

CHAPTER 94

TAXATION OF RATE-REGULATED WATER UTILITIES

S.F. 451

AN ACT relating to the taxation of rate-regulated water utilities by establishing a rate-regulated water utility replacement tax, imposing a statewide rate-regulated water utility property tax, providing for the administration of the replacement tax and statewide property tax, providing penalties, and including effective date and retroactive applicability provisions.

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

Section 1. Section 257.3, subsection 1, paragraph c, Code 2013, is amended to read as follows:

c. Replacement taxes under chapter 437A or chapter 437B shall be regarded as property taxes for purposes of this chapter.

Sec. 2. Section 331.604, subsection 4, Code 2013, is amended to read as follows:

4. A county shall not be required to pay a fee to the recorder for filing or recording instruments. However, a county treasurer is required to pay recording fees pursuant to ~~section sections~~ sections 437A.11 and 437B.7.

Sec. 3. Section 421.10, Code 2013, is amended to read as follows:

421.10 Appeal period — applicability.

The appeal period for revision of assessment of tax, interest, and penalties set out under section 422.28, 423.37, 437A.9, 437A.22, 437B.5, 437B.18, 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. 4. Section 427A.1, subsection 1, paragraph h, Code 2013, is amended to read as follows:

h. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, 437B, and 438.

Sec. 5. Section 427B.17, subsection 5, unnumbered paragraph 1, Code 2013, is amended to read as follows:

This section shall not apply to property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, 437B, and 438, and such property shall not receive the benefits of this section.

Sec. 6. Section 428.24, Code 2013, is amended to read as follows:

428.24 Public utility plants.

The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks, other than waterworks taxed under chapter 437B, or gasworks or pipelines, except those natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue. In the making of assessments of waterworks plants, the value of any interest in the property assessed, of the municipal corporation where it is situated, shall be deducted, whether the interest is evidenced by stock, bonds, contracts, or otherwise.

Sec. 7. Section 428.26, Code 2013, is amended to read as follows:

428.26 Personal property.

1. All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, other than natural gas pipelines permitted pursuant to chapter 479 and other than waterworks taxed under chapter 437B, shall be listed and assessed by the department of revenue.

2. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation in which the waterworks is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise.

Sec. 8. Section 428.28, Code 2013, is amended to read as follows:

428.28 Annual report by utility.

1. Every individual, partnership, corporation, or association operating for profit, waterworks, other than waterworks taxed under chapter 437B, or gasworks or pipelines other than natural gas pipelines permitted pursuant to chapter 479, annually on or before May 1 of each calendar year, shall make a report on blanks to be provided by the department of revenue of all of the property owned by such individual, partnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the director of revenue shall require.

2. Every individual, partnership, corporation, or association which operates a public utility on a nonprofit basis other than a utility subject to tax under chapter 437A or chapter 437B, as defined in section 428.24 shall annually, on or before May 1 of each calendar year, make a report on blanks to be provided by the department of revenue of all of the property owned by the individual, partnership, corporation, or association within the incorporated limits of any city in the state, and give other information the director of revenue requires.

Sec. 9. Section 437A.15, subsection 7, paragraph b, Code 2013, is amended to read as follows:

b. The task force shall study the effects of the replacement tax taxes under this chapter and chapter 437B on local taxing authorities, local taxing districts, consumers, and taxpayers through January 1, ~~2013~~ 2016. If the task force recommends modifications to the replacement tax that will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter, the department of management shall transmit those recommendations to the general assembly.

Sec. 10. NEW SECTION. 437B.1 Purposes.

The purposes of this chapter are to replace property taxes imposed on rate-regulated water utilities with a system of taxation which will remove fluctuations in property taxes by imposing a system of taxation based on the delivery of water, to preserve revenue neutrality and debt capacity for local governments and taxpayers, to preserve neutrality in the allocation and cost impact of any replacement tax among and upon consumers of rate-regulated water utilities in this state, and to provide a system of taxation which reduces existing administrative burdens on state government.

Sec. 11. NEW SECTION. 437B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Centrally assessed property tax*” means property tax imposed with respect to the value of property determined by the director pursuant to sections 428.24 to 428.29, Code 2013, and allocated to water service.

