

CHAPTER 83**MISCELLANEOUS STATE AND LOCAL TAX PROVISIONS***H.F. 554*

AN ACT relating to state and local taxes including appeals of department of revenue and finance actions, the prohibition of unconstitutional or illegal tax collections, assessment procedures pertaining to amended returns, corporate income tax rates, sales tax on test laboratory services, collection of sales tax by out-of-state retailers, interest accrual on sales and use tax refunds, sales tax permit denial for delinquent taxes, bonding provisions for sales tax and environmental protection charge contested case decisions, costs associated with contested case hearings, penalty for underpayment of corporation income and franchise taxes, services subject to use tax, penalty for underpayment of use tax, the repeal of obsolete property tax provisions, and imposition of the drug excise tax on unprocessed marijuana plants and providing effective and applicability date provisions.

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

Section 1. Section 421.10, Code 1995, is amended to read as follows:

421.10 APPEAL PERIOD – DENIAL OF TAXPAYER’S CLAIM.

The appeal period for revision of assessment of tax, interest, and penalties set out under section 422.28, 422.54, 452A.64, 453A.29, or 453A.46 applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section, and notices of any department action directed to a specific taxpayer, other than licensing, which involves a calculation.

Sec. 2. Section 421.60, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 10. **ILLEGAL TAX.** A tax shall not be collected by the department if it is prohibited under the Constitution of the United States or laws of the United States, or under the Constitution of the State of Iowa.

Sec. 3. Section 422.25, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 11. If a taxpayer files an amended return within sixty days prior to the expiration of the applicable period of limitations described in subsection 1, the department has sixty days from the date of receipt of the amended return to issue an assessment for any applicable tax, interest, or penalty.

Sec. 4. Section 422.33, subsection 1, unnumbered paragraph 2, Code 1995, is amended to read as follows:

“Income from sources within this state” means income from real, ~~or~~ tangible, or intangible property located or having a situs in this state.

Sec. 5. Section 422.43, subsection 11, unnumbered paragraph 1, Code 1995, is amended to read as follows:

The following enumerated services are subject to the tax imposed on gross taxable services: alteration and garment repair; armored car; vehicle repair; battery, tire and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property, except mobile homes which are tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage

and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxi-dermy services; telephone answering service; test laboratories, ~~except including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals~~; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening.

Sec. 6. Section 422.43, subsection 12, Code 1995, is amended by striking the subsection.

Sec. 7. Section 422.45, subsection 7, paragraph b, Code 1995, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

Sec. 8. Section 422.53, subsection 2, Code 1995, is 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.~~

Sec. 9. Section 422.55, subsection 2, Code 1995, is amended by striking the subsection and inserting in lieu thereof the following:

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

Sec. 10. Section 422.70, subsection 2, Code 1995, is amended to read as follows:

2. Where the director finds the taxpayer has made a fraudulent return, the costs of said any hearing, including a contested case hearing, shall be taxed to the taxpayer. In all other cases the costs shall be paid by the state.

Sec. 11. Section 422.88, subsections 2 and 3, Code 1995, are amended to read as follows:

2. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax was equal to eighty ninety percent

of the tax shown on the return of the taxpayer for the taxable year over ~~any~~ the amount of installments paid on or before the date prescribed for payment.

3. If the taxpayer did not file a return during the taxable year, the amount of the underpayment shall be equal to ~~eighty~~ ninety percent of the taxpayer's tax liability for the taxable year over ~~any~~ the amount of installments paid on or before the date prescribed for payment.

Sec. 12. Section 422.89, subsection 3, unnumbered paragraph 1, Code 1995, is amended to read as follows:

An amount equal to ~~eighty~~ ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

Sec. 13. Section 422B.8, unnumbered paragraph 1, Code 1995, is amended to read as follows:

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax and may not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of natural gas or electric energy in a city or county where the gross receipts are subject to a franchise fee or user fee during the period the franchise or user fee is imposed, ~~on the gross receipts upon which sales tax is imposed only under section 422.43, subsection 12,~~ on the gross receipts from the sale of equipment by the state department of transportation, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

Sec. 14. Section 423.1, subsection 7, Code 1995, is amended to read as follows:

7. "Retailer" means and includes every person engaged in the business of selling tangible personal property or services enumerated in section 422.43 for use within the meaning of this chapter; ~~provided, however, that. However,~~ when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of ~~such~~ those dealers, distributors, supervisors, employers, or persons, the director may ~~so~~ regard them and ~~may regard~~ the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

Sec. 15. Section 423.18, subsections 2 and 3, Code 1995, are amended to read as follows:

2. A person who willfully attempts in any manner to evade a tax imposed by this chapter or the payment of ~~ninety percent~~ of the tax, or a person who makes or causes to be made any false or fraudulent monthly deposit form or return with intent to evade the tax imposed by this chapter or the payment of ~~ninety percent~~ of the tax is guilty of a class "D" felony.

