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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Chapter 17A, The Code, and supersedes Part I of the Iowa Administrative Code Supplement.

The Bulletin contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form], all proclamations and executive orders of the Governor which are general and permanent in nature, and other "materials deemed fitting and proper by the Administrative Rules Review Committee."

The Bulletin may also contain economic impact statements to proposed rules and filed emergency rules, objections filed by Administrative Rules Review Committee, Governor or the Attorney General, any delay by the Committee of the effective date of filed rules, and agenda for monthly committee meetings.

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through~~ ~~letters~~ indicate deleted material.

The ARC number which appears before each agency heading is assigned by the Administrative Rules Co-ordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to section 17A.6, The Code. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules co-ordinator and published in the Bulletin.

WAYNE A. FAUPEL, Code Editor
PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
3	Friday, July 31, 1981	August 19, 1981
4	Friday, August 14, 1981	September 2, 1981
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Iowa Administrative Bulletin

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Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - $563.00 plus $16.89 tax
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Practice and procedures, amendments to ch 7 IAB 8/5/81 **ARC 2227**	Hearing Room Commerce Commission First Floor Lucas State Office Bldg. Des Moines, Iowa	September 14, 1981 10:00 a.m.
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ARC 2228

AGRICULTURE DEPARTMENT[30]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Sections 199.7, 199.11(1)"b" and 159.5(11), The Code, the Iowa Department of Agriculture hereby gives Notice of Intended Action to amend Chapter 5, "Agricultural Seeds", Iowa Administrative Code.

In 1950, Secretary of Agriculture Harry D. Linn recognized the Iowa Crop Improvement Association as the agency responsible in Iowa for certification of seed, including potatoes. Such recognition and delegation of responsibility was made pursuant to the provisions of Section 199.7, The Code, which was enacted in 1949. Since that time, this association has served as the official seed certification authority.

Consistent with the spirit and provisions of Chapter 17A, The Code, Secretary Lounsberry officially promulgates as a rule his decision to continue the long established policy and procedure whereby the Iowa Crop Improvement Association is the duly constituted state authority to certify seeds and potatoes.

Any interested person may make written suggestions or comments on these proposed rules prior to August 25, 1981, by submitting them to the Secretary at his office in the Henry A. Wallace Building, Des Moines, Iowa 50319. A public hearing will be held on August 25, 1981, at 10:00 a.m., in the First Floor Conference Room at the Henry A. Wallace Building, Des Moines, Iowa.

This rule is intended to implement Sections 199.7 and 199.11, The Code.

The following amendment is proposed.

ITEM 1. Amend chapter 5, "Agricultural Seeds", by adding the following new rule.

30—5.6(199) Certification of seed and potatoes. The Iowa Crop Improvement Association is the duly constituted state authority and state association recognized by the secretary to certify agricultural seed, including seed potatoes, in Iowa.

This rule is intended to implement section 199.7, The Code.

ARC 2231

COLLEGE AID COMMISSION[245]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Sections 261.1 and 261.15, The Code, and Acts of the Sixty-ninth General Assembly, Senate File 552, section 6, the College Aid Commission proposes to amend Chapter 9, Iowa Administrative Code.

The amendment is intended to more specifically define who may receive National Guard Education Benefits.

Interested persons may comment or submit requests for an oral presentation by writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 on or before August 25, 1981.

These rules are intended to implement Acts of the Sixty-ninth General Assembly, Senate File 552.

Subrule **9.1(1)** is amended by adding a new paragraph "e" as follows:

e. Applicant must not be receiving federal bonus or education benefits funded by the military.

These rules are intended to implement Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 552.

ARC 2227

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Section 476.2, The Code, and Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771, the Iowa State Commerce Commission hereby solicits comments on rules previously adopted in [250] Chapter 7, "Practice and Procedure", Iowa Administrative Code. Part of these rules, relating to information to be submitted with rate increase applications, were adopted by the Commission in Docket No. RMU-80-18 and made effective upon filing with the Administrative Rules Coordinator on July 1, 1981 [ARC 2199, IAB 7/22/81]. Other rules, meant to implement Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771, were emergency adopted and implemented July 10, 1981 [ARC 2226, IAB 8/5/81].

House File 771 became effective on July 1, 1981, and requires the Commission to have rules to enable proceedings under Section 476.6, The Code, to be completed within ten months from the date of filing and rate reduction proceedings under Section 476.3, The Code, to be completed in six months from the date of filing of a complaint by the Commission staff. This legislation also sets standards for the setting of interim rates and requires rules to be adopted to consider certain matters in ratemaking proceedings.

These rules involve treatment of defective filings, filing requirements for Section 476.6, The Code, proceedings involving rate increase applications and other applications by utilities, the procedure to set interim rates and to seek the generating facility exception to the ten-month limitation, information to accompany filed direct testimony and exhibits, the order of procedure, rate investigations, the setting of procedural schedules, briefs, oral arguments and the consideration of current test years and certain known and measurable changes.

Any interested person may file written comments on these rules no later than September 2, 1981, by filing an original and six copies of such comments, substantially complying with the form prescribed in [250] subrule 2.2(2), Iowa Administrative Code. All comments shall clearly indicate the author's name and address, as well as specific reference to Docket No. RMU-81-12 and the proposed rule to which the comment is addressed.

A rulemaking oral presentation for the purpose of receiving comments on these rules shall be held September 14, 1981, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa, at 10:00 a.m.

These rules are intended to implement Sections 476.2, 476.3, 476.6, 476.8 and 476.10, The Code, and Chapter 476, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771.

Comments are sought on the following rules:

ITEM 1. Add new subrule 7.2(10) as follows:

7.2(10) Defective filings. There will be accepted for filing only such applications, pleadings, documents, testimony and other submittals as conform to the requirements of any applicable rule or order of the commission or applicable statute. Applications, pleadings, documents, testimony and other submittals tendered for filing which fail so to conform will be considered defective and will be rejected unless waiver of the relevant requirement has been granted by the commission prior to filing. Motions to reject filing shall be made within fifteen days of the filing date, and any resistances shall be made within seven days thereafter. Acceptance for filing by commission employees shall not waive any failure to comply with any statutory provision, these rules, or commission order, and such failure may be cause for rejecting the filing.

ITEM 2. Amend the introductory paragraph of subrule 7.4(6) as follows:

7.4(6)* Evidence. Unless otherwise authorized by the commission *in writing prior to filing*, a utility ~~shall~~ *must* when proposing changes in rate schedules, which changes relate to a general increase in revenue, prepare and submit with its proposed tariff the following evidence *in addition to the information required in 7.4(11):*

*The revision indicated in this subrule is in effect under emergency provisions, ARC 2226 herein.

ITEM 3. The commission announces its intention to consider additional comments on subrule **7.4(6)**, paragraph "e", which was adopted in Docket No. RMU-80-18 and reads as follows: [See also ARC 2199, IAB 7/22/81 and ARC 2226 herein]

e. Additional evidence for investor-owned utilities. In addition to the foregoing evidence, an investor-owned utility shall file, at the same time the proposed increase is filed, the following information. For the purposes of these rules, "year of filing" means the calendar year in which the filing is made. Unless otherwise specified in these rules, the information required shall be based upon the calendar year immediately preceding the year of filing.

1. Rate base for both total company and Iowa jurisdictional operations calculated by utilizing a thirteen-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis, except for the cash working capital component of this figure, which will be computed on the basis of a lead-lag study as set forth in item 5.

2. Revenue requirements for both total company and Iowa jurisdictional operations to include: Operating and maintenance expense, depreciation, taxes and return on rate base.

3. Capital structure calculated utilizing a thirteen-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis.

4. Schedules supporting the proposed capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure and schedules showing requested return on rate base with capital structure and corresponding capital cost.

5. Cash working capital requirements, including a recent and representative lead-lag study.

COMMERCE COMMISSION[250] *(cont'd)*

6. Complete federal and state income tax returns for the two calendar years preceding the year of filing and all amendments to those returns. If a tax return or amendment has not been prepared at the time of filing, the return shall be filed with the commission under this subrule at the time it is filed with the Internal Revenue Service or the state of Iowa Department of Revenue.

7. Schedule of monthly Iowa jurisdictional expense by account as required by chapter 16 of the commission's rules.

8. For gas, electric and water utilities, a schedule of monthly consumption (units sold) and revenue by customer-rate classes, reflecting separately revenue collected in base rates and adjustment clause revenues. For telephone companies, a rate matrix as set forth in the company's annual report (page B-16), shall be filed along with a statement of the total amount of revenue produced under the rate matrix.

9. Schedules showing that the rates proposed will produce the revenues requested. In addition to these schedules, the utility shall submit in support of the design of the proposed rate a narrative statement describing and justifying the objectives of the design of the proffered rate. If the purpose of the rate design is to reflect costs, the narrative should state how that objective is achieved, and should be accompanied by a cost analysis that would justify the rate design. If the rate design is not intended to reflect costs, a statement should be furnished justifying the departure from cost-based rates. This filing shall be in compliance with all other rules of the commission concerning rate design and cost studies.

10. All monthly or periodic financial and operating reports to management beginning in January two years preceding the year of filing. The item or items to be filed under this rule include: (a) Reports of sales, revenue, expenses, number of employees, number of customers, or similar data; (b) related statistical material. This requirement shall be a continuing one, to remain in effect through the month that the rate proceeding is finally resolved. Notwithstanding other provisions concerning the number of copies to be filed, one copy of each report shall be filed under this rule.

11. Schedule of monthly tax accruals separated between federal, state, and property taxes, including the methods used to determine these amounts.

12. Allocation methods, including formulas, supporting revenue, expense, plant or tax allocations.

13. Schedule showing interest rates, dividend rates, amortizations of discount and premium and expense, and unamortized thirteen-monthly balances of discount and premium and expense, ending on December 31 of the year preceding the year of filing, for long-term debt and preferred stock.

14. Schedule showing the thirteen-monthly balances of capital stock expense associated with common stock, ending on December 31 of the year preceding the year of filing.

15. Schedule showing the thirteen-monthly balances of capital surplus, separated between common and preferred stock, ending on December 31 of the year preceding the year of filing. For the purpose of this rule, capital surplus means amounts paid in that are less than or are in excess of par value of the respective stock issues.

16. Stockholders' reports, including supplements, for the year of filing and the two preceding calendar years. If the reports are not available at the time of filing, they shall be filed immediately upon their availability to stockholders.

17. If applicable, securities and exchange commission forms 10Q for all past quarters in the year of filing and the preceding calendar year, and form 10K for the two preceding calendar years. If these forms have not been filed with the securities and exchange commission at the time the rate increase is filed, they shall be filed under this subrule immediately upon filing with the securities and exchange commission. This requirement is not applicable for any such reports which are routinely and formally filed with the commission.

18. Any prospectus issued during the year of filing or during the two preceding calendar years.

19. Consolidated and consolidating financial statements.

20. Revenue and expenses involving transactions with affiliates and the transfer of assets between the utility and its affiliates.

21. A schedule showing the following for each of the fifteen calendar years preceding the year of filing, and for each quarter from the first quarter of the calendar year immediately preceding the year of filing through the current quarter.

Earnings, annual dividends declared, annual dividends paid, book value of common equity, and price of common equity (each item should be shown per average actual common share outstanding, adjusted for stock splits and stock dividends).

Rate of return to average common equity.

Common stock earnings retention ratio.

For common stock issued pursuant to tax reduction act stock ownership plans, employee stock option plans, and dividend reinvestment plans: Net proceeds per common share issued, and number of shares issued and previously outstanding at the beginning of the year. This shall be set forth separately for each of the three types of plans, and reported as annual aggregates or averages.

For other issues of common stock: Net proceeds per common share issued, and number of shares issued and previously outstanding for each issue of common stock.

22. If the utility is applying for a gas rate increase, a schedule for weather normalization, including details of the method used.

23. All testimony and exhibits in support of the rate filing attached to affidavits of the sponsoring witnesses. All known and measurable changes in costs and revenues upon which the utility relies in its application shall be included.

Unless otherwise provided, ten copies of all testimony and exhibits, and four copies of all other information, shall be filed.

If the utility which has filed for the rate increase is affiliated with another company as either parent or subsidiary, the information required in items 3, 4, 6, 13, 14, 15, 16, 17, 18, 19 and 21 shall be provided for the parent company (if any) and for all affiliates which are not included in the consolidating financial statements filed pursuant to this rule.

ITEM 4. Add new subrule 7.4(11) as follows:

7.4(11) Applications pursuant to section 476.6, The Code. At the time a rate-regulated public utility, other than a rural electric cooperative, files for new or changed rates, charges, schedules or regulations, it shall submit the following:

a. Any cost, revenue or economic data underlying the filing.

b. An explanation of how the proposed tariff would affect the rates and service of the public utility.

