percent of the amount of the tax. The penalty imposed under this subsection is not subject to waiver.

Sec. 27. Section 422.28, Code 1985, 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 at any time within ~~ninety~~ thirty 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 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 in effect under section 421.7 for each month or a fraction of a month. The director may, on the director's own motion at any time, abate any portion of tax, interest or penalties which 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 a report shall not disclose the identity of the taxpayer.

Sec. 28. Section 422.33, subsection 5, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures. For purposes of this subsection, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities ~~computed which would be allowable under section 30 of the Internal Revenue Code of 1954, as amended to and including in effect on January 1, 1983~~ 1985. The research activities credit is applicable for taxable years beginning after December 31, 1985 to the same extent that the credit is applicable for federal income tax purposes for taxable years beginning after ~~December 31, 1985~~.

Sec. 29. Section 422.47, subsection 3, paragraph b, Code 1985, is amended to read as follows:

b. The sales tax liability for all sales of tangible personal property and all sales of services ~~shall be~~ is upon the seller and the purchaser unless the seller takes in good faith from the purchaser a valid exemption certificate stating under penalties for perjury that the purchase is for resale or for processing and is not a retail sale as defined in section 422.42, subsection 3. ~~Where~~ If the tangible personal property or services are purchased tax free pursuant to a

valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser shall be is solely liable for the taxes and shall remit said the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to such the purchaser.

Sec. 30. Section 422.52, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 6. a. If a purchaser fails to pay tax imposed by this division to the retailer required to collect the tax, then in addition to all of the rights, obligations and remedies provided, the tax is payable by the purchaser directly to the department, and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the purchaser. For failure, the retailer and purchaser are liable, unless the circumstances described in subsections* 422.47, subsection 3, paragraphs "b" and "e" are applicable.

b. If any retailer subject to this division sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

c. A person sponsoring a flea market, or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest and penalty due and owing from any retailer selling property or services at the event. Sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the sponsors. For purposes of this paragraph a person sponsoring a flea market, or a craft, antique, coin or stamp show or similar event does not include an organization which sponsors an event less than three times a year or a state, county or district agricultural fair.

Sec. 31. Section 422.53, subsections 2 and 5, Code 1985, are amended to read as follows:

2. The applicant must have a permit for each place of business. The department may deny a permit to an applicant who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty or interest of the applicant corporation.

5. If the holder of a permit fails to comply with any of the provisions of this division or any orders or rules of the department adopted under this division or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director upon hearing after giving ten days' notice of the time and place of the hearing to show cause why the permit

*Section probably intended

should not be revoked, may revoke the permit. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a retailer must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

Sec. 32. Section 422.58, subsection 1, Code 1985, is amended to read as follows:

1. If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the semimonthly or monthly tax deposit form 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 ~~ten~~ fifteen percent of the amount of the tax due, except as provided in section 421.27. In case of willful failure to file a semimonthly or monthly tax deposit form or return, willful filing of a false semimonthly or monthly tax deposit form or return or willful filing of a false or fraudulent semimonthly or monthly tax deposit form or 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 semimonthly or monthly tax deposit form or return fifty seventy-five percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form 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. The penalty imposed under this subsection is not subject to waiver.

Sec. 33. Section 422.58, subsection 2, Code 1985, is amended to read as follows:

2. a. Any person who ~~shall~~ knowingly ~~sell~~ sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or ~~engage~~ engages in the rendering, furnishing, or performing of services enumerated in section 422.43, in this state without procuring a permit, as provided in section 422.53, or who ~~shall violate the provisions of~~ violates section 422.49, and the officers of any corporation who ~~shall so act, shall be~~ acts is guilty of a ~~simple~~ serious misdemeanor.

b. Any A person who ~~shall~~ knowingly ~~sell~~ sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or ~~engage~~ engages in the rendering, furnishing, or performing of services enumerated in section 422.43, in this state after the person's license ~~shall have~~ has been revoked and before it has been restored as provided in section 422.53, subsection 5 and the officers of any corporation who ~~shall so act shall be~~ are guilty of a ~~serious~~ an aggravated misdemeanor.