2. “*Consumer*” means an end user of water used or consumed within the service area of a water utility. “*Consumer*” includes any master-metered facility even though the water delivered to such facility may ultimately be used by another person. A person to whom water is delivered by a master-metered facility is not a consumer. A “*master-metered facility*” means any multi-occupancy premises where units are separately rented or owned and where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

3. “*Delivery*” means the physical transfer of water, excluding nonrevenue water, to a consumer for sale. Physical transfer to a consumer occurs when transportation of water ends and such water becomes available for use or consumption by a consumer.

4. “*Director*” means the director of revenue.

5. “*Lease*” means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in

such property. A contract to deliver water using operating property within this state is not a lease. “*Capital lease*” means a lease classified as a capital lease under generally accepted accounting principles.

6. “*Local taxing authority*” means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

7. “*Local taxing district*” means a geographic area with a common consolidated property tax rate.

8. a. “*Major addition*” means any acquisition on or after January 1, 2012, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

(1) A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

(2) A water treatment plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph,¹ “*water treatment plant*” means buildings and equipment used in that portion of the potable water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

(3) Water utility operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

(4) Any water utility property in this state acquired by a person not previously subject to taxation under this chapter pursuant to section 437B.12.

b. For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

9. “*Nonrevenue water*” means the difference between the total number of gallons of water carried through the water utility’s distribution system and the number of gallons of water delivered to consumers using the water utility’s distribution system.

10. “*Operating property*” means all property owned by or leased to a water utility, not otherwise taxed separately, which is necessary to and without which the company² could not perform the activities of a water utility.

11. “*Replacement tax*” means the excise tax imposed on the delivery of water under section 437B.3.

12. “*Service area*” means the geographical area within this state to which the water utility delivers water and related services. A water utility’s service area shall be that area described in the water utility’s tariff filed with the utilities board.

12A. “*Taxable value*” means as defined in section 437B.15, subsection 2, paragraph “e”.

13. “*Taxpayer*” means a water utility or other person subject to the replacement tax imposed under section 437B.3.

14. “*Tax year*” means a calendar year beginning January 1 and ending December 31.

15. “*Utilities board*” means the utilities board created in section 474.1.

16. “*Water utility*” or “*rate-regulated water utility*” means a person engaged primarily in the production, delivery, service, or sale of water in a service area, whether formed or organized under the laws of this state or elsewhere, and subject to the rate and service regulation of the utilities board pursuant to chapter 476. “*Water utility*” does not include a cooperative, municipal utility, or other entity engaged primarily in such activities that is not under the jurisdiction of the utilities board.

Sec. 12. NEW SECTION. **437B.3 Replacement tax imposed on delivery of water.**

1. A replacement delivery tax is imposed on each water utility that delivers water to a consumer within the water utility’s service area. The replacement delivery tax imposed by this section is equal to the number of gallons of water delivered to consumers in the water utility’s service area by the taxpayer during the tax year multiplied by the replacement delivery tax rate in effect for the service area.

2. The replacement delivery tax rate for each service area shall be calculated by the director as follows:

¹ See chapter 140, §67 herein

² See chapter 140, §68 herein

a. The director shall determine the centrally assessed property tax liability allocated to water delivery for those water utilities operating within the service area for the assessment year 2011 based on property tax amounts due and payable as the result of that assessment year.

b. The director shall determine the number of gallons of water delivered to consumers in the service area which would have been subject to taxation under this section in calendar year 2011, had such section been in effect for calendar year 2011.

c. The director shall determine a replacement delivery tax rate for each service area by dividing the centrally assessed property tax liability, as determined in paragraph "a", by the number of gallons of water delivered, as specified in paragraph "b".

3. a. If for any tax year after calendar year 2012, the total number of gallons of water required to be reported by a water utility pursuant to section 437B.4, subsection 1, paragraph "a", increases or decreases by more than the threshold percentage from the average of the base year amounts for that water utility for the immediately preceding five calendar years, the replacement tax rate imposed under subsection 1 for that tax year shall be recalculated by the director for that water utility so that the total of the tentative replacement delivery taxes required to be reported pursuant to section 437B.4, subsection 1, paragraph "b", for that water utility with respect to the tax imposed under subsection 1, shall be as follows:

(1) If the number of gallons of water required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by the water utility for that water utility for the immediately preceding tax year.