COMMERCE COMMISSION[250] *(cont'd)*

c. All testimony and exhibits in support of the filing attached to affidavits of the sponsoring witnesses.

ITEM 5. Add new subrule 7.4(12) as follows:

7.4(12) Requests for interim relief pursuant to section 476.6, The Code.

a. At the time of filing a request for temporary authority to place in effect any or all of suspended rates, charges, schedules or regulations, a utility shall submit:

(1) A list of any and all regulatory principles relied upon, together with an indication of where and when they were previously established.

(2) A calculation of the rate of return sought and an explanation of the source of the weights and cost rates used.

b. Within thirty days of the filing for interim relief, any party may file an objection to any or all of the interim relief sought. An objection to interim relief shall include an explanation of the disputed regulatory principles or interim rate of return. Within fifteen days of the filing of the objection, the utility may file a reply. The commission or examiner may shorten the time periods for objection and reply for good cause.

c. No objection or failure to object shall prevent a party from presenting evidence and argument with respect to any matter including previously established regulatory principles or rate of return. A hearing on interim relief before the commission or examiner shall be held upon request, or may be held on the commission's own motion, where there is an issue of adjudicative fact as to the nature, applicability or effect of previously established regulatory principles or rates of return.

d. Oral argument may be had with respect to interim relief at the commission's discretion.

e. The commission's decisions on interim relief shall not constitute precedent or the law of the case with respect to test period, the nature, applicability or effect of any regulatory principles, rate of return or the appropriateness of any figures used.

ITEM 6. Strike existing subrule 7.7(1) and replace with the following:

7.7(1) Investigations.

a. The availability of discovery pursuant to section 17A.13, The Code, or the rules of civil procedure referenced therein shall not be construed to limit the investigatory powers of the commission and its representatives, particularly those powers conferred in section 475.7(2), The Code, relating to the duties of the commerce counsel and section 476.2, The Code, relating to the duty of the commission to inquire into the management of the business of all public utilities in order to keep itself informed as to the manner and method in which the management of public utilities is conducted.

b. The commission shall commence a rate investigation upon the motion of the commission staff alleging that a rate-regulated utility's annual report indicates that the earnings of that public utility may have been or will be excessive. The commission may also commence a rate investigation upon the motion of any interested person.

c. If a public utility objects, does not understand or cannot comply with a data request lodged by the commission staff during a rate investigation or contested case, the public utility shall file an appropriate motion within seven days of receipt of the data request. Intervenors making a discovery request may ask the commission or examiner for a shortened period for response pursuant to the rules of civil procedure.

ITEM 7. Strike existing subrule 7.7(6) and replace with the following:

7.7(6) Order of presenting evidence.

a. At evidentiary hearings upon complaints, applications or petitions, the complainant, applicant, or petitioner shall open and close the presentation of evidence. At evidentiary hearings on several proceedings on a consolidated record, the commission or examiner shall designate who shall open and close.

b. Intervenors shall follow the parties on whose behalf the intervention is made, and, in all cases where the intervention is not in support of either original party, the commission or examiner shall designate at what stage the intervenors shall be heard.

c. The commission or examiner may direct departures from the foregoing order of procedure for efficiency and justice.

ITEM 8. Strike subrule 7.7(12), renumber subrules 7.7(9) through 7.7(11) as 7.7(10) through 7.7(12), respectively, and add new subrule 7.7(9) as follows:

7.7(9) Prepared testimony and exhibits. In any case where these rules or commission order requires the filing of a party's prepared direct testimony and exhibits prior to hearing, that filing shall include:

a. All supporting workpapers.

b. An indication of the derivation or source of all figures used which were not generated by workpapers.

c. Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

ITEM 9. Renumber subrule 7.7(13) as 7.7(16) and add new subrule 7.7(13) as follows:

7.7(13) Briefs.

a. Unless waived by the parties with the consent of the commission or examiner, whether oral argument is heard or not, the commission or examiner, as soon as practicable after the commencement of the proceeding, shall fix times for the filing and service of briefs.

The initial brief shall be filed by the party or parties upon whom rests the burden of proof, except that the commission or examiner may direct that briefs be filed simultaneously if the circumstances or exigencies so require.

b. Six copies of a party's brief if the matter is before the commission and four copies if before an examiner shall be filed with the commission and at least two copies served upon each of the other parties or their representatives, unless the commission or examiner orders otherwise.

c. Briefs shall contain a concise statement of the case and any argument, claimed to be established by evidence, shall include references to the specific portions of the record in which the evidence may be found. Every brief of more than twenty pages shall contain on its front leaves a subject index, with page references, and a list of all legal authority cited, alphabetically arranged, with references to the pages where the citations appear.

ITEM 10. Add new subrule 7.7(14) as follows:

7.7(14) Oral arguments. When, in the opinion of the commission or examiner, the nature of the proceedings, the complexity or importance of the issues of fact or law invovled, and the public interest warrant, the commission or examiner may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

COMMERCE COMMISSION[250] *(cont'd)*

ITEM 11. Add new subrule 7.7(15) as follows:

7.7(15) Procedural schedule in sections 476.3 and 476.6, The Code, proceedings.

a. In any proceeding initiated as a result of the filing by a public utility of new or changed rates, charges, schedules or regulations, the commission or examiner shall set a procedural schedule to be followed based on the following guidelines, unless otherwise ordered by the commission or examiner pursuant to this rule:

Prepared direct testimony and exhibits supporting the public utility's case-in-chief to be filed—date of filing.

Hearing for solicitation of public comments—as soon as practicable after date of filing.

Cross-examination of public utility's case-in-chief—within one and one-half months after date of filing.

Prepared direct testimony and exhibits of commission staff and intervenors to be filed—within two months after close of initial hearing. If commission staff testimony recommends a rate reduction, this shall be considered a complaint alleging excessive rates under section 476.3, The Code, and the commission's rules.

Cross-examination of commission staff and intervenor testimony—within one month after filing of this testimony.

Prepared direct rebuttal testimony and exhibits to be filed by public utility—within two weeks after close of intermediate hearing.

Cross-examination of rebuttal case—within three weeks after filing of this testimony.

Public utility's initial brief to be filed—within one month after close of rebuttal hearing.

Briefs of commission staff and intervenors to be filed—within one month after filing of initial brief.

Public utility's reply brief to be filed—within two weeks after filing of commission staff and intervenor briefs.

b. In a rate reduction proceeding initiated as a result of the filing of a complaint pursuant to the second paragraph of section 476.3, The Code, the following procedural schedule shall be followed, unless otherwise ordered by the commission or examiner:

Prepared direct testimony and exhibits supporting the commission staff's case-in-chief to be filed—date of filing of complaint.

Public utility and intervenor direct testimony and exhibits to be filed—within one month after filing of complaint.

Prepared direct rebuttal testimony and exhibits of commission staff—within one month after filing of public utility and intervenor cases.

Cross-examination of all testimony—within two weeks after filing of rebuttal case.

Commission staff initial brief to be filed—within one month after close of hearing.

Public utility and intervenor briefs to be filed—within one month after filing of initial brief.

Commission staff reply brief to be filed—within two weeks after filing of public utility and intervenor briefs.

c. In setting the procedural schedule in a case, the commission or examiner shall take into account the existing hearing calendar and shall give due regard to other obligations of the parties, attorneys and witnesses. The commission or examiner may on its own motion or upon the motion of any party, including commission staff, for good cause shown change the time and place of any hearing. Any effect such a change has on the remainder of the procedural schedule or the deadline for decision shall be noted when the change is ordered.

d. Additional time may be granted a party, including commission staff, upon a showing of good cause for the delay, including, but not limited to:

(1) Delay of completion of previous procedural step.

(2) Delays in responding to discovery or commission staff data requests.

Any effect such an extension has on the remainder of the procedural schedule or the deadline for decision shall be noted in the motion for extension and the commission order granting the extension.

e. If any party, including commission staff, wishes to utilize the electric generating facility exception to the ten-month decision deadline contained in section 476.6, The Code, it shall expeditiously file a motion seeking this exception including an explanation of that portion of the suspended rates, charges, schedules or regulations necessarily connected with the inclusion of the generating facility in rate base. Any other party may file a response to such a motion.

ITEM 12. Add new rule 250—7.10(476) as follows:

250—7.10(476) Consideration of current information in rate regulatory proceedings.

7.10(1) Test period. In rate regulatory proceedings under sections 476.3 and 476.6, The Code, the commission shall consider the use of the most current test period possible in light of existing and verifiable data respecting costs and revenues available as of the date of commencement of the proceedings.

7.10(2) Known and measurable changes. In rate regulatory proceedings under sections 476.3 and 476.6, The Code, the commission shall consider verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within twelve months after the date of commencement of the proceedings.

These rules are intended to implement sections 476.2, 476.3, 476.6, 476.8 and 476.10, and chapter 476, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771.

See also ARC 2226, p. 192

ARC 2222

CONSERVATION COMMISSION[290]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Section 107.24, The Code, the State Conservation Commission hereby gives Notice

of Intended Action to amend Chapter 108, "Fishing Regulations", Iowa Administrative Code.

This rule establishes season dates, daily catch limits, possession limits, and minimum length limits for the 1982 fishing season.

Any interested person may make written suggestions or comments on this proposed rule prior to September 8, 1981. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Fish Management Supervisor at 515/281-5208 or at the Fisheries' office on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on Tuesday, September 8, 1981, at 10:00 a.m. in the conference room on the fourth floor of the Wallace State Office Building. Persons may present their views at this public hearing either orally or in writing.

This rule is intended to implement Chapter 109, The Code.

The following amendments are proposed.

ITEM 1. Rule 290—108.1(109) is amended to read as follows:

290—108.1(109) Seasons, daily catch limits, possession limits, and minimum length limits.

KIND OF FISH	OPEN SEASON	DAILY CATCH LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	INLAND WATERS OF THE STATE / BOUNDARY RIVERS MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0		Same as inland waters
Paddlefish*	Continuous	2	4	None	Same as inland waters
Yellow Perch	*Continuous*	25	50	None	Same as inland waters except no catch or possession limit
Trout	Continuous*	5	10	None*	Same as inland waters
Catfish	Continuous	8	16	None	Same as inland waters except no catch or possession limit
Largemouth Bass	Continuous	5	10	None*	Largemouth and smallmouth black bass: Same as inland waters except aggregate *daily catch limit* ~~10~~ *5*; aggregate possession limit ~~20~~ *10*. No minimum length limits
Smallmouth Bass	Continuous	5	10	12"*	
Combined Walleye and Sauger	*Continuous**	5	10	None	Continuous open season aggregate daily catch limit 10, aggregate possession limit 20
Northern Pike	*Continuous**	3	6	None	Continuous open season; daily catch limit 5; possession limit 10
Muskellunge or Hybrid Muskellunge	Continuous*	1	1	30"	Same as inland waters
Ocean Striped Bass	Continuous*	1	1	None	Same as inland waters
All other fish species	Continuous	None	None	None	Same as inland waters
Frogs (except Bullfrogs)	*Continuous*	48	96	None	Same as inland waters
Bullfrogs (Rana Catesbeiana)	Continuous	12	12	None	Same as inland waters

*Also see 108.2(109), Exceptions.

ITEM 2. Rule 290—108.2(109) is amended by changing subrule 108.2(1) as follows:

108.2(1) Natural lakes. In lakes West Okoboji, East Okoboji, and Spirit Lake, there shall be a closed season on walleye, muskellunge or tiger muskie, and nothern pike from March 1, ~~1981~~ *1982* through ~~May 1~~ *April 30*, ~~1981~~ *1982*.

These rules are intended to implement sections 109.39 and 109.67, The Code.

ARC 2229

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation *hereon as provided in* §17A.4(1)"*b*" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Chapters 17A and 175, The Code, and Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 532, the Iowa Family Farm Development Authority hereby gives Notice of Intended Action to amend Chapter 2 "Beginning Farmer Program", Iowa Administrative Code.

This amendment is to add rules to implement the agricultural development revenue bond program for beginning farmers.

The purpose of this notice is to solicit suggestions or comments on these proposed rules prior to Friday, August 28, 1981. Such written materials should be directed to the Executive Administrator of Iowa Family Farm Development Authority, Liberty Building, 418 Sixth Avenue, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Executive Administrator at (515) 281-6444 or in the authority's office on the fifth floor of the Liberty Building. There will also be a public hearing on Friday, August 28, 1981, at 10:00 a.m. in the conference room at the authority offices on the fifth floor of the Liberty Building. Persons may present their views at this public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Executive Administrator at least one day prior to the date of the public hearing.

This rule is intended to implement Section 175.12, The Code, and Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 532.

To confer a benefit upon the public by making loans available sooner, it is the intention of the authority to adopt these rules pursuant to Section 17A.5(2)"b"(2) The Code, on or about September 21, 1981.

