

CHAPTER 156**SALES AND USE TAXES — MISCELLANEOUS PROVISIONS**

S.F. 469

AN ACT relating to the state sales and use taxes by providing for the effective date for any rate increase or decrease, filing of consolidated sales tax returns by affiliated corporations, changing the statute of limitations for assessing tax and applying for refunds and relating to local sales and services taxes by providing the effective dates for imposing, repealing, or changing rates, allowing cities in more than one county to impose the tax, providing for refunds of tax payable to construction contractors, allowing for 28E agreements to be entered into between school districts and counties or other school districts, and providing for utilization of excess revenue for property tax reduction, and including retroactive applicability and effective dates.

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

Section 1. Section 422.43, Code 1999, is amended by adding the following new subsection:
NEW SUBSECTION. 14. An increase or decrease in the retail sales tax rate shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

Sec. 2. Section 422.51, Code 1999, is amended by adding the following new subsection:
NEW SUBSECTION. 5. Upon making application and receiving approval from the director, a parent corporation and its affiliated corporations that make retail sales of tangible personal property or taxable enumerated services may make deposits and file a consolidated sales tax return for the affiliated group, pursuant to rules adopted by the director. A parent corporation and each affiliate corporation that files a consolidated return is jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

Sec. 3. Section 422.54, subsections 1 and 3, Code 1999, are amended to read as follows:
1. As soon as practicable after a return is filed and in any event within ~~five~~ four years after the return is filed, if filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, and within three years after the return is filed, if filed for quarterly periods beginning on or after January 1, 2001, the department shall examine it, assess and determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.
3. ~~The five-year~~ four-year or three-year period of limitation, as applicable, provided in subsection 1 may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

Sec. 4. Section 422.73, subsection 1, Code 1999, is amended to read as follows:
1. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of division IV of this chapter or chapter 423, then such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within ~~five~~ four years after the tax payment for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, upon which a refund or

credit is claimed became due, and within three years after the tax payment for quarterly periods beginning on or after January 1, 2001, upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

Sec. 5. Section 422B.1, subsection 2, paragraph a, subparagraphs (1) and (2), Code 1999, are amended to read as follows:

(1) ~~All~~ At least eighty-five percent of the residents of the city live in one county.

(2) The county in which at least eighty-five percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

Sec. 6. Section 422B.1, subsection 2, paragraph b, subparagraph (1), Code 1999, is amended to read as follows:

(1) The tax shall only be imposed in the area of the city located in the county where ~~none~~ not more than fifteen percent of its ~~the city's~~ residents reside.

Sec. 7. Section 422B.1, subsection 2, paragraph e, Code 1999, is amended to read as follows:

e. A city is not authorized to impose a local sales and services tax under this subsection after ~~January 1, 1998~~ July 1, 2000. A city that has imposed a local sales and services tax under this subsection on or before ~~January 1, 1998~~ July 1, 2000, may continue to collect the tax until such time as the tax is repealed by the city and the fact that ~~that the~~ the area acquires more than fifteen percent of the city's residents after the tax is imposed shall not affect the imposition or collection of the tax.

Sec. 8. Section 422B.1, subsection 5, Code 1999, is amended to read as follows:

5. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed which date shall not be earlier than ninety days following the election. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors decides under subsection 6 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

Sec. 9. Section 422B.1, subsection 6, paragraph a, Code 1999, is amended to read as follows:

6. a. If a majority of those voting on the question of imposition of a local option tax favor imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax shall be imposed in each of those contiguous cities only if the majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition. The local option tax may be repealed or the rate

increased or decreased or the use thereof changed after an election at which a majority of those voting on the question of repeal or rate or use change favored the repeal or rate or use change. The date on which the repeal, rate, or use change is to take effect shall not be earlier than ninety days following the election. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or rate or use change shall be voted on only by the registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate. However, the governing body of the incorporated area or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner of elections to hold an election in the incorporated or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the incorporated or unincorporated area on the change in use favor the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

When submitting the question of the imposition of a local sales and services tax, the county board of supervisors may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be ~~the end of a calendar quarter~~ as provided in section 422B.9, subsection 1.

Sec. 10. Section 422B.1, subsection 6, paragraph b, Code 1999, is amended to read as follows:

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, ~~the governing body~~ county auditor shall give written notice by sending a copy of the abstract of the ballot from the favorable election to the director of revenue and finance or, in the case of a local vehicle tax, to the director of the department of transportation, of the result of the election.