Sec. 34. Section 423.9, unnumbered paragraph 1, Code 1985, is amended to read as follows:

Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under ~~the provisions of~~ section 423.4 nor collectible under ~~the provisions of~~ section 423.7, shall at the time of making ~~such~~ the sales, whether within or without the state, collect the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt ~~therefor~~ for the tax in the manner and form prescribed by the director, if the director ~~shall, by regulation, require such~~ rules requires a receipt. Each such retailer shall list with the department the name and address of all the retailer's agents operating in this state, and the location of ~~any and~~ all the retailer's distribution or sales houses or offices or other places of business in this state. The department may deny the issuance of a permit to a retailer who is substantially delinquent in paying a tax due,

or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner owes any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty or interest of the applicant corporation.

Sec. 35. Section 423.13, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a retailer sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

Sec. 36. Section 423.18, subsection 1, Code 1985, is amended to read as follows:

1. If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the monthly deposit form or return on or before the due date, or pays less than ninety percent of any tax required to be shown on the monthly deposit form or 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 seven and one-half~~ five seven and one-half percent of the tax due, except as provided in section 421.27. For tax due under section 423.9, the penalty shall be ten percent. In case of willful failure to file a monthly deposit form or return, willfully filing a false monthly deposit form or return, or willfully filing a false or fraudulent monthly deposit form or 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 monthly deposit form or return ~~fifty seventy-five~~ fifty seven percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form 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 chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The penalty imposed under this subsection is not subject to waiver.

Sec. 37. Section 423.22, Code 1985, is amended to read as follows:
423.22 REVOKING PERMITS.

~~Whenever any~~ If a retailer maintaining a place of business in this state, or authorized to collect the tax ~~herein~~ imposed pursuant to section 423.10, fails to comply with any of the provisions of this chapter or any orders or rules prescribed and adopted under this chapter, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director may, upon notice and hearing as ~~hereinafter~~ provided, by order

revoke the permit, if any, issued to such the retailer under section 422.53, or if such the retailer is a corporation authorized to do business in this state under chapter 494, may certify to the secretary of state a copy of an order finding that such the retailer has failed to comply with certain specified provisions, orders or rules. The secretary of state shall, upon receipt of such the certified copy, revoke the permit authorizing said the corporation to do business in this state, and shall issue a new permit only when such the corporation shall have has obtained from the director an order finding that such the corporation has complied with its obligations under this chapter. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such the order should not be made, and the retailer shall be given ten days' notice of the time, place, and purpose of such the hearing. The director may issue a new permit pursuant to section 422.53 after such revocation. The preceding provision shall apply applies to users and persons supplying services enumerated in section 422.43.

Sec. 38. Section 435.5, Code 1985, is amended to read as follows:
435.5 PENALTY.

If any person 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 the total amount of the tax due as shown on the return, there shall be added to the tax a penalty of five seven and one-half percent of the tax due, except as provided in section 421.27. 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 provided, there shall be added to the amount required to be shown as tax on the return fifty seventy-five percent of the amount of the tax. The penalty imposed under this section is not subject to waiver.

Sec. 39. Section 450.63, subsection 2, Code 1985, is amended to read as follows:

2. If a person liable for the payment of tax as stated in section 450.5 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, there shall be added to the tax a penalty of five seven and one-half percent of the amount of the tax due, except as provided in section 421.27. The penalty imposed under this subsection is not subject to waiver.

Sec. 40. Section 450.94, subsection 3, Code 1985, 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 the rate in effect under section 421.7, under the 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 three 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, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within ninety thirty 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 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. 41. Section 805.8, subsection 2, paragraph p, Code Supplement 1985, is amended by striking the paragraph.

Sec. 42. There is appropriated from the general fund of the state to the department of revenue for the fiscal year beginning July 1, 1985 and ending June 30, 1986 the sum of two

hundred fifty thousand (250,000) dollars or so much thereof as necessary, to be used to administer this Act. *There is also appropriated for the purpose of increasing the auditing and enforcement activities of the department, not to exceed an additional thirty-six full-time equivalent positions, the sum of one million (1,000,000) dollars, or so much thereof as is necessary.* The department shall report the gross revenue collected under each tax pursuant to the amnesty program as soon as practicable after the close of the amnesty period but prior to February 1, 1987. The department shall also report its estimates of the additional revenue collected as a result of any increase in auditing and enforcement activities provided for under this appropriation. Notwithstanding section 8.33, moneys remaining of the appropriation under this section on June 30, 1986 shall not revert to the general fund.