The following amendments are proposed:

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523] *(cont'd)*

ITEM 1. Amend chapter 2 by inserting after the chapter heading the following:

Subchapter A—Bond Market Program

ITEM 2. Further amend chapter 2 by adding after rule 2.8(68GA,ch1050) the following:

Subchapter B—Individual Agricultural Development Bond Program

PART IV

523—2.9(175,69GA,SF532) Individual agricultural development bond program description. This program is intended to allow beginning farmers to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-free bond issued by the authority and purchased by the participating lender. The authority will enter into a loan agreement with the beginning farmer and assign that loan to the participating lender. At the same time, the authority will issue a tax-free bond in the amount of the loan and the participating lender will purchase that bond, which is used to fund the loan assigned to the lender. The bond which is issued by the authority and purchased by the lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

PART V

523—2.10(175,69GA,SF532) Definitions.

2.10(1) The definitions for the individual agricultural development bond program include the definitions in subrules 2.1(1) through 2.1(7).

2.10(2) "Application" means a completed instrument on a form approved by the authority. Each application must include the following: Applicant name, address, and credit data, evidence of unavailability of alternative credit, description of anticipated use of loan proceeds, amount of loan and applicant down payment (if any), and the IFFDA net worth compliance.

PART VI

523—2.11(175,69GA,SF532) Application procedures. The beginning farmer may apply (on forms approved by the authority) for an authority loan with any participating lender. Any loan approved will be assigned to that participating lender. Authority loan eligibility is determined by the requirements of the Act and the rules of the authority. If a beginning farmer meets the loan eligibility requirements, the decision on whether to enter into the loan agreement is between the beginning farmer and the participating lender. They must agree on terms of the loan such as interest rates, length of loan, down payment, service fees, origination charges, and repayment schedule, which may not be any more onerous than that charged to similar customers for similar loans, but taking into account the tax exempt nature of interest on the loan. Following completion of the loan application by the beginning farmer and approval by the participating lender, the loan application must be submitted to the authority for its review and approval. The authority's review will include, but not be limited to whether (1) the loan applicant is a qualified beginning farmer, (2) the loan proceeds will be used for a qualified purpose under the Act and rules of the authority and the Internal Revenue Code and IRS regulations relating to industrial development revenue bonds, and (3) the terms of the loan comply with these rules. Following approval and issuance of the bond, the authority will enter into a loan agreement with the beginning farmer and then assign the loan without recourse to the participating lender. The authority may charge such reasonable and necessary fees as needed to defray its costs for processing the loan and bond.

523—2.12(175,69GA,SF532) Issuance of bond. Following approval of the loan, the authority will issue a bond, to be purchased by the participating lender, in the amount and fitting the terms of the loan to the beginning farmer. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the beginning farmer and the underlying collateral or other security furnished by or on behalf of the beginning farmer. The participating lender shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

523—2.13(175,69GA,SF532) Participating lenders. Any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state may be a participating lender. A financial institution may become a participating lender at any time by signing an agreement with the authority to become a participating lender.

523—2.14(175,69GA,SF532) Minimum loan. The minimum loan under this program shall be $20,000.

523—2.15(175,69GA,SF532) Priority of applications. Applications shall be processed by the authority on a first-come, first-served basis, based upon the receipt of all completed documents by the authority.

PART VII

523—2.16(175,69GA,SF532) Procedures following bond issuance. No bond proceeds may be used for a nonqualified purpose or by a nonqualified user. No transfer to a nonqualified user of property financed by the bond proceeds shall be allowed. Following the disbursement of the bond proceeds, the participating lender and beginning farmer shall certify to the authority that the proceeds were used by a qualified beginning farmer for a qualified purpose.

523—2.17(175,69GA,SF532) Right to audit. The authority shall have at any time the right to audit the records of the participating lender and the beginning farmer relating to this loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

This rule is intended to implement Section 175.12, The Code, and Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Senate File 532.

ARC 2237

PAROLE, BOARD OF[615]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Section 906.3, The Code, the Iowa Board of Parole hereby gives Notice of Intended Action to amend Chapter 1, "Description Information and Communication" and Chapter 2 "Meetings and Agenda", Iowa Administrative Code.

Rule 1.1(904) gives a general description of the board of parole and its duties. By reason of a change in the law affecting an amendment to Section 904.1, The Code, the number of members of the board is increased from five to seven. This proposed amendment makes that change.

Rule 2.1(906) indicates the number of affirmative votes necessary to grant or revoke a parole. The rule further states the procedure to be followed in designating the board members who will serve on the parole panels from time to time. This proposed amendment cures the defect in the rule which fails to reflect the statutory requirement of three affirmative votes to grant or revoke a parole.

Any interested person may make written suggestions or comments on these proposed rules prior to August 26, 1981. Such written materials shall be directed to Donald L. Olson, Executive Secretary, Iowa Board of Parole, Hoover State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the same at 515-281-4820. Also there will be a public hearing on Thursday, August 27, 1981, at 10:00 a.m. in the board room on the fifth floor of the Hoover State Office Building. Persons may present their views at this hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the said executive secretary at least one day prior to the date of the public hearing.

This rule is intended to implement section 904.1, The Code.

The following amendment is proposed.

ITEM 1. Rule 615—1.1(904) is amended to read as follows:

615—1.1(904) Description—information and communication. The Iowa board of parole is a statutory state agency created by the Code of Iowa. The board consists of ~~five~~ *seven* members who serve five-year terms. The members are appointed by the governor with confirmation by the senate. With the exception of a sentence imposed for conviction of a crime for which a minimum sentence is prescribed by statute, the board of parole has authority to grant parole to, and revoke the parole of, any person sentenced to a state correctional institution for less than a life term.

ITEM 2. Rule 615—2.1(904) is amended to read as follows:

615—2.1(904) Majority vote. All parole granting *and revoking* decisions shall be made by *affirmative vote of* not less than three members of the board of parole. ~~At least once each quarter, the chairperson of the board of parole shall reconstitute the membership of the panel which considers paroles to assure maximum variation in its make up throughout the year.~~

This rule is intended to implement section 904.1, The Code.

ARC 2238

PAROLE, BOARD OF[615]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Section 906.3, The Code, the Iowa Board of Parole hereby gives Notice of Intended Action to amend Chapter 7 "Termination and Revocation of Parole" Iowa Administrative Code.

Subrule 7.5(13) refers to the authority of the hearing officer to order that the parolee be admitted to bail which is inconsistent with the statute in that the Code only authorizes the hearing officer to recommend bail (as provided in Section 908.6, The Code).

Subrule 7.6(1) provides for the appointment of a liaison officer as a member of the hearing panel to hear final revocation proceedings when as a matter of practice the chairman of the board actually appoints another member of the board rather than a liaison officer so that the panel consists of two parole board members.

Any interested person may make written suggestions or comments on these proposed rules prior to August 26, 1981. Such written materials shall be directed to the Executive Secretary, Iowa Board of Parole, Hoover State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the same at 515-281-4820. Also there will be a public hearing on Thursday, August 27, 1981, at 10:00 a.m. in the board room on the fifth floor of the Hoover State Office Building. Persons may present their views at this hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the said executive secretary at least one day prior to the date of the public hearing.

These rules are intended to implement Sections 908.6 and 908.7, The Code.

The following amendments are proposed.

ITEM 1. Subrule 7.5(13) is amended as follows:

7.5(13) Findings of the board hearing officer. If the board hearing officer finds that probable cause does not exist, he or she shall order that the parolee be released from custody and continued on parole. If the board hearing officer finds that probable cause does exist, he or she ~~may~~ *shall* order that the parolee be ~~admitted to bail or~~ committed to the custody of the department of social services *or may recommend bail as provided in section 908.2, The Code,* pending the final decision of the board of parole regarding the revocation of parole. If the board hearing

PAROLE, BOARD OF[615] *(cont'd)*

officer finds that probable cause does exist, but also finds that there exist circumstances in mitigation which show that the violation does not warrant revocation of parole, he or she may order that the parolee continue on parole, in which case the hearing officer may modify the conditions of parole.

ITEM 2. Subrule 7.6(1) is amended to read as follows:

7.6(1) Hearing panel of the board of parole. Prior to the board's monthly meeting, the chairperson shall designate ~~not less than~~ *one or more* members of the board of parole ~~and one liaison officer~~ to serve as the board hearing panel to conduct final parole revocation hearings. ~~At no time shall this liaison officer be the hearing officer who conducted the probable cause hearing of this alleged violation.~~

ARC 2217

PUBLIC SAFETY DEPARTMENT[680]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Chapter 101, The Code, the Iowa Department of Public Safety, State Fire Marshal, hereby gives Notice of Intended Action to amend rule 5.350(101) relating to Oil Burning Equipment, Iowa Administrative Code.

Synopsis:

This amendment deletes the section of the NFPA pamphlet No. 31, Section 1—10.1 which specifically prohibits the burning of crankcase oil in a burner. The aforementioned section (with the exception of the exclusion of the mention of crankcase oil) is adopted in subrule 5.350(1).

Any interested person may make written suggestions or comments on this proposed amendment to Wilbur R. Johnson, State Fire Marshal, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319, no later than August 27, 1981. There will also be a public hearing on August 27, 1981, at 10:00 a.m. in the east half of the Third Floor Conference Room of the Wallace State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact Wilbur R. Johnson of the State Fire Marshal's Office at least one day prior to the date of the public hearing.

The following amendment is proposed.

ITEM 1. Rule 680—5.350(101) is amended to read as follows:

680—5.350(101) Rules generally. "The Standard for the Installation of Oil Burning Equipment", No. 31, 1978 edition of the National Fire Protection Association *with the exception of section 1—10.1 Fuel Oil*, together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code 1979 edition of the National Fire Protection Association published in 1979 shall be the rules governing oil burners in the state of Iowa.

ITEM 2. Rule 5.350(101) is amended by adding a new subrule as follows:

5.350(1) Fuel oil. The grade of fuel oil used in a burner shall be that for which the burner is approved and as stipulated by the manufacturer. Any oil containing gasoline shall not be used. For use of oil fuels other than defined herein, see section 1—2.3 of "The Standard for the Installation of Oil Burning Equipment", No. 31, 1978 edition of the National Fire Protection Association.

5.350(2) Reserved.

This rule is intended to implement section 101.1, The Code.

ARC 2223

REAL ESTATE COMMISSION[700]

TERMINATION OF NOTICE

Pursuant to the authority of Section 117.9, The Code, the Iowa Real Estate Commission hereby terminates the Notice of Intended Action to amend 700—Chapters 1 and 2, Iowa Administrative Code.

These rules extend the time period for filing for a real estate license after passing the real estate examination and eliminates the requirement that individuals failing the examination be automatically rescheduled for the next examination.

This notice was published June 10, 1981, IAB as ARC 2086.

The reason for termination was that the changes were effectuated by ARC 2085, published June 10, 1981, and further the sole purpose of filing this notice was to inform the public and obtain public input. A public hearing was held on June 30, 1981, at 2:00 p.m. at which time no public comments were received.

ARC 2234

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Sections 421.14 and 422.68, The Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapters 12, "Filing Returns, Payment of Tax, Penalty and Interest", Chapter 44 "(Individual) Penalty and Interest", Chapter 52, "(Corporation) Penalty and Interest", Chapter 58, "(Franchise) Penalty and Interest", Chapter 63, "Administration", and Chapter 75, "Determination of Value and Tax for Freight-Line and Equipment Car Companies", Iowa Administrative Code. These rules place constrictive guidelines on the computation of penalty and also waive penalty on any additional taxes found to be due greater than the amount shown to be due on the return as filed.

The Code, as amended by Acts of the Sixty-eighth General Assembly, 1980 Session, Senate File 2327, provides that penalty shall be imposed for the failure to pay all tax required to be shown due on the return with the filing of the return. The present rules of the department are in direct conflict with the statutory mandates by the legislature in that they prohibit the assessment of a penalty for failure to pay the tax required to be shown due on the return when a penalty for failure to file has been charged at an earlier stage on the same tax period. The present rules also provide a blanket waiver for the penalty assessment of any additional tax found to be due on the return. The amended rules are to bring the department's rules into compliance with the verbiage and intent of the current statute.

Any interested persons may make written suggestions or comments on these proposed rules prior to September 4, 1981. Such written materials should be directed to the Deputy Director, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Deputy Director of Revenue at 515/281-3346 or in the Administration offices on the fourth floor of the Hoover State Office Building.

There will be a public hearing on Thursday, August 27, 1981, at 1:30 p.m. in Conference Room 1 on the fourth floor of the Hoover Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Deputy Director of Revenue at least one day prior to the date of the public hearing.