(2) If the number of gallons of water required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by the water utility for that water utility for the immediately preceding tax year.

b. For purposes of paragraph "a", subparagraphs (1) and (2), in computing the tax rate under subsection 1, for tax year 2013, the director shall use the centrally assessed property tax liability allocated to water sales computed pursuant to subsection 2, paragraph "a", or the water utility's centrally assessed property tax liability for the assessment year 2010, whichever is greater, in lieu of the taxes required to be reported for that water utility for the immediately preceding tax year. In addition, notwithstanding the provisions of this section to the contrary, for tax years 2013, 2014, and 2015, if the total amount of replacement delivery taxes imposed on the water utility in any of those tax years is less than the utility's centrally assessed property tax liability for the assessment year 2010, the replacement tax rate imposed under subsection 1 for that tax year shall be recalculated by the director so that the total amount of replacement delivery taxes imposed on the water utility for such tax year equals the water utility's centrally assessed property tax liability for the assessment year 2010.

c. For purposes of this section, "*base year amount*" means for calendar years prior to tax year 2013, the number of gallons of water delivered to consumers by the water utility which would have been subject to taxation under this section had this section been in effect for such calendar year, and for tax years after calendar year 2012, the number of gallons of water required to be reported by the water utility pursuant to section 437B.4, subsection 1.

d. The threshold percentage shall be five percent.

4. The replacement delivery tax rate in effect for each service area shall be published by the director in the Iowa administrative bulletin on or before May 31 of each year.

5. If recalculation of the replacement delivery tax rate is required pursuant to subsection 3, the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the end of the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1 and required to be shown on any affected water utility's return pursuant to section 437B.4, subsection 1, paragraph "b", to reflect the adjusted replacement delivery tax rate for the tax year, and report such adjustment to the affected water utility on or before June 30 following the end of the tax year. The new replacement delivery tax rate shall apply prospectively, until such time as further adjustment is required.

6. For a service area established as the result of the formation or organization of a new water utility on or after January 1, 2013, the director shall to the extent possible determine a replacement delivery tax rate for the new service area using the procedures of this section

and for the information for the year that the water utility was first under the jurisdiction of the utilities board.

Sec. 13. NEW SECTION. 437B.4 Return and payment requirements.

1. Each taxpayer, on or before March 31 following a tax year, shall file with the director a return including but not limited to the following information:

a. The total taxable gallons of water delivered by the water utility to consumers within the service area during the tax year.

b. The tentative replacement taxes imposed by section 437B.3 due for the tax year.

2. A return shall be signed by an officer, or other person duly authorized by the water utility, and must be certified as correct and in accordance with forms and rules prescribed by the director.

3. At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 5 and by section 437B.3, subsection 3, and notify the taxpayer of any such adjustments in accordance with the requirements of section 437B.3, subsection 5. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such allocations to county treasurers pursuant to section 437B.11. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2014, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437B.11, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

4. Notwithstanding subsections 1 through 3, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less, provided that all water utilities shall file a return, regardless of the taxpayer's replacement tax liability.

5. Following the determination of replacement delivery tax rates by the director pursuant to section 437B.3, subsection 2, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to the assessment year 2011 used in determining such rates, the director shall recalculate the replacement delivery tax rate for any affected water utility to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of the centrally assessed property tax liability allocated to water service pursuant to section 437B.3, subsection 2, paragraph "a". Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph "b", for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437B.11 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 2013, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year

in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

Sec. 14. NEW SECTION. 437B.5 Failure to file return — incorrect return.

1. As soon as practicable after a return required by section 437B.4, subsection 1, is filed, and in any event within three years after such return is filed, the director shall examine the return, determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the 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 any tax or in the case of a failure to file a return.

2. If a return required by section 437B.4, subsection 1, is not filed, or if such return when filed is incorrect or insufficient and the taxpayer fails to file a corrected or sufficient return within twenty days after such return is required by notice from the director, the director shall determine the amount of tax due from information as the director may be able to obtain and, if necessary, may estimate the tax due on the basis of external indices. The director shall give notice of the determination to the taxpayer liable for the tax and to the county treasurers to whom the tax is owed. The determination shall fix the tax unless the taxpayer against whom it is levied, within sixty days after notice of the determination, applies to the director for a hearing. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax and to the county treasurers to whom the tax is owed.