3. A person required to pay tax, or to make, sign or file a monthly deposit form or return, who willfully makes a false or fraudulent monthly deposit form or return, or who

willfully fails at the time required by law to pay at least ninety percent of the tax or fails to make, sign or file the monthly deposit form or return, is guilty of a fraudulent practice.

Sec. 16. Section 423.21, Code 1995, is amended to read as follows:

423.21 BOOKS – EXAMINATION.

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, services, or the product of services shall keep ~~such~~ those records, receipts, invoices, and other pertinent papers as the director shall require, in ~~such~~ the form as that the director shall require. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or services or liable for the tax imposed by this chapter, and investigate the character of the business of any ~~such~~ person in order to verify the accuracy of any return made, or if ~~no~~ a return was not made by ~~such~~ the person, ascertain and determine the amount due under ~~the provisions of this chapter.~~ Any such These books, papers, and records shall be made available within this state for ~~such~~ examination upon reasonable notice when the director shall deem it advisable and shall so order. The preceding requirements shall likewise apply to users and persons rendering, furnishing, or performing service enumerated in section 422.43.

Sec. 17. Section 423.25, Code 1995, is amended to read as follows:

423.25 TAXATION IN ANOTHER STATE.

If any person who causes tangible personal property to be brought into this state or who uses in this state services enumerated in section 422.43 has already paid a tax in another state in respect to the sale or use of the property or the performance of the service, or an occupation tax in respect to the property, in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate fixed in this title and the rate by which the previous tax on the sale or use, or the occupation tax, was computed. If the tax imposed and paid in the other state is equal to or more than the tax imposed by this title, then ~~no~~ a tax is not due in this state on the personal property or service.

Sec. 18. Section 424.13, subsection 2, Code 1995, is amended by striking the subsection and inserting in lieu thereof the following:

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

Sec. 19. Section 427.1, subsections 5, 14, 18, 19, and 22, Code 1995, are amended by striking the subsections.

Sec. 20. Section 428.1, unnumbered paragraph 1, Code 1995, is amended to read as follows:

Every ~~inhabitant of this state, of full age and sound mind,~~ person shall list for the assessor all property subject to taxation in the state, of which the ~~inhabitant~~ person is the owner, or has the control or management, in the following manner herein directed:

Sec. 21. Section 428.23, Code 1995, is amended to read as follows:

428.23 MANUFACTURER TO LIST.

Corporations organized ~~under the laws of this state~~ for pecuniary profit and engaged in manufacturing as defined in section 428.20 shall list their real property in the same manner as is required of individuals.

Sec. 22. Section 428.37, subsection 2, unnumbered paragraph 1, Code 1995, is amended to read as follows:

Notwithstanding ~~sections section~~ section 428.25 ~~and 428.27~~, the taxable value of an electric power generating plant placed in commercial service after December 31, 1972, shall be

apportioned by the director of revenue and finance, commencing with the year 1973, as follows:

Sec. 23. Section 433.4, Code 1995, is amended to read as follows:

433.4 ASSESSMENT.

The director of revenue and finance shall on the second Monday in July of each year, proceed to find the actual value of the property of ~~such these~~ companies in this state, taking into consideration the information obtained from the statements ~~above~~ required, and any further information the director can obtain, using the same as a means for determining the actual cash value of the property of ~~such these~~ companies within this state. The director shall also taking take into consideration the valuation of all property of ~~such these~~ companies, including franchises and the use of the property in connection with lines outside the state, and making ~~such these~~ deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. ~~Said The~~ assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by ~~said the~~ companies in the transaction of telegraph and telephone business; and the property so included in ~~said the~~ assessment shall not be taxed in any other manner than as provided in this chapter ~~and section 427.1, subsection 19.~~

Sec. 24. Section 433.12, Code 1995, is amended to read as follows:

433.12 "COMPANY" DEFINED.