These rules are intended to implement Chapter 422, The Code, as amended by the Sixty-eighth General Assembly, 1980 Session, Senate File 2327[chapter 1113].

ITEM 1. Amend subrule 12.10(3) as follows:

12.10(3) Computations for tax periods *where the due date occurs* ~~beginning~~ after December 31, 1980. The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause. Section 422.58(1), The Code, provides a penalty for failure to file a permit holder's monthly tax deposit or a return or, if a permit holder fails to remit at least ninety percent of the tax due with the filing of the return or pay less than ninety percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due. ~~Only the penalty for failure to file a return will be added when there is both a failure to file either a deposit or return and a failure to remit at least ninety percent of the tax due or to pay less than ninety percent of the tax due or to pay less than ninety percent of the tax required as shown on the return.~~ The rate of penalty shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate for failure to file a deposit or return and for failure to pay at least ninety percent of the tax due. ~~Penalty is computed on the amount required to be shown as tax with the filing of the deposit or return. For purposes of computing the penalty in case of failure to file or failure to pay at least ninety percent of the tax due as shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be the percentage which had accumulated when the initial penalty was assessed and paid on the delinquent return.~~

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See subrule 44.3(3) for examples of the penalty computation. These examples would also apply to sales and use tax.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed.

This rule is intended to implement section 422.58(1), The Code.

ITEM 2. Amend rule 730—44.3(422) by striking the entire rule and inserting in lieu thereof the following:

730—44.3(422) Computation for tax periods beginning after June 30, 1974.

REVENUE DEPARTMENT[730] *(cont'd)*

The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

Although section 422.25 refers to a penalty for failure to file a return or to pay the tax due, only one penalty will be added. The rate of penalty for failure to file shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate. The rate of penalty for failure to pay the tax required to be paid with the filing of the return shall be five percent for payments which were due before January 1, 1981. If there is a failure with respect to both requirements as in the case where a tax is assessed by the department for failure to file and failure to pay, only the penalty for failure to file will be added. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

44.3(1) Computation for tax payments due on or after January 1, 1981, but before January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

A penalty of five percent per month, not to exceed twenty-five percent in the aggregate, is imposed for failure to file a return or pay the tax due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition for failure to pay, if after the return is filed, there is a continued failure to pay the tax due during the five-month period after the tax was due (taking into consideration any extensions of time to file the return). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment and the refund, considering each fraction of a month as an entire month.

44.3(2) Computation for tax payments due on or after January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

Section 422.25 provides a penalty of five percent per month, not to exceed twenty-five percent in the aggregate, for the failure to file a return or to pay the tax required to be shown due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return, the additional tax is subject to penalty for failure to pay, unless the failure was due to reasonable cause. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall be interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

Following are examples to illustrate the computation of penalties imposed under subrule 44.3(3). For the purpose of these examples only, interest has been computed at the rate of three-quarters of one percent per month.

REVENUE DEPARTMENT[730] *(cont'd)*

Example (a) - Delinquent Return

a. Tax due is $100

b. Return filed 3 months and 10 days after the due date.

c. $100 paid with the return.

The calculation for additional tax due is shown below:

Tax	$100.00	
Penalty	20.00	(20% failure to file penalty)
Interest	3.00	
Total	$123.00	
Less Payment	100.00	
Additional Tax Due	$ 23.00	

The computation below shows the total amount due if payment for the additional tax due is not received until six months after the due date of the return. The example assumes the $23.00 was assessed by the Department during the fourth month.

Additional Tax	$ 23.00	
Penalty	1.15	(5% failure to pay penalty)
Interest	.35	
Total Due	$ 24.50	

The maximum penalty cannot exceed 25%.

Example (b) - Timely Filed No Remit

a. Tax due is $100

b. Return was timely filed.

c. $0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	$100.00	
Penalty	25.00	(the maximum failure to pay penalty - 25% is assessed)
Interest	3.75	
Total	$128.75	

Example (c) - Late Filed No Remit

a. Tax due is $100

b. Return is filed 2 months and 10 days after the due date.

c. $0 paid.

The calculation for the total amount due three months after the due date is shown below.

Tax	$100.00	
Penalty	15.00	(15% for failure to file)
Interest	2.25	
Total Due 3rd mo.	$117.25	

The computation below shows the total amount due if the return was filed in the third month, but payment was not received until the sixth month after the due date.

Total Due 3rd mo.	$117.25	
Penalty	10.00	(10% for failure to pay)
Interest	2.25	
	$129.50	

The maximum penalty of 25% is assessed.

Example (d) - Timely Filed Partial Payment

a. Tax due is $100.

b. Return is timely filed.

c. $75 is paid with the return.

The calculation for the total amount due five months after the due date is shown below.

Tax	$100.00	
Less Payment	75.00	
Amount Due	$ 25.00	
Additional Tax	$ 25.00	
Penalty	6.25	(the maximum failure to pay penalty is assessed 25%)
Interest	.94	
Total Due 5th mo.	$ 32.19	

Example (e) - Late Filed Partial Pay

a. Tax due is $100.

b. Return was filed 1 month and 10 days after the due date.

c. $75 is paid with the return.

The calculation for the additional tax due is shown below.

Tax	$100.00	
Penalty	10.00	(10% failure to file penalty)
Interest	1.50	
Total Due	$111.50	
Less Payment	75.00	
Additional Tax Due	$ 36.50	

The computation below shows the total amount due if payment for the additional tax is not received until six months after the due date of the return.

Additional Tax	$ 36.50	
Penalty	5.48	(15% failure to pay penalty)
Interest	1.10	
Total Due 6th mo.	$ 43.08	

The maximum penalty of 25% is assessed.

Example (f) - Audit on Timely Filed Return

a. $100 in additional tax found due.

b. Timely filed return.

c. Audit completed 8 months after the due date of the return.

d. Return showed $100 as the computed tax, which was paid with the return.

The computation for the total amount due is shown below.

Computed tax after audit	$200.00
Less tax paid with return	100.00
Additional tax due	100.00
Penalty (maximum failure to pay penalty - 25%)	25.00
Interest	6.00
Total due	$131.00

REVENUE DEPARTMENT[730] *(cont'd)*

Example (g) - Audit on Late Filed Return

a. $100 in additional tax found due.

b. Return was filed 10 days after the due date.

c. Penalty and interest, as well as tax, were paid with the return.

d. $100 claimed as tax on the return.

e. Audit was completed 8 months after the due date of the return.

The computation for the total amount due is shown below.

Tax	$200.00	
Penalty	10.00	(5% failure to file)
Interest	1.50	
Total Due	$211.50	
Less Payment	105.75	
Additional Tax Due	$105.75	
Penalty	21.15	(20% failure to pay)
Interest	5.55	
Total Due	$132.45	

Example (h) - Audit on Late Filed Partial Pay Return

a. $100 in additional tax found due.

b. Return was filed 10 days after the due date.

c. $75 was paid with the return.

d. $100 claimed as tax on the return.

e. Audit was completed 8 months after the due date of the return.

The computation for the total amount due is shown below.

Tax	$200.00	
Penalty	10.00	(5% penalty for failure to file)
Interest	1.50	
Total Due	$211.50	
Less Payment	75.00	
Additional Tax Due	$136.50	
Penalty	27.30	(20% penalty for failure to pay)
Interest	7.17	
Total Due	$170.97	

Example (i) - Audit No Return Filed

a. $200 tax found due.

b. No return filed.

c. Audit completed 8 months after the due date of the return.

The computation for the total amount due is shown below.

Tax	$200.00
Penalty	50.00
Interest	12.00
Total Due	$262.00

The failure to file penalty provision is assessed since both the failure to file and failure to pay occurred simultaneously.

Example (j) - Audit on Late Filed No Remit Return

a. $100 claimed as tax on the return.

b. $100 in additional tax found due.

c. Return filed four months and ten days after the due date.

d. Audit completed 11 months after the due date.

The computation for the total amount due is shown below.

Tax	$200.00
Penalty	50.00
Interest	16.50
Total Due	$266.50

25% penalty for failure to file is applicable to the $100 claimed as tax on the return and the $100 found to be due by audit. The failure to pay penalty cannot be imposed since the failure to file penalty has reached the maximum 25%.

Example (k) - Audit on Late Filed No Remit Return

a. $100 claimed as tax on the return.

b. $100 in additional tax found due.

c. Return filed one month and ten days after the due date.

d. Audit completed 11 months after the due date.

The computation for the total amount due is shown below.

Tax	$200.00
Penalty-Failure to File	20.00
Penalty-Failure to Pay	30.00
Interest	16.50
Total Due	$266.50

A 10% penalty for failure to file is applied to the $200 total tax owed. A failure to pay penalty of 15% is imposed for the remaining three months of the penalty period. The failure to pay also commences on the due date of the return.

Example (l) - Late Filed Return With Extension, No Remit

a. Tax due is $100.

b. Taxpayer has valid extension through October 31.

c. Return was filed October 31, with no payment.

The calculation for the total amount due two months after the return was filed is shown below:

Tax	$100.00	
Penalty	10.00	(10% failure to pay penalty)
Interest	6.00	
Total	$116.00	

No penalty is assessed during period of extension. Penalty for failure to pay is assessed on the unpaid tax at a rate of 5% from the extended due date (October 31) until the tax is paid, not to exceed 25%.

REVENUE DEPARTMENT[730] *(cont'd)*

Example (m) - Return Filed During Period of Extension Without Payment of Interest

a. Tax owed is $2,000.

b. Taxpayer has valid extension through October 31.

c. $2,000 paid with the filing of the return on October 31.

d. Audit is performed six months after filing date.

Tax	$2,000.00	
Interest	90.00	
Total	$2,090.00	
Less Payment	2,000.00	
Additional Tax Due	$ 90.00	
Penalty	22.50	(25% failure to pay penalty)
Interest	4.05	
Total Due	$ 116.50	

Example (n) - Audit of Timely Filed Return With Extension

a. $100 in additional tax found due.

b. Extension of 3 months was requested and appproved.

c. $100 in estimated tax paid with the extension.

d. Return filed 2 months after the original due date. (Filed timely with extension period).

e. Audit completed 4 months after filing date.

f. Return showed tax due of $100.

The computation for the total amount due is shown below.

Computed Tax after Audit	$200.00
Less Paid with Extension	100.00
Additional Tax Due	100.00
Penalty (15% for failure to pay penalty)	15.00
Interest (6 months)	4.50
Total Due	$119.50

Failure to pay penalty does not begin to accrue until the end of the extension period.

Example (o) - Audit of Return Where Payment With Return Does Not Exceed Penalty and Interest

a. $100 in additional tax found due.

b. Return was filed 1 month and 15 days after the due date.

c. Return showed $10 as the computed tax which was paid with the return.

The calculation for the additional amount due after the filing of the return is shown below.

Computed tax after Audit	$110.00	
Penalty (10% failure to file penalty)	11.00	
Interest	1.65	
Total Due With Return	$122.65	
Less Paid With Return	10.00	
Computed Tax After Payment		$110.00
Penalty Remaining After Payment		1.00
Interest After Payment		1.65
Balance Remaining after Payment with Return	$112.65	

The computation below shows the total amount due if the payment for the additional tax due is not received until six months after the due date of the return.

Tax Remaining Due	$110.00
Penalty (15% failure to pay penalty)	16.50
Interest	3.30
Penalty (balance of failure to file penalty)	1.00
Interest (amount due with filing of return)	1.65
Total Due 6th month	$132.45

Example (p) - Two Audits of a Return Where the First Audit Results in a Refund, and the Second Audit Results in an Assessment

a. $250 was paid during the year as estimated tax payments.

b. Return was filed timely showing $100 as the computed tax due, $50 to be credited against the next year's estimated payments and $100 to be refunded in a warrant to the taxpayer.

c. Return was audited within 30 days of filing, all information was found to be correct and the $100 was refunded (without interest).

d. Eight months after filing the original return, taxpayer filed an amended Iowa return, due to an amended federal return, showing $300 as the computed tax due and paying $200 with the amended return.

e. Audit completed two months after the filing of the amended return.

The computation for the additional amount due after the filing of the amended return is shown below:

Computed Tax After Audit on Amended Return	$300.00
Less Estimated Payments	250.00
Tax Credited to Next Years Estimate	50.00
Tax Due With Return	$100.00
Tax Refunded with Warrant	100.00
Total Tax Due	$200.00
Penalty 25% maximum failure to pay	25.00
Interest 6%	12.00
Total Due with Amended Return	$237.00
Less Paid with Filing of Amended Return	200.00
Tax Remaining Due After Filing of Amended Return	$ 37.00
Interest 1.5%	.56
Total Due	$ 37.56

REVENUE DEPARTMENT[730] *(cont'd)*

Penalty can only be imposed upon the additional tax due before the tax was refunded.