3. The three-year period of limitation provided in subsection 1 may be extended by the taxpayer by signing a waiver agreement form 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. 15. NEW SECTION. 437B.6 Judicial review.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

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 of the district court a bond for the use of the appropriate local taxing authorities, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

Sec. 16. NEW SECTION. 437B.7 Lien — actions authorized.

1. Whenever a taxpayer who is liable to pay a replacement tax imposed by this chapter refuses or neglects to pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording the lien. The requirement for recording, as applied to the replacement tax imposed by this chapter, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of

the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

2. The county recorder of each county shall index each lien showing the applicable entries specified in sections 558.49 and 558.52 and showing, under the names of taxpayers arranged alphabetically, all of the following:

a. The name of the taxpayer.

b. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.

c. Time the notice of lien was filed for recording.

d. Date of notice.

e. Amount of lien then due.

f. Date of assessment.

g. Date when the lien is satisfied.

3. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve such notice, shall index the notice in the index, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

4. The county treasurer or chief financial officer of the city shall pay recording fees as provided in section 331.604, for the recording of the lien, or for its satisfaction.

5. Upon the payment of the replacement tax as to which a county treasurer has filed notice with a county recorder, the county treasurer shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall record the notice of satisfaction showing the applicable entries specified in sections 558.49 and 558.52.

6. Section 445.3 applies with respect to the replacement taxes and special utility property tax levies and penalties and interest imposed by this chapter, except for the provisions limiting the commencement of actions. In addition, at the county treasurer's discretion, chapters 446, 447, and 448 apply in the enforcement of the special utility property tax levies, but any tax deed issued shall not extinguish a tax lien or judgment lien for replacement taxes that has attached to the property.

Sec. 17. NEW SECTION. 437B.8 Service of notice.

1. A notice authorized or required under this chapter may be given by mailing the notice to the taxpayer, addressed to the taxpayer at the address given in the last return filed by the taxpayer pursuant to this chapter, or if no return has been filed, then to the most recent address of the taxpayer obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the taxpayer to whom the notice is addressed. A period of time within which some action must be taken for which notice is provided under this section commences to run from the date of mailing of the notice.

2. There is no limitation for the enforcement of a civil remedy pursuant to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty due under this chapter.

Sec. 18. NEW SECTION. 437B.9 Penalties — offenses — limitation.

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

Sec. 19. NEW SECTION. 437B.10 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.

1. *a.* If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

2. *a.* It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the gallons of water delivered by a water utility disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such information pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

b. Local taxing authority employees are deemed to be officers and employees of the state for purposes this of³ subsection.

3. Unless otherwise expressly permitted by a section referencing this chapter, the gallons of water delivered by a taxpayer in a service area shall not be divulged to any person or entity, other than the taxpayer, the department of revenue, or the internal revenue service for use in a matter unrelated to tax administration. This prohibition precludes persons or entities other than the taxpayer, the department of revenue, or the internal revenue service from obtaining such information from the department of revenue. A subpoena, order, or process which requires the department of revenue to produce such information to a person or entity,

³ See chapter 140, §69 herein

other than the taxpayer, the department of revenue, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

5. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

Sec. 20. NEW SECTION. 437B.11 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. a. All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the taxable value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to the procedures required pursuant to section 437B.15. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

b. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer's replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

c. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437B.2, subsection 8, paragraph "a", subparagraph (4), the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under paragraph "a" of this subsection, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition. For purposes of this paragraph, "*prorated assessed value of the major addition*" means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

4. On or before August 31 following tax years 2013, 2014, and 2015, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax

revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437B.4, subsection 3. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437B.4, subsection 5. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437B.4, subsection 5, or adjustment to assessed value under section 437B.15. "Anticipated tax revenues from a taxpayer" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437B.7. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437B.9.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disbursed by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any municipality which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such municipality under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437B.12 included in such area on January 1, 2011, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. The utility replacement tax task force created in section 437A.15 shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers through January 1, 2016. If the task force recommends modifications to the replacement tax that will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter, the department of management shall transmit those recommendations to the general assembly.

Sec. 21. NEW SECTION. 437B.12 Assessment exclusive.

All operating property and all other property that is primarily and directly used in the delivery of water subject to replacement tax is exempt from taxation except as otherwise provided by this chapter.