Sec. 11. Section 422B.1, subsection 9, Code 1999, is amended to read as follows:

9. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective ~~at the end of the calendar quarter during which it adopted the repeal motion or the motion for the repeal was received~~ on the later of the date of the adoption of the repeal motion or the earliest date specified in section 422B.9, subsection 1. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

Sec. 12. Section 422B.8, unnumbered paragraph 1, Code 1999, 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 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. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. 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. 13. Section 422B.9, subsection 1, Code 1999, is amended to read as follows:

1. a. A local sales and services tax shall be imposed either January 1, ~~April 1,~~ or July 1 ~~or October 1~~ following the notification of the director of revenue and finance but not sooner than ninety days following the favorable election.

b. A local sales and services tax shall be repealed only on ~~March 31,~~ June 30, ~~September 30,~~ or December 31 but not sooner than ninety days following the favorable election if one is held. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue and finance.

c. If a local sales and services tax has been imposed prior to the effective date of this section of this Act and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph "b".

Sec. 14. Section 422B.10, subsection 3, Code 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. If a subsequent certified census exists which modifies that most recent certified federal census for a participating jurisdiction under paragraphs "a" and "b", the computations under paragraphs "a" and "b" shall utilize the subsequent certified census in the distribution formula under rules established by the director of revenue and finance.

Sec. 15. Section 422E.2, subsections 1 and 3, Code 1999, are amended to read as follows:

1. a. A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. The effective date shall be either January 1 or July 1 but not sooner than ninety days following the favorable election. A local sales and services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

b. A local sales and services tax shall be repealed on either June 30 or December 31 but not sooner than ninety days following the favorable election, if one is held.

c. If a local sales and services tax has been imposed prior to the effective date of this section of this Act and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph "b".

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes

for which the revenues shall be expended. The dates for the imposition and repeal of the tax shall be as provided in subsection 1. The rate of tax shall not be more than one percent as set by the county board of supervisors. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

Sec. 16. Section 422E.2, subsection 4, paragraph b, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, the county ~~board of supervisors~~ auditor shall give written notice by sending a copy of the abstract of ballot from the favorable election to the director of revenue and finance of the result of the election. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district and the total number of registered voters in all of the school districts within the county.

Sec. 17. Section 422E.3, subsection 3, Code 1999, is amended to read as follows:

3. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state gross receipts taxes or other local option sales taxes. A tax permit other than the state tax permit required under section 422.53 shall not be required by local authorities.

Sec. 18. Section 422E.3, subsection 5, paragraph c, Code 1999, is amended to read as follows:

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first November payment ~~of the new fiscal year~~ shall be adjusted to reflect any overpayment.

Sec. 19. Section 422E.3, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the conditions specified in section 422B.11. The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund. The penalty provisions contained in section 422B.11, subsection 3, shall apply regarding an erroneous application for refund of local sales and services tax paid under this chapter.

Sec. 20. Section 422E.4, unnumbered paragraph 2, Code 1999, is amended to read as follows:

A school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to enter into a chapter 28E agreement with one or more cities or a county whose boundaries encompass all or a part of the area of the school district. A city or cities entering into a chapter 28E agreement shall be authorized to expend its designated portion of the local option sales and services tax revenues for any valid purpose permitted in this chapter or authorized by the governing body of the city. A county entering into a chapter 28E agreement with a school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to expend its designated portion of the local option sales and services tax revenues to provide property tax relief within the boundaries of the school district located in the county. A school district where a

local option sales and services tax is imposed is also authorized to enter into a chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option sales and services tax for infrastructure purposes.

Sec. 21. Section 423.12, Code 1999, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An increase or decrease in the excise tax rate in this section shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

Sec. 22. Section 423.16, Code 1999, is amended to read as follows:

423.16 DETERMINATION BY DEPARTMENT.

If any return required by this chapter is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall have the same power to determine the amount due, as is vested in the department by sections 422.54, 422.55, and 422.57, subject to all of the provisions, and restrictions, and rights to seek judicial review provided in the sections. If a return required by this chapter has been filed, the ~~five-year~~ period of limitation specified in section 422.54, subsection 1, shall apply to the making of a determination by the department of the amount of tax due and to the giving of notice to the taxpayer of such determination. The right to waive the ~~five-year~~ period of limitation as provided in section 422.54, subsection 3, is applicable to this chapter.

Sec. 23. **EFFECTIVE AND APPLICABILITY DATES.**

1. Sections 1 through 4, 21, and 22 of this Act take effect January 1, 2000, for state sales and use taxes.

2. Sections 8, 9, 11, 13, and 15 of this Act take effect April 1, 2000, for local sales and services taxes.

3. Sections 19 and 20 of this Act, being deemed of immediate importance, take effect upon enactment and apply retroactively to July 1, 1998.

4. Sections 5, 6, and 7 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 20, 1999

CHAPTER 157

TOBACCO PRODUCT MANUFACTURERS — SETTLEMENT AGREEMENT

S.F. 482

AN ACT relating to tobacco product manufacturers, providing penalties, and providing an effective date.

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

Section 1. NEW SECTION. 453C.1 DEFINITIONS.

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit "C" to the master settlement agreement.