This rule is intended to implement section 422.25, The Code.

ITEM 3. Subrule 44.7(6) is amended to read as follows:

44.7(6) A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

~~A waiver of penalty for failure to pay any amount of any tax required to be shown on the return will generally apply to any additional taxes due except where the fifty percent penalty provisions are applicable, where the internal revenue service has assessed a negligence penalty, or where the taxpayer has substantially understated his or her Iowa taxable income.~~ Where the taxpayer fails to remit the tax due with the filing of the return on or before the due date, penalty will be imposed on the unpaid balance unless it can be shown that reasonable cause for such failure existed.

ITEM 4. Amend subrule 52.5(2) by striking the entire subrule and inserting in lieu thereof the following subrules 52.5(2), 52.5(3), 52.5(4) and renumbering the remaining subrules.

52.5(2) Computation for tax periods beginning after June 30, 1974.

The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

Although section 422.25 refers to a penalty for failure to file a return or to pay the tax due, only one penalty will be added. The rate of penalty for failure to file shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate. The rate of penalty for failure to pay the tax required to be paid with the filing of the return shall be five percent for payments which were due before January 1, 1981. If there is a failure with respect to both requirements as in the case where a tax is assessed by the department for failure to file and failure to pay, only the penalty for failure to file will be added. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

52.5(3) Computation for tax payments due on or after January 1, 1981, but before January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

A penalty of five percent per month, not to exceed twenty-five percent in the aggregate, is imposed for failure to file a return or pay the tax due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition for failure to pay, if after the return is filed, there is a continued failure to pay the tax due during the five-month period after the tax was due (taking into consideration any extensions of time to file the return). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment and the refund, considering each fraction of a month as an entire month.

52.5(4) Computation for tax payments due on or after January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that the failure was due to reasonable cause.

Section 422.25 provides a penalty of five percent per month, not to exceed twenty-five percent in the aggregate, for the failure to file a return or to pay the tax required to be shown due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due

(taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return, the additional tax is subject to penalty for failure to pay, unless the failure was due to reasonable cause. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall be interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

For examples on application of penalties, refer to rule 44.3(422).

ITEM 5. Subrule **52.5(7)**, paragraph "h" is amended to read as follows:

h. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he paid on the due date.

~~A waiver of penalty for failure to pay any amount of any tax required to be shown on the return will generally apply to any additional taxes due except where the fifty percent penalty provisions are applicable, where the internal revenue service has assessed a negligence penalty, or where the taxpayer has substantially understated his Iowa taxable income.~~ Where the taxpayer fails to remit the tax due with the filing of the return on or before the due date, penalty will be imposed on the unpaid balance unless it can be shown that reasonable cause for such failure existed.

This rule is intended to implement section 422.25, The Code.

ITEM 6. Amend subrule 58.5(2) by striking the entire subrule and inserting in lieu thereof the following subrules 58.5(2), 58.5(3), 58.5(4) and renumbering the remaining subrules.

58.5(2) Computation for tax periods beginning after June 30, 1974.

The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed unless it is shown that the failure was due to reasonable cause.

Although section 422.25 refers to a penalty for failure to file a return or to pay the tax due, only one penalty will be added. The rate of penalty for failure to file shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate. The rate of penalty for failure to pay the tax required to be paid with the filing of the return shall be five percent for payments which were due before January 1, 1981. If there is a failure with respect to both requirements as in the case where a tax is assessed by the department for failure to file and failure to pay, only the penalty for failure to file will be added. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

58.5(3) Computation for tax payments due on or after January 1, 1981, but before January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

A penalty of five percent per month, not to exceed twenty-five percent in the aggregate, is imposed for failure to file a return or pay the tax due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition for failure to pay, if after the return is filed, there is a continued failure to pay the tax due during the five-month period after the tax was due (taking into consideration any extensions of time to file the return). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

REVENUE DEPARTMENT[730] *(cont'd)*

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment and the refund, considering each fraction of a month as an entire month.

58.5(4) Computation for tax payments due on or after January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

Section 422.25 provides a penalty of five percent per month, not to exceed twenty-five percent in the aggregate, for the failure to file a return or to pay the tax required to be shown due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return, the additional tax is subject to penalty for failure to pay, unless the failure was due to reasonable cause. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall be interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

For examples on application of penalties, refer to rule 44.3(422).

ITEM 7. Subrule **58.5(6)**, paragraph "h" is amended to read as follows:

h. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of its tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if it paid on the due date.

~~A waiver of penalty for failure to pay any amount of any tax required to be shown on the return will generally apply to any additional taxes due except where the fifty percent penalty provisions are applicable, where the internal revenue service has assessed a negligence penalty, or where the taxpayer has substantially understated its Iowa taxable income.~~ Where the taxpayer fails to remit the tax due with the filing of the return on or before the delinquency date, penalty will be imposed on the unpaid balance unless it can be shown that reasonable cause for such failure existed.

This rule is intended to implement sections 422.66 and 422.25, The Code.

ITEM 8. Amended rule 730—63.8(324) as follows:

730—63.8(324) Penalty. The Code provides for penalties to be charged against the taxpayer or reporter in two situations: (1) When a report is filed late, or (2) when a taxpayer fails to remit a tax payment on or before the due date (section 324.65, The Code). The penalty shall be determined as a percentage of the tax due, and if no tax is due, the penalty shall be ten dollars if the report is filed late.

The penalty for a late filed report is five percent of the tax due for the first month and an additional five percent for each additional month or fraction of a month during which the report remains unfiled, up to a maximum of twenty-five percent. For the periods prior to January 1, 1981, the penalty for failure to remit a tax payment by the due date is five percent of the tax due. For periods *where the due date occurs* after December 31, 1980, the penalty for failure to remit a tax payment by the due date is five percent of the tax due for the first month and an additional five percent for each additional month or fraction of a month, up to a maximum of twenty-five percent.

~~If a penalty for both failure to file a report and failure to remit taxes could apply to any situation, the penalty for failure to file the report shall apply.~~ *In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due. The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See subrule 44.3(3) for examples of the penalty computation. These examples would also apply to the motor fuel tax.*

If it is determined that a failure to file a report or remit taxes when due was the result of a deliberate attempt to evade the payment of fuel taxes on the part of the taxpayer, a penalty of fifty percent of the tax due will be assessed against such party. This penalty shall be in lieu of the other penalties provided for. If a taxpayer remits a tax payment by check and such check is subsequently not honored by the taxpayer's bank, such check shall not constitute a remittance until honored or otherwise paid.

This rule is intended to implement section 324.65, The Code.

ITEM 9. Repeal chapter 75 and insert in lieu thereof the following new rules.

730—75.1(435) Filing of return.

The annual return pertaining to freight-line and equipment car tax, as required by section 435.3, The Code, shall be made on the form provided by the director of revenue.

Additional information filed by taxpayer, but not required by the director, shall be on separate schedules and will be considered part of the annual return.

The annual return shall be filed with the director of revenue on or before the first Monday in June in each year.

Upon the filing of the annual returns, the director of revenue or his duly authorized representative shall examine each of them, and if they are deemed sufficient or if they fail to fully set out the matters required to be reported, the taxpayer shall be required to make such other and further returns as to the matters covered by these rules.

730—75.2(435) Penalty and interest. Computations for tax periods where the due date occurs after December 31, 1981. The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts. If either condition is not met, a penalty shall be assessed unless it is shown that the failure was due to reasonable cause. The rate of penalty shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate for failure to file a return. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See subrule 44.3(3) for examples of the penalty computation.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposition was required to be filed.

This rule is intended to implement chapter 435, The Code.

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NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Sections 421.14 and 422.68(1), The Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage", and Chapter 26, "Sales and Use Tax on Services", Iowa Administrative Code.

The following amendments are made as required by Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 466 and House File 468. The amendment to rule 18.25(422,423) reflects the effective date of House File 468, which changes the method of taxing optional service or warrant contracts and reflects the tax imposition on optional service or warranty contracts. The amendments also provide that preventative maintenance contracts, as defined, are not subject to tax at the time of sale.

Subrule 26.2(6) is amended to delete the examples that do not qualify as a resale of services.

Subrules 26.2(7) and 26.2(8) are added to distinguish when the resale of services do not apply, based on the Iowa Supreme Court decision in Iowa Auto Dealers v. Iowa Department of Revenue, 301 N.W.2d 760 (Iowa 1981), and implements section 422.42(13), The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, Senate File 466.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 4, 1981. Such written comments should be directed to the Director, Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Director, Excise Tax Division at (515) 281-5476 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 27, 1981.

These rules are intended to implement section 422.42(13), The Code.

The following amendments are proposed.

ITEM 1. Amend subrule 18.25(3) to read as follows:

18.25(3) Optional warranties. *For periods prior to July 1, 1981, optional warranty contracts are not subject to tax at the time they are entered into.* The person obligated under an optional warranty contract to furnish parts,

REVENUE DEPARTMENT[730] *(cont'd)*

materials, and labor necessary to maintain the property is the consumer of the materials, parts, and labor furnished and tax applies to the sale of such items to ~~him~~ *them.* If he *or she* purchased the property for resale, without tax paid on the purchase price, he *or she* must report and pay tax upon the cost of such property to him *or her* when ~~he~~ *they* appropriates it to the fulfillment of the contract of warranty. Labor performed for an enumerated taxable service will be taxed at the same rate that labor is billed for nonwarranty services.

ITEM 2. Amend subrule 18.25(4) by deleting it in its entirety and inserting in lieu thereof the following:

18.25(4) Optional warranties. For periods after June 30, 1981. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under section 422.43, The Code, is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale.

ITEM 3. Amend subrule 18.25(5) to read as follows:

18.25(5) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. *The gross receipts from the sale of a preventive maintenance contract is not subject to tax.*

ITEM 4. Amend subrule 26.2(6) to read as follows:

26.2(6) ~~a~~ A service which is purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service. For example:

a. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service *from Z* for resale *to Y.*

~~b. B owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. B is in the business of selling used cars and is the consumer of the service since he or she owns the car. See Merriwether v. State, 252 Al. 590, 42 So.2d 465, 11 A.L.R. 2d 918 (1949).~~

~~c.~~ *b.* B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair services furnished by C to B constitute a sale of such services to B for resale to E who is the consumer of these services.

~~d.~~ *c.* B owns an auto repair shop and C brings his automobile in to have the air conditioner fixed. B is unable to fix the unit so he or she sends the car to G who is an air conditioning specialist. The sale of G's service to B is a sale for resale by B to C.

~~e. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting such tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering such testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services. See rule 15.3(422,423) regarding resale certificates.~~

~~This rule shall become effective for tax periods beginning on or after July 1, 1978.~~

~~This rule is intended to implement section 422.42(3) of the Code.~~

ITEM 5. Amend rule 730—26.2(422) by adding the following new subrules:

26.2(7) Services purchased which are not for resale. For periods beginning July 1, 1978, the tax on services is collectible at the time the service is complete even if not purchased by the ultimate beneficiary. For example:

a. B, a used car dealer, owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. Tax is due when the service is completed for the used car dealer. See Iowa Auto Dealers v. Iowa Department of Revenue, 301 N.W.2d 760 (Iowa 1981). This particular example does not apply to denote tax due after June 30, 1981. See subrule 26.2(8).

b. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services. See rule 15.3(422,423) regarding resale certificates.

26.2(8) For periods beginning after June 30, 1981, services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale, upon which sales or use tax will be paid when the tangible personal property is ultimately sold. For example:

a. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax free because A is regularly engaged in selling refrigerators and tax will be collected when ultimately sold to a final consumer.

b. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax free because B is regularly engaged in selling used cars and use tax will be paid when the car is sold and registered with the county treasurer.

c. C operates a retail farm implement dealership. C accepts a motor boat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motor boats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

d. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television set that XYZ is going to sell. XYZ can purchase television repair service tax free from W because XYZ is regularly engaged in selling television sets subject to sales tax. However, the used television in this instance is sold to Y and XYZ delivers the television set into interstate commerce with the result that the sales tax is not collectible. In this example, the repair service performed on the television set sold to Y is taxable because an Iowa sales or use tax is not paid when the property is sold at retail.

This rule is intended to implement sections 422.42(3), 422.42(13), and 422.43, The Code.

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NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b" of Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Sections 421.14 and 450.12, The Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to create rules for Chapter 89, "Fiduciary Income Tax", Iowa Administrative Code.

There have been a number of fiduciary income tax law changes in the past four to five years which are not covered by rule. The proposed Chapter 89 rules specifically cover the law changes on installment sale obligations, the taxation of the gain from Iowa real estate owned by nonresident aliens, recent Iowa Supreme Court cases affecting estate income, the interaction of the Iowa inheritance tax with fiduciary income tax, the double deduction of expenses allowable against the Iowa inheritance tax, computation of taxable income and changes in the area of required audit documents due to the merger of fiduciary income tax files with the file for inheritance tax.