Sec. 22. NEW SECTION. 437B.13 Statutes applicable — rate calculations.

1. The director shall administer and enforce the replacement tax imposed by this chapter in the same manner as provided in and subject to sections 422.68, 422.70, 422.71, and 422.75.

2. The calculation of tax rates and adjustments to such rates by the director pursuant to this chapter do not constitute rulemaking subject to the provisions of chapter 17A.

Sec. 23. NEW SECTION. 437B.14 Tax imposition.

An annual statewide property tax of three cents per one thousand dollars of assessed value is imposed upon all property described in section 437B.12 on the assessment date of January 1.

Sec. 24. NEW SECTION. 437B.15 Adjustment to assessed value — reporting requirements.

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 2013, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

- (1) The local amount of any major addition by local taxing district.
- (2) The statewide amount of any major addition without notation of location.
- (3) Any building in Iowa at acquisition cost of more than ten million dollars that was originally placed in service by the taxpayer prior to January 1, 2012, and that was transferred or disposed of in the preceding calendar year, listed by local taxing district.
- (4) All other taxpayer property without notation of location.
- (5) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.
- (6) All other transferred taxpayer property, in addition to any transferred property reported under subparagraph (3), listed by local taxing district.
- (7) Any water utility operating property at acquisition cost of more than one million dollars that was transferred or disposed of in the preceding calendar year, listed by local taxing district.

b. For purposes of this section:

- (1) “*Book value*” means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.
- (2) “*Taxpayer property*” means property described in section 437B.12.
- (3) “*To dispose of*” means to sell, abandon, decommission, or retire an asset.
- (4) “*Transfer*” means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, “*taxpayer*” includes a person who would have been a taxpayer in calendar year 2012 had the provisions of this chapter been in effect for the 2012 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. *a.* Beginning January 1, 2013, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

(1) Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

(2) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph “*a*”, subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(3) In the case of taxpayer property described in subsection 1, paragraph “*a*”, subparagraphs (3), (4), and (7), decrease the assessed value of taxpayer property in each local taxing district by the assessed value reported within such local taxing district.

(4) In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

(5) In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

(6) In the event the assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. An adjustment to the assessed value of taxpayer property shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

b. In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

c. The director, on or before October 31 of each assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of each assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

d. Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the taxable value of taxpayer property reported to county auditors pursuant to this subsection.

e. In addition to reporting the assessed values as described in this subsection, the director, on or before October 31 of each assessment year, shall also report to the department of management and to the auditor of each county the taxable value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this chapter, "taxable value" means the value for all property subject to the replacement tax annually determined by the director, by dividing the estimated annual replacement tax liability for that property by the current fiscal year's consolidated taxing district rate for the taxing district where that property is located, then multiplying the quotient by one thousand. A taxpayer who paid more than five hundred thousand dollars in replacement tax in the previous tax year or who believes the taxpayer's replacement tax liability will vary more than ten percent from the previous tax year shall report to the director by October 1 of the current calendar year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to all of the taxpayer's property subject to replacement tax for the current tax year. The department shall utilize the estimated replacement tax liability as reported by the taxpayer or the taxpayer's prior year's replacement tax amounts to estimate the current tax year's taxable value for that property. Furthermore, a taxpayer who has a new major addition of operating property which is put into service for the first time in the current calendar year shall report to the director by October 1 of the current calendar year, or at the time the major addition is put into service, whichever time is later, on forms prescribed by the director, the cost of the major addition and, if not previously reported, shall report the estimated replacement taxes which that asset will generate in the current calendar year. For the purposes of computing the taxable value of property in a taxing district, the taxing district's share of the estimated replacement tax liability shall be the taxing district's percentage share of the assessed value allocated by property tax equivalent multiplied by the total estimated replacement tax. The assessed value allocated by property tax equivalent shall be determined by dividing the taxpayer's current year assessed valuation in a taxing district by one thousand, and then multiplying by the prior year's consolidated tax rate.

Sec. 25. NEW SECTION. 437B.16 Tax exemptions.

Except as provided in section 437B.12, all property tax exemptions in the Code do not apply to property subject to the statewide property tax unless such exemptions expressly refer to the statewide property tax, except that if property was exempt from property tax on January 1, 2013, such exemption shall continue until the exemption expires, is phased out, or is repealed. The property of a taxpayer who does not owe any replacement tax is exempt from the statewide property tax for the coinciding assessment year.