~~The word "company" "Company" as used in this chapter and section 427.1, subsection 19, shall be deemed and construed to mean and include~~ means any person, copartnership, association, corporation, or syndicate that ~~shall own owns or operate operates, or be is~~ engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere.

Sec. 25. Section 437.1, Code 1995, is amended to read as follows:

437.1 "COMPANY" DEFINED.

~~The word "company" "Company" as used in this chapter and section 427.1, subsection 19, shall be deemed and considered to mean and include~~ means any person, copartnership, association, corporation, or syndicate, ~~(except co-operative corporations or associations which are not organized or operated for profit), that shall own owns or operate oper-~~ ates a transmission line or lines for the conducting of electric energy located within the state and wholly or partly outside cities, whether formed or organized under the laws of this state or elsewhere.

Sec. 26. Section 437.12, Code 1995, is amended to read as follows:

437.12 ASSESSMENT EXCLUSIVE.

Every transmission line or part ~~thereof~~ of a transmission line, of which the director of revenue and finance is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 428.24 to ~~428.27~~ 428.26, or under any other law of this state except as provided in this chapter.

Sec. 27. Section 437.13, Code 1995, is amended to read as follows:

437.13 LOCAL ASSESSMENT.

All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construction owned or operated by any company referred to in section 437.2, and where ~~such this~~ property is located within any city within this state, shall be listed and assessed for taxation in the same manner as provided in sections 428.24, 428.25, and 428.29, for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles, and wires within the limits of any city belonging to individuals or corporations furnishing electric light or power, and where ~~such this~~ property, except the capital stock, is situated

partly within and partly without the limits of a city. All personal property of every company owning or operating any such transmission line referred to in section 437.2, used or purchased by it for the purpose of such the transmission line, shall be listed and assessed in the assessment district where usually kept and housed and under sections 428.26, ~~428.27~~, and 428.29.

Sec. 28. Section 441.21, subsection 9, paragraph b, Code 1995, is amended to read as follows:

~~b. Notwithstanding paragraph "a" of this subsection, any construction or installation of gas production systems using waste or manure to produce gas completed on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of the property for assessment years beginning on January 1, 1979 and ending on or before December 31, 1985. In addition, notwithstanding paragraph "a" of this subsection, any construction or installation of a solar energy system on property so classified shall not increase the actual, assessed and taxable values of the property for five full assessment years.~~

Sec. 29. Section 453B.1, subsection 3, paragraph b, Code 1995, is amended to read as follows:

b. Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.

Sec. 30. Section 453B.1, subsection 3, Code 1995, is amended by adding the following new paragraph after paragraph b and relettering:

NEW PARAGRAPH. c. One or more unprocessed marijuana plants.

Sec. 31. Section 453B.1, Code 1995, is amended by adding the following new subsections:

NEW SUBSECTION. 7A. "Processed marijuana" means all marijuana except unprocessed marijuana plants.

NEW SUBSECTION. 10. "Unprocessed marijuana plant" means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

Sec. 32. Section 453B.7, Code 1995, is amended to read as follows:

453B.7 TAX IMPOSED – RATE OF TAX.

An excise tax is imposed on dealers at the following rates:

1. On each gram of processed marijuana, or each portion of a gram, five dollars.
2. On each gram or portion of a gram of any taxable substance sold by weight other than marijuana, two hundred fifty dollars.
3. On each unprocessed marijuana plant, seven hundred fifty dollars.
- ~~2. 4. On each ten dosage units of any taxable substance, other than unprocessed marijuana plants, that is not sold by weight, or portion thereof, four hundred dollars.~~

Sec. 33. Section 428.27, Code 1995, is repealed.

Sec. 34. Section 3 of this Act, being deemed of immediate importance, takes effect upon enactment, and applies or retroactively applies to April 1, 1995, for amended tax returns filed on or after that date.

Sec. 35. Section 4 of this Act applies retroactively to January 1, 1995, for tax years beginning on or after that date.

Sec. 36. Sections 11 and 12 of this Act are effective July 1, 1995, for tax years beginning on or after that date.

Approved April 25, 1995