Any interested persons may make written suggestions or comments on the proposed rules on or before September 4, 1981. Such written materials should be directed to the Director, Estates and Trusts Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Director, Estates and Trusts Division, Iowa Department of Revenue, at (515) 281-5615 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building. Also, there will be a public hearing on Thursday, August 27, 1981, at 1:30 p.m. in conference room 2 on the third floor of the Hoover State Office Building. Persons may present their views at this hearing either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the director of the Estates and Trusts Division at least one day prior to the date of the public hearing.

These rules are intended to implement Chapters 17A and 324 and sections 421.2, 421.4, 422.4, 422.5, 422.6, 422.7, 422.8, 422.9, 422.12, 422.14, 422.16, 422.21, 422.23, 422.25, 422.26, 422.27, 422.28, 422.73, 633.106, 633.352, 633.425, 633.471, 633.477 and 633.479, The Code.

The following rules are proposed.

ITEM 1. The following index is inserted at the beginning of Chapter 89, "Fiduciary Income Tax".

[An Index will be published in IAC when rules are adopted]

ITEM 2. Chapter 48 is deleted in its entirety and is reserved for future use. The following new chapter 89 is inserted after chapter 88.

CHAPTER 89
FIDUCIARY INCOME TAX

730—89.1(422) Administration.

89.1(1) Definitions. The following definitions cover chapter 89 and are in addition to the definitions contained in section 422.4, The Code.

a. "Department" means the Iowa department of revenue.

b. "Director" means the director of revenue.

c. "Administrator" means the administrator of the estates and trusts division of the department of revenue and the personal representative of an intestate estate.

d. "Estates and trusts division" is the organizational unit of the department created by the director to administer the inheritance, estate, generation skipping transfer and fiduciary income tax laws.

e. "Taxpayer" means the executor, administrator or other personal representative of a decedent's estate required to file a return for the estate and the decedent under sections 422.14 and 422.23, The Code. "Taxpayer" also means the trustee of a trust subject to tax under 26 U.S.C. section 641 and required to file a return under 26 U.S.C. section 6012(b), as well as the trustee of the bankrupt estate of an individual under chapter 7 or 11 of Title 11 of the United States Code.

f. "Tax" means the income tax imposed on estates and trusts under section 422.6, The Code.

g. "Personal representative" means the executor, administrator or trustee of a decedent's estate.

89.1(2) Delegation of authority. The director delegates to the administrator of the estates and trusts division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: Determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; determining reasonable cause for failure to file and make timely tax payment; granting extensions of time to file the return and pay the tax due and issuing the certificate of acquittance authorized by section 422.27, The Code. The administrator of the estates and trusts division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and clerks of the division as he or she may designate.

This rule is intended to implement sections 421.2, 421.4, 422,6, 422.23, 422.25, 422.26, 422.27 and 422.73, The Code.

730—89.2(422) Confidentiality.

89.2(1) Confidential information. The state and federal returns, accompanying schedules, as well as the taxpayer's books, records, documents and accounts of any person, firm or corporation, are held confidential, except the information which is deemed a public record by the state and federal law. See 26 U.S.C. section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See departmental rule 730—38.5(422) for the confidentiality of a decedent's individual income tax returns.

89.2(2) Information not confidential. Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not confidential. The fact alone that a return has or has not been filed with the department is not confidential information. 1976 Op. Att'y Gen. 679.

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89.2(3) Documents to be filed.

a. Estates of Iowa decedents. A copy of the preliminary inheritance tax report and probate inventory required by section 633.361, The Code, and department subrule 86.2(2) (relating to inheritance tax) and a copy of the decedent's will in testate estates shall be filed with the first fiduciary return of income, unless previously filed with the department for inheritance tax purposes.

b. Nonresident decedents-ancillary administration. If ancilliary administration has been opened for the estate of a nonresident decedent, a copy of the preliminary inheritance tax report and probate inventory and a copy of the decedent's will in testate estates, shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

c. Inter vivos trusts. Inter vivos trusts with a situs in Iowa and inter vivos trusts with a situs outside Iowa with Iowa taxable income, shall submit to the department with the first fiduciary return the following: (1) A copy of the trust instrument; (2) a list of the trust assets (those generating Iowa taxable income in case of trusts with a situs outside Iowa); and (3) an estimate of the fair market value of each asset. If the trust instrument is amended or additional assets are added to the trust corpus (additional assets which generate Iowa taxable income in case of trusts with a situs outside Iowa), a copy of the amended items must be submitted to the department with the first fiduciary return of income following the change.

d. Testamentary trusts. If the estate was not reported for inheritance tax purposes, a copy of the decedent's will and a list of assets in the trust corpus in testamentary trust with a situs both within and without Iowa must be submitted to the department with the first fiduciary return of income.

89.2(4) Required records. The taxpayer shall keep records and accounts necessary to substantiate reportable income and deductions. Upon request, the taxpayer shall furnish the department documents, such as copies of tax returns, court orders, trust instruments, annual reports, canceled checks and like information as may be reasonably necessary to enable the department to determine the correct tax liability. Tiffany v. County Board of Review, 188 N.W.2d 343, 349 (Iowa 1971).

This rule is intended to implement sections 422.25, 422.27, 422.28 and 422.73, The Code.

730—89.3(422) Situs of trusts.

89.3(1) Testamentary trusts. The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.

89.3(2) Inter vivos trusts. If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. sections 671 through 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.

If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. sections 671 through 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but not limited to: The residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. sections 671 through 679, is not a controlling factor as to the situs of the trust, unless he or she is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

The rule is intended to implement sections 422.6, 422.8, and 422.14, The Code.

730—89.4(422) Fiduciary returns and payment of the tax.

89.4(1) Form of return. The form of the fiduciary return shall be prescribed by the director. It shall conform as nearly as possible to the federal fiduciary return.

89.4(2) Required federal returns and schedules. Nonresident estates with Iowa taxable income and trusts with situs outside Iowa with Iowa taxable income must submit a copy of the federal fiduciary return with the Iowa return. Estates of Iowa decedents and trusts with a situs in Iowa must submit copies of the federal schedules that substantiate gross income, deductions and ordinary and throwback distributions to beneficiaries with the Iowa return.

89.4(3) Same form for nonresident estates and foreign situs trusts. Nonresident estates and foreign situs trusts shall use the same form for reporting Iowa taxable income as prescribed for resident estates and trusts with a situs in Iowa.

89.4(4) Accounting period—tax year. The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by section 422.6, The Code, must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid (not including any extension of time to file and pay), the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. sections 441 through 433, federal regulations sections 1.441—1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

1. Decedent died July 4, 1980. The taxable year for the estate commences the day after the decedent's death (July

5, 1980) and will end December 31, 1980, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, 1980, or the last day of any future month (except December 31, 1980), but no later than June 30, 1981, subject to the condition that it is selected prior to the time the return and payment are orignally due.

2. Grantor creates an irrevocable trust on July 27, 1979. On July 1, 1980, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, 1979. Since the return was due March 17, 1980 (March 15 was a Saturday) for federal income tax purposes and March 31, 1980, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

89.4(5) Short year returns. If an estate or trust is in existence only a portion of the taxable year, a return must be filed for the partial year in accordance with subrule 89.4(6).

89.4(6) Minimum filing requirements.

a. General rule. A fiduciary return of income must be filed if the gross income of the estate or trust for the taxable year is six hundred dollars or more, regardless of any tax liability.

b. Exception to the general rule. A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to sections 422.27, 633.477 and 633.479, The Code.

89.4(7) Amended returns. An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See subrules 43.3(4) and 43.3(5) for the period of time for making a claim for a refund of excess tax paid.

89.4(8) Return due date. The fiduciary return must be filed with the department and the tax due paid in full, on or before the last day of the fourth month following the end of the taxable year or the last day of the period granted by the department on an extension of time. If the due date falls on a Saturday, Sunday or holiday, the due date is the next day which is not a Saturday, Sunday or holiday. Returns not timely filed and tax not timely paid are delinquent and subject to penalty as provided in rule 89.6(422).

89.4(9) Duties of the taxpayer.

a. Income of the estate or trust. A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 89.4(6) are met and to pay the tax due, if any, in full. The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid: In Re Estate of Oelwein, 217 Iowa 1137, 1141, 251 N.W. 694 (1933); Findley v. Taylor, 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in his or her possession, prior to applying the income to estate obligations. See section 633.352, The Code.

b. Decedent's final individual income tax return. The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death, equals or exceeds the minimum filing requirements. See subrules 39.1(1) through 39.1(3) and 39.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decendent's rights to income received after the day of the decedent's death, are income of the decedent's estate or the persons succeeding to the property or rights to income, as the case may be. See sections 633.350 through 633.353, The Code, for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the decedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year or the last day of the period granted by the department in an extension of time. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

c. Decedent's prior year returns. The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due, if any. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in section 633.425, The Code (probate).

d. Withholding agent—general rule. The personal representative of a decedent's estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to beneficiaries who are nonresidents of Iowa. This applies to both Iowa and non-Iowa situs estates and trusts. See section 422.16(12), The Code, and subrule 46.4(2)"5." for the duty to withhold. The amount of income tax to be withheld shall be computed according to tax tables provided by the department. See subrule 46.3(1) for the required withholding form and return to be filed with the department.

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e. Exception to the general rule. If a nonresident beneficiary of an estate or trust who is to receive a distribution of Iowa taxable income, files with the department a nonresident declaration of estimated tax and pays the estimated tax on the income declared in full, subrule 89.4(9)"d" does not apply to the amount of the income declared. A certificate of release from the duty to withhold will be issued to the withholding agent upon request. See sections 422.16(12) and 422.17, The Code, and subrule 46.4(3) relating to the release certificate.

f. Withholding not required. Withholding is not required from the distribution made by estates and trusts of Iowa taxable income to beneficiaries who are residents of Iowa.

g. Beneficiary's share of income, deductions and credits. After the final distribution of income for the taxable year, but prior to the date for filing a beneficiary's individual income tax return, the personal representative of an estate and the trustee of a trust shall furnish each beneficiary receiving a distribution from an estate or trust a written statement specifying the amount and types of income subject to Iowa tax and the kinds and amounts of the deductions and credits against the tax. A copy of federal schedule K-1, form 1041, adapted to reflect Iowa taxable income, may be submitted in lieu of the statement.

h. Liability of a withholding agent. A withholding agent is personally liable for the amount of the tax required to be withheld under section 422.16(12), The Code, if the income tax liability of a nonresident beneficiary which is attributable to the distribution is not paid, and in addition, is personally liable for any penalty and interest due if the tax required to be withheld is not paid to the department within the time prescribed by law. See rules 44.1(422) through 44.7(422) for the application and computation of penalty and interest on income tax required to be withheld.

This rule is intended to implement sections 422.6, 422,8, 422.16, 422.21, 422.23, 422.25, 422.27, 633.352 and 633.425, The Code.

730—89.5(422) Extensions of time to file and pay the tax.

89.5(1) Automatic two-month extension. An automatic two-month extension of time to file the fiduciary income tax return and to pay the tax due will be granted by the department, if the application for the extension is filed prior to the due date of the return. See subrule 89.4(8) for what constitutes timely filing.

89.5(2) Additional extension of time. For good cause, the department may grant an additional extension of time not to exceed four months to file the fiduciary return and pay the tax if an application for additional time is filed prior to the expiration of the automatic extension of time.

89.5(3) Extension of time for the decedent's final return. Department subrule 39.2(2) providing for extensions of time to file individual income tax returns and pay the tax due shall apply to the decedent's final return.

89.5(4) Form of application and place of filing. The application for an extension of time to file the fiduciary income tax return and to pay the tax due, shall be made on forms prescribed by the director. The application must be filed with the department prior to the date the return is due, directed to the Estates and Trusts Division, Hoover State Office Building, Des Moines, Iowa 50319. A partial payment of the tax due is not a prerequisite for granting an extension of time.

This rule is intended to implement section 422.21, The Code.

730—89.6(422) Penalties.

89.6(1) Negligence penalty—delinquent returns and payment. Effective for fiduciary income tax returns and tax due on or after January 1, 1981, a penalty of five percent per month, not to exceed twenty-five percent in the aggregate, is imposed for failure to file a fiduciary income tax return or to pay the tax required to be shown as due, within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or to pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit of a fiduciary return results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See rules 44.1(422) through 44.3(422) for individual income tax penalties and subrule 44.3(3) for examples of penalty computation.

89.6(2) Fraud penalty. If the failure to file the fiduciary income tax return is willful or deliberate with the intention of evading tax or if a false return is willfully or deliberately filed for the purpose of evading the correct tax due, a penalty of fifty percent of the amount of the tax required to be shown as due is imposed. The penalty for fraud shall be in lieu of the penalties provided in subrule 89.6(1).