Sec. 26. **NEW SECTION. 437B.17 Return and payment requirements.**

1. Each water utility whose property is subject to the statewide property tax shall file with the director a return, on or before March 31 following the assessment year, including but not limited to the following information:

- a. The assessed value of property subject to the statewide property tax.
 - b. The amount of statewide property tax computed on such assessed value.
2. The first return under subsection 1 is due on or before February 28, 2014.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

4. At the time of filing the return with the director, the taxpayer shall calculate the statewide property tax owed for the assessment year and shall remit to the director the statewide property tax required to be shown due on the return.

5. Notwithstanding subsections 1 through 4, a taxpayer is not required to file a return under this section or to remit any statewide property tax for any tax year in which the taxpayer's statewide property tax liability is one dollar or less.

Sec. 27. **NEW SECTION. 437B.18 Statutes applicable.**

1. Sections 437B.5, 437B.6, 437B.8, and 437B.9, and section 437B.10, subsection 1, are applicable to water utilities whose property is subject to the statewide property tax.

2. a. Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

b. The county recorder of each county shall index each lien showing the applicable entries specified in sections 558.49 and 558.52 and showing, under the names of taxpayers arranged alphabetically, all of the following:

- (1) The name of the taxpayer.
- (2) The name "State of Iowa" as claimant.
- (3) Time the notice of lien was filed for recording.
- (4) Date of notice.
- (5) Amount of lien then due.
- (6) Date of assessment.
- (7) Date when the lien is satisfied.

c. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

d. The director, from moneys appropriated to the department of revenue for this purpose, shall pay recording fees as provided in section 331.604 for the recording of the lien, or for its satisfaction.

e. Upon the payment of the statewide property tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the statewide property tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Sec. 28. **NEW SECTION. 437B.19 Deposit of tax proceeds.**

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available, as appropriated by the general assembly, to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available,

as appropriated by the general assembly, to the department of revenue for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

Sec. 29. NEW SECTION. 437B.20 Records.

Each water utility that is subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of five years following the later of the original due date for filing a return pursuant to sections 437B.4 and 437B.17 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

Sec. 30. NEW SECTION. 437B.21 Rules.

The director of revenue may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

Sec. 31. Section 441.73, subsection 1, Code 2013, is amended to read as follows:

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue pursuant to section 428.24 and chapters 433, 434, 437, 437A, 437B, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide property taxes under chapter chapters 437A and 437B.

Sec. 32. Section 443.2, unnumbered paragraph 2, Code 2013, is amended to read as follows:

The county auditor shall list the aggregate actual value and the aggregate taxable value of all taxable property within the county and each political subdivision including property subject to the statewide property tax imposed under section 437A.18 or 437B.14 on the tax list in order that the actual value of the taxable property within the county or a political subdivision may be ascertained and shown by the tax list for the purpose of computing the debt-incurring capacity of the county or political subdivision. As used in this section, “actual value” is the value determined under section 441.21, subsections 1 to 3, prior to the reduction to a percentage of actual value as otherwise provided in section 441.21. “Actual value” of property subject to statewide property tax is the assessed value under section 437A.18 or 437B.14.

Sec. 33. Section 476.6, subsection 19, paragraphs a and b, Code 2013, are amended to read as follows:

a. The costs of the replacement tax imposed pursuant to chapter 437A or 437B shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities’ costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999. The implementation and initial imposition of the replacement taxes pursuant to chapter 437B is not intended to result in an increase in the rates and charges for the sale of water that is subject to regulation by the board and in effect on January 1, 2013.

b. The cost of the replacement taxes imposed by chapter 437A or 437B shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Sec. 34. IMPLEMENTATION — EMERGENCY RULES. The department of revenue shall adopt administrative rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph “b”, to implement this Act including but not limited to rules requiring water utilities to report all information and data necessary for the department to carry out the provisions of this Act and the rules shall be effective immediately upon filing unless a later date is specified

in the rules. Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in section 17A.4.

Sec. 35. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 36. RETROACTIVE APPLICABILITY. This Act applies retroactively to property tax assessment years and replacement tax years beginning on or after January 1, 2013.

Approved May 9, 2013