Sec. 43. It is the intent of the general assembly in enacting the Iowa tax amnesty Act that the general assembly and the state shall not conduct another tax amnesty program prior to January 1, 2000.

Sec. 44. Sections 22 and 28 of this Act are retroactive to January 1, 1986 for tax years beginning on or after that date.

Sec. 45. Sections 5, 6, 7, 9, 10, 11, 12, 14, 15, 17, 20, 23, 24, 25, 26, 29, 31, 32, 34, 36, 37, 38, and 39 are effective January 1, 1987 for taxes due and payable on or after that date.

Sec. 46. Sections 8, 18, 27, and 40 are effective January 1, 1987 for assessments made on or after that date.

Sec. 47. This Act, except for sections 5 through 12, 14, 15, 17, 18, 20, 22, 23 through 29, 31, 32, 34, and 36 through 40, being deemed of immediate importance, takes effect from and after its publication in The Nevada Evening Journal, a newspaper published in Nevada, Iowa, and in The Toledo Chronicle, a newspaper published in Toledo, Iowa.

Approved February 14, 1986, except the item which I hereby disapprove and which is designated as that portion of section 42 which is herein bracketed in ink and initialed by me. My reasons for vetoing this item are delineated in the item veto message pertaining to this Act to the Speaker of the House of Representatives this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, Governor

I hereby certify that the foregoing Act, House File 764, was published in The Nevada Evening Journal, Nevada, Iowa, on March 11, 1986, and in The Toledo Chronicle, Toledo, Iowa, on March 12, 1986.

MARY JANE ODELL, Secretary of State

*Item veto; see message at end of this Act

Dear Mr. Speaker:

I hereby transmit House File 764, an Act relating to unpaid taxes, tax credits and enforcement of taxes administered by the department of revenue, making an appropriation, and providing civil and criminal penalties.

House File 764 is approved February 14, 1986, with the following exception which I hereby disapprove.

I am unable to approve the item designated in Section 42, which reads as follows:

There is also appropriated for the purpose of increasing the auditing and enforcement activities of the department, not to exceed an additional thirty-six full-time equivalent positions, the sum of one million (1,000,000) dollars, or so much thereof as is necessary.

House File 764 establishes a tax amnesty program. The tax amnesty program will run from September 2, through October 31 of this year. The bill also provides for stiffer penalties for tax evaders following the amnesty period. An appropriation of \$250,000 is provided to the Department of Revenue to administer the program and an additional \$1,000,000 is appropriated in this fiscal year to hire up to an additional 36 tax collection agents.

The tax amnesty program is projected to provide the state with up to \$5,000,000 in additional revenue which was projected in the FY '87 budget. In addition, the tax evasion penalties and the \$250,000 appropriation are provided in order to successfully implement the amnesty program.

However, the \$1,000,000 appropriated by the General Assembly this fiscal year is untimely, unnecessary and excessive spending. Although appropriated this year, the funds could not be spent until after the amnesty period — that is next fiscal year. Although a carryover of the funds is provided for, this appropriation would needlessly threaten to place the state's budget in the red this year.

Moreover, the budgets for both FY '86 and '87 fiscal years are extremely tight, with little discretionary funds available for additional expenditures. I question the need for an additional 36 revenue agents at a time when the state is working to reduce its payroll by over 960 positions.

I understand that other states have put in place additional revenue collection capabilities following an amnesty period. The stiffer tax evasion penalties in the bill should help with the enforcement effort. Reallocation may also be necessary to provide needed assistance to the Department. And I have indicated to legislators that I am willing to consider a modest appropriation to the Department in FY '87, if it can be done without putting the budget in the red.

For the above reasons, I hereby respectfully disapprove of this item in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 764 are hereby approved as of this date.

TERRY E. BRANSTAD, *Governor*