89.6(3) Waiver of penalty. A request for waiver of penalty must be in writing, in the form of an affidavit, and be submitted to the Estates and Trusts Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. It must identify the fiduciary income tax return, the taxable year for which the delinquency occurred and state the reasons for the failure. It is not sufficient for the taxpayer to simply establish that the failure was not willful. The reasons why the failure was reasonable must also be established. The affidavit must contain the facts on which a conclusion can be reached that the penalty should be waived. A mere statement of conclusions is not sufficient.

89.6(4) Reasonable cause. What constitutes reasonable cause for failure to timely file the fiduciary return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause include, but are not limited to:

a. The return filing and payment were timely, but erroneously submitted to the internal revenue service or another state agency.

b. When the return and payment were mailed on or before the due date, but were not received by the department until after the due date. If the due date falls on a Saturday, Sunday or holiday, the due date is the next day which is not a Saturday, Sunday or holiday. See section 622.106, The Code, for what constitutes proof of the mailing date.

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c. The estate's right to the income is subject to litigation and the personal representative of the estate either has not received the income, or is prohibited from disbursing the income received.

d. The condition of decedent's books and records prevent the compilation of the data necessary to file a return.

e. The delay was caused by the death or serious illness of the taxpayer.

f. The delay was caused by the prolonged unavoidable absence of the taxpayer.

g. The delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

h. Ordinary business care and prudence was exercised to provide for the timely filing of the return and payment of the tax due, but the filing or payment was nevertheless delinquent. See subrule 44.7.(7) for reasonable cause for delinquencies on individual income tax returns.

89.6(5) What does not constitute reasonable cause. Factors which do not tend to establish reasonable cause include, but are not limited to:

a. Negligence of the tax return preparer to timely file the return and pay the tax due. The duty of the taxpayer to timely file the return and pay the tax due is a nondelegable responsibility.

b. Failure to exercise the generally accepted standards of fiduciary responsibility in providing for the timely filing of the return and payment of the tax due.

89.6(6) Interest cannot be waived. Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period it was deprived of the use of money. Therefore, interest due cannot be waived. Vick v. Phinney, 414 F.2d 444, 448 (5th CA 1969); Time, Inc. v. United States, 226 F.Supp. 680, 686, (S.D. N.Y. 1964); In Re Jeffco Power Systems, Dep't of Revenue Hearing Officer decision, Docket No. 77-9-6A-A (1978).

This rule is intended to implement sections 4.1, 422.25 and 622.106, The Code.

730—89.7(422) Interest.

89.7(1) Interest on unpaid tax. Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate of three-fourths of one percent per month for each month, or fraction of a month, that the tax liability remains unpaid. Payments made are first credited to penalty and interest due and then to the tax liability.

89.7(2) Interest on refunds.

a. Tax paid prior to due date. For the purpose of determining the time interest begins to accrue, all income tax withheld, estimate tax paid and other tax paid prior to the due date, shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

b. Tax paid prior to April 30, 1980. Interest on excess tax paid prior to April 30, 1980, draws interest at the rate of three-fourths of one percent per month or fraction of a month commencing sixty days after payment was made until paid.

c. Tax paid on or after April 30, 1980, but prior to April 30, 1981. Interest on excess tax paid on or after April 30, 1980, but prior to April 30, 1981, draws interest at the rate of three-fourths of one percent per month or fraction of a month commencing thirty days after payment was made until paid.

d. Tax paid on or after April 30, 1981. Interest on excess tax paid on or after April 30, 1981, draws interest at the rate of three-fourths of one percent per month commencing the first day of the second calendar month following the date the payment was made or the return was filed, whichever is later.

89.7(3) Interest on a net operating loss carryback.

a. The sixty-day period—years ending no later than June 30, 1980. For net operating losses occurring in any of the taxable years beginning on or after January 1, 1974, and ending no later than June 30, 1980, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or sixty days after the tax to be refunded was paid, whichever time is later.

b. The thirty-day period prior to April 30, 1981. For net operating losses occurring in any taxable year ending on or after July 1, 1980, but prior to April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or thirty days after the tax to be refunded was paid, whichever time is later.

c. The second calendar month period—on or after April 30, 1981. For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

d. Tax deficiency in carryback year—interest due. A tax deficiency occurring in any taxable year to which a net operating loss is carried back draws interest at the rate of three-fourths of one percent per month or fraction of a month, from the date the tax due was required to be paid, including tax due during an extension of time to pay, to the close of the taxable year in which the net operating loss occurs, notwithstanding the fact the net operating loss carryback reduces or eliminates the prior year tax deficiency.

This rule is intended to implement section 422.25, The Code.

730—89.8(422) Reportable income and deductions.

89.8(1) Application of the Internal Revenue Code. Section 422.4(1), The Code, provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in sections 422.7 and 422.9, The Code. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See First National Bank of Ottumwa v. Bair, 252 N.W.2d 723 (Iowa 1977).

89.8(2) Authority of federal court cases, regulations and rulings. The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under section 422.4, The Code. Federal regulations may be interpreted by Iowa courts for state tax purposes. In Re Estate of Louden, 249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the jurisdiction where the statute originated properly commands consideration and is highly persuasive. Eddy v. Short, 190 Iowa 1376, 1383, 179 N.W. 818 (1920), In Re

Estate of Millard, 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see rule 41.2(422).

89.8(3) Reportable income in general—Iowa estates and trusts. Estates of Iowa resident decedents and trusts with a situs in Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. See subrule 89.8(11)"b" for the credit allowable against the Iowa tax for income tax paid to another state or country on income reported to Iowa for taxation.

89.8(4) Reportable income in general—foreign situs estates and trusts. Estates and trusts with a situs outside Iowa must report only that portion of its income which is derived from Iowa sources. Examples of Iowa source income include, but are not limited to: Income from real and tangible personal property with a situs in Iowa, such as a farm and from a business located in Iowa; the capital gain portion of an installment sale contract of Iowa situs property and wages, salaries and other compensation for services performed in Iowa, but received after the death of the decedent.

Foreign situs estates and trusts must report income from intangible personal property, such as annuities, interest on bank deposits and dividends, but only to the extent they are derived from a business, trade, profession or occupation carried on in Iowa.

89.8(5) Income from property subject to the jurisdiction of the probate court.

a. Probate property subject to possession by the personal representative. Income received on probate property after the decedent's death is chargeable to the estate or to the person succeeding to the decedent's property depending on whether the personal representative has the right to, or has taken possession of the probate property producing the income. Rev. Ruling 57-133, 10-CB 200 (1957). If the personal representative has taken possession of or has the right to possession of a specific item of probate property, the income from this property is estate income, even though the personal representative is bound by law to distribute the income during the course of administration to a beneficiary. Colthurst v. Colthurst, 265 N.W.2d 590 (Iowa 1978); In Re Estate of Herring, 265 N.W.2d 740 (Iowa 1978). The personal representative is charged with the income from this property for each taxable year until the property is distributed or otherwise disposed of. Section 633.351, The Code (probate code), specifies the personal representative shall take possession of the decedent's personal property, except exempt property, and also the decedent's real estate, except the homestead, if any one of the following conditions are met: If there is no distributee present and competent to take possession; if the real estate is subject to a lease; or if the distributee is present and competent and gives consent to possession. Colthurst v. Colthurst, 265 N.W.2d 590 (Iowa (1978); In Re Estate of Peterson, 263 N.W.2d 555 (Iowa Ct. of Appeal 1977). In addition, section 633.386, The Code (probate code), gives the personal representative authority to lease real estate (and therefore to take possession) in order to pay the debts and charges of the estate.

b. Income charged to the heir or beneficiary. Under Iowa law title to probate property, both real and personal, passes instantaneously on death of the heir or beneficiary. In Re Estate of Bliven, 236 N.W.2d 366, 370 (Iowa 1975). If property is not subject to the personal representative's right of possession under section 633.351, The Code (probate code), and the personal representative has not exercised the right to sell, lease, mortgage or pledge real and personal property to pay debts and charges under section 633.386, The Code (probate code), the income from this probate property is not estate income. It is income to the person succeeding to the property.

89.8(6) Income from nonprobate property. Income from property not subject to the jurisdiction of the probate court is charged to the beneficiary or other person succeeding to the property. Examples of income from nonprobate property include, but are not limited to: Property held in joint tenancy, annuity payments, pension and retirement plans not payable to the estate and income from certain trusts created by the grantor-decedent. See Wood, Admr., v. Logue, 167 Iowa 436, 441, 149 N.W. 613 (1914) for joint tenancy property not being subject to the jurisdiction of the probate court; also Lang v. Commissioner, 289 U.S. 109, 77 L.Ed. 1066, 53 S.Ct. 535 (1933).

89.8(7) Gross income of an estate.

a. In general. 26 U.S.C. section 641(b) provides that the taxable income of an estate or trust shall be computed in same manner as the taxable income of an individual, except as modified in subchapter J of the Internal Revenue Code. The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. section 61. Department subrules 89.8(7)"d" through 89.8(7)"n" describe the most common kinds of income of an estate or trust. However, those rules are not intended to identify all types of taxable income.

b. Definition of the period of administration. The income charged to the decedent's estate is reportable by the personal representative for each taxable year during the period of the administration of the decedent's estate, if the minimum filing requirements are met. The period of administration for Iowa income tax purposes is determined by applying federal tax law to Iowa estates because Iowa taxable income is the same as federal taxable income, subject to the adjustments provided in sections 422.7 and 422.9, The Code. Old Virginia Brick Co., Inc. v. Commissioner, 367 F.2d 276 (4th CA 1966); First National Bank of Ottumwa v. Bair, 252 N.W.2d 723 (Iowa 1977). It is the period actually required by the personal representative to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, legacies and bequests, whether the period required is longer or shorter than the period specified under the probate code. See federal regulations 1.641 (b)-3(a). An estate will be considered terminated for income tax purposes when all of the assets have been distributed, except for a reasonable amount set aside in good faith for the payment of unascertained or contingent liabilities and expenses. The delay in closing the estate cannot be capricious. Frederich v. Commissioner, 147 F.2d 796 (5th CA 1944). If the period of administration is terminated for income tax purposes, the heir or beneficiary is charged with the income.

c. The estate's first return—special considerations. Death terminates the decedent's taxable year. Income received the day of the decedent's death is to be reported on the decedent's final individual return. See 26 U.S.C. 443(a)(2); Federal regulation section 1.443-1(a)(1).

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The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income, as the case may be. See subrules 89.8(5)"a" and 89.8(5)"b". Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income, as the case may be. See 26 U.S.C. section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income, owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid, as the case may be. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. section 2053. See 26 U.S.C. 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See departmental subrules 86.6(2) paragraph "g" and 86.6(3) paragraph "b". Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74—175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

d. Dividends. All income classified as dividends under 26 U.S.C. section 61 and federal regulation section 1.61-9, received or constructually received, during the taxable year constitutes gross income to the estate or trust. However, some income labeled as dividends is for tax purposes classified as interest. For example, income from cooperative banks, credit unions, domestic building and loan associations, domestic savings and loan associations, federal savings and loan associations and mutual savings banks are considered interest and not dividends.

e. Interest. All interest received or constructually received during the taxable year, with the exception of interest, but not capital gain, from federal securities and bonds issued by the Iowa board of regents pursuant to chapter 262, The Code, is income to the estate or trust. Interest from securities issued by a state and its political subdivisions or from foreign securities is included in gross income for Iowa tax purposes, even though the interest may be exempt from federal income tax.

f. Partnerships and other estates and trusts. If a partnership in which the decedent had an interest is not terminated at death, the deceased partner's share of the partnership income is considered to be all received at the end of the partnership taxable year. As a result, none of the partnership income is chargeable to the deceased partner, unless the day of the partner's death coincides with the day the partnership year ends. It is chargeable to the deceased partner's estate or the person succeeding to the partner's interest, notwithstanding the fact the deceased partner may have withdrawn most or all of his or her share of the partnership income prior to death. Federal regulation section 1.706-1(C)(3)(ii); Rev. Ruling 68-215, 18 I.R.B. 14 (1968).

In general, if an estate or trust and its beneficiaries have different taxable years, the beneficiary is required to report the income from the estate or trust as if it were all paid on the last day of the taxable year of the estate or trust. Federal regulation section 1.662(C)-1. Hay v. U.S., 263 F. Supp. 813 (D.C. Tex. 1967). However, if the beneficiary dies during the taxable year of an estate or trust, the taxable income of the beneficiary's estate includes only the portion of the income of the other estate or trust which was required to be distributed to the beneficiary, but was not in fact distributed to the beneficiary before death. The income that was in fact distributed by the other estate or trust prior to the beneficiary's death is properly included in the beneficiary's final income tax return. See federal regulation 1.662(C)-2.

g. Rents and royalties. Income received after death for the use or occupancy of the decedent's real and personal property is the income of the decedent's estate or the income of the person succeeding to the property. See subrule 89.8(5) paragraph "a" and 89.8(5) paragraph "b". If the rental income was accrued, but unpaid at death, the accrued rent is income in respect of a decedent and is to be included as income, either by the estate or the person succeeding to the right to the income, in the taxable year when payment is received. Rent is not limited to payments in cash. It includes, but is not limited to, crop share rental payments when the decedent was a nonparticipating landlord. Alvin R. Huldeen Estate v. Department of Revenue, Sac County District Court, Probate No. 14,661 (1975). Income from the sale of grain and livestock in the estate of a participating landlord which was on hand at death is classified as income from a farm or business and not rental income.

Income from royalties would include, but is not limited to, payment for rights in books, plays, copyrights, trademarks, formulas, patents and from the exploitation of natural resources.

h. Farm and business income—in general. The death of the decedent does not alter the rules under which business and farm income is computed for income tax purposes. However, the decedent's estate as a new taxpayer may adopt a taxable year which is different than the decedent's taxable year. Also, the decedent's estate may adopt a different accounting method. The rules for determining gain or loss from the sale or exchange of assets in the decedent's estate are the same as those for an individual. However, see subrule 89.8(7) paragraph "i" and 89.8(7) paragraph "j" for the basis for gain or loss from the sale or exchange of property acquired from a decedent and subrule 89.8(7) paragraph "l" for depreciation rules for property acquired from a decedent.

i. Basis for gain or loss—the stepped up basis. Property acquired from a decedent receives a new basis for determining gain or loss when the property is sold or exchanged. This rule does not apply to property which is classified as income in respect of a decedent and certain other property designated in 26 U.S.C. section 1014(b) and (c) and the federal regulations thereunder. The basis of property acquired from a decedent is either: (1) Its fair

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market value at the time of death or the alternate value when it has been elected for federal estate tax purposes under 26 U.S.C. section 2032 or (2) its special use value when the property has been valued for federal estate tax purposes under 26 U.S.C. section 2032A. The decedent's basis in the property is not relevant. Property is considered to have been acquired from a decedent when it would be includible in the decedent's gross estate for federal estate tax purposes. The fact the gross estate is not sufficient to require the filing of a federal estate tax return is not controlling. The property acquires the new basis if it would be includible in the decedent's gross estate, had the gross estate been of a sufficient amount to require the filing of a federal estate tax return. See federal regulation section 1.1014-2(b)(2). The new or "stepped up" basis, as it is commonly called, is illustrated by the following example:

1. Decedent A died July 1, 1980, owning a 160 acre Iowa farm which the decedent purchased in his own name in 1955 for $200.00 per acre, or $32,000. At the time of A's death, the farm had a fair market value of $1,500 per acre, or $240,000. In 1965, A and his surviving spouse B purchased a residence for $35,000 in joint tenancy. The surviving spouse B, a school teacher, contributed from her own funds one-half of the purchase price of the residence, therefore, one-half of the residence is excluded from A's gross estate. At the time of A's death, the residence had a fair market value of $50,000. The surviving spouse B received the entire estate and did not elect the alternate or special use valuation.

B's basis for gain or loss in the farm and residence is computed as follows:

Asset	Fair Market Value at Death	New Basis for Gain or Loss	
160 acre farm	$240,000.00		$240,000.00
Residence	50,000.00	½ new basis	25,000.00
		½ old basis	17,500.00
			$ 42,500.00

Since the entire farm was acquired from A, its basis is 100% of the fair market value at death. Only one-half of the residence was acquired from A, therefore, only one-half of the residence receives a new basis on A's death.

j. No new basis—income in respect of a decedent. Property or rights to income, classified as income in respect of a decedent under 26 U.S.C. section 691, does not receive a new basis upon the decedent's death. It is a special exception to the stepped up basis rule. See 26 U.S.C. section 1014(c) and federal regulation section 1.1014-1(c).

Examples of income in respect of a decedent are, but not limited to, the following:

1. Wages, salary or other compensation for personal services earned which are unpaid at death.
2. Interest accrued on obligations, such as bank accounts, certificates of deposit, bonds and promissory notes.
3. Accrued interest and unpaid capital gain on real and person property installment contracts.
4. Federal income tax refunds, if claimed as a deduction on an Iowa income tax return.
5. Accounts receivable, if the decedent was on a cash accounting basis.
6. Crop share rent if the decedent was a nonparticipating landlord. This also includes growing crops, which are to be valued at the time of the decedent's death.

The basis for gain or loss for property classified as income in respect of a decedent is the decedent's basis in the property at the time of death.

k. Gain or loss—holding period. For the purpose of determining whether the sale or exchange of property is a long or short term gain or loss, the holding period of property acquired from a decedent begins the day after the decedent's death, regardless of how long the property was held by the decedent. See 26 U.S.C. section 1223, federal regulation section 1.1223-1(j). However, if the property acquired from a decedent is sold or otherwise disposed of within one year of the decedent's death, it will be considered to have been held over one year. In general, this is a sufficiently long holding period to qualify the sale or exchange as a long term gain or loss transaction. However, a one-year holding period does not qualify horses and cattle held for draft, breeding or dairy purposes for long term gain or loss treatment. A twenty-four-month holding period is required by 26 U.S.C. section 1231(b)(3) for the transaction to be considered long term.

Therefore, if this kind of livestock is acquired from a decedent (which is usually the case) and is sold or exchanged within twenty-four months after the decedent's death, the sale is considered a short term transaction. See Rev. Ruling 75-361, 2 C.B. 344 (1975). However, even if the sale or exchange results in a short term gain or loss transaction, the property has a stepped up basis, because it is acquired from a decedent. See department subrule 89.8(7), paragraph "i".

l. Depreciation—property acquired from a decedent. Property acquired from a decedent which is subject to the allowance for depreciation, receives the same value for depreciation purposes as its basis for gain or loss in a sale or exchange, regardless of its basis or remaining useful life in the hands of the decedent. See 26 U.S.C. sections 167(g) and 1011; federal regulation section 1.167(g)-1. For the purpose of determining the life of an asset subject to the allowance for depreciation, the property is treated as if it were acquired the day after the decedent's death. See federal regulation section 1.167(a)-10. The decedent's estate or other person acquiring depreciable property from the decedent, may adopt a depreciation method different from that used by the decedent for the depreciable asset. See federal regulation section 1.167(a)-7.

m. Section 641(c) gain. Section 422.7(7), The Code, adds the gain that is excluded from federal taxable income under 26 U.S.C. section 641(c) to the Iowa taxable income of a trust. This gain is excluded from taxable income for federal purposes because it is subject to a special federal tax under 26 U.S.C. section 644(a). The effect of section 422.7(7), The Code, is to tax the gain, which receives separate treatment for federal income tax purposes, in the same manner as this gain was taxed prior to the enactment of the Federal Tax Reform Act of 1976.

n. Nonrecognition of gain—installment sale contracts before October 20, 1980. No gain or loss is realized by the estate of a decedent-seller dying before October 20, 1980, when the purchaser in an installment sale contract inherits the seller's rights under the contract of sale. The merger of the asset with the liability is considered to be a nontaxable transfer. Therefore, any unreported gain from the installment sale contract is not subject to income tax when there is a merger of the asset with the liability. See Senate Finance Committee Report to P.L. 96-471.

o. Recognition of gain—installment sale contracts after October 19, 1980. Effective for estates of decedents dying after October 19, 1980, Section 3 of Public Law

96-471 (Installment Sales Revision Act of 1980) provides for the recognition of the remaining gain on installment sales contracts when the debtor inherits the obligation and thereby causing a merger of the asset with the liability. Therefore, the rule after October 19, 1980 is this: If as a result of the death of the holder of an installment sale obligation (usually the seller), the installment sale obligation is transferred to the debtor (usually the purchaser), or if the installment obligation is canceled either as a result of the holder's death, or by the personal representative of the holder's estate, the remaining gain from the installment sale contract not previously reported is recognized by the holder's estate, as if the remaining balance due had been immediately paid in full. The merger of the asset with the debt is treated as a taxable transfer by the estate of the holder (seller) of the obligation and is income in respect of a decedent realized by the holder's estate.

If the obligation was held by a person other than the seller, such as a trust, the cancellation of the obligation will be treated by that person as a taxable transfer immediately after the seller's death. In the absence of some act of canceling the obligation, such as by distribution or notation which results in cancellation under Chapter 554, The Code (Uniform Commercial Code), the disposition is considered to occur no later than the time the period of administration of the estate is ended. See Senate Committee Report to P.L. 96-471.

For gain recognition purposes, if the seller and the debtor were related parties, the value of the installment contract is considered to be not less than full face value, regardless of its value for Iowa inheritance tax or federal estate tax purposes. A related party includes the spouse, child (including an adopted child), grandchild, or parent of the seller; an estate in which the seller is a beneficiary; a partnership in which the seller is a partner; a corporation in which the seller owns fifty percent or more of the stock; and a trust where the seller is a beneficiary or is treated as the owner.

If the debtor inherits the obligation to pay or another share of the estate, the personal representative of the holder's estate must set off the contract of sale to the debtor when satisfying the debtor's share of the estate, if the debtor's share of estate equals or exceeds the face value of the contract. In this case the entire contract is canceled and all of the unreported gain is income in respect of a decedent to the estate. If the debtor's share of the estate is less than the face value of the contract of sale, the contract of sale is canceled only to the extent of the debtor's share of the estate and only a like percentage of the unreported gain is considered income in respect of a decedent received immediately by the estate. See section 633.471, The Code, for the right of retainer and set off. In Re Estate of Ferris, 234 Iowa 960, 14 N.W.2d 889 (1944).

p. Nonresident aliens—sales of Iowa real estate. For sales and exchanges occurring after June 18, 1980, nonresident aliens and estates and trusts with a situs outside the United States must include the gain from the sale or exchange of Iowa real estate as taxable income, even though the real estate was not effectively connected with a trade or business carried on in the United States. See Public Law 96-499. Any gain paid or distributed to a nonresident alien or an estate or trust with a situs outside the United States is subject to Iowa income tax withholding, unless the gain has been previously accumulated and any tax due paid. See department subrules 89.4(9), paragraph "d" and 46.4(2)"5." for the duty to withhold Iowa income tax from distributions to nonresident beneficiaries and individuals.

q. Miscellaneous income. Miscellaneous income is an inclusive term. It includes those items of income that are subject to Iowa income tax under section 422.6, The Code, which are not classified as dividends, interest, rent and royalties, income from partnerships and other fiduciaries, business or farm income and gain or loss from the sale or exchange of assets. Examples of miscellaneous income include, but are not limited to: Wages and salaries earned by the decedent which are unpaid at death; federal income tax refunds, if the refund was deducted from an Iowa income tax return; and distributions to the estate from an employee's pension or retirement plan, if subject to Iowa income tax.

r. Grantor trusts. If the income of a trust is subject to the grantor trust rules under 26 U.S.C. sections 671 through 679 inclusive, the grantor of the trust or other person specified in the trust instrument, and not the trust, is considered the owner of the income. This income is properly reportable on the Iowa individual income tax return of the grantor or other individual treated as the owner. The fiduciary income tax return of a grantor trust is an informational return only. Items of income, deductions and credits of a grantor trust should be reported on a separate statement attached to the fiduciary return of income. See federal regulation section 1.671-4. The taxable year of a grantor trust must be the same as the taxable year of the grantor, or of the other individual considered the owner of the income for tax purposes. William Scheft, 59 T.C. 428. Examples of grantor trusts are, but not limited to: Trusts where the grantor or a nonadverse party has the power to revoke the trust or to return the corpus to the grantor; trusts where the grantor or a nonadverse party has the power to distribute income to or for the benefit of the grantor or the grantor's spouse; and trusts where the grantor has retained a reversionary interest in the trust, within specified time limits. See federal regulation 1.671-1.

s. "Equity trusts"—assignment of future wages and salaries. The assignment of future wages, salaries or other compensation for future services by a grantor to a trust (commonly called "equity" or "family estate" trust), does not shift the tax burden on this income from the grantor to the trust. The trust is subject to the grantor trust rules under 26 U.S.C. sections 671 through 679, inclusive. The income of the trust is to be reported by the grantor on an Iowa individual income tax return. Lucas v. Earl, 281 U.S. 111, 74 L.Ed 731, 50 S.C. 241 (1930); Vnuk v. Commissioner, 621 F.2d 1318 (8th CA 1980); Revenue Ruling 75-257, 2 C.B. 251 (1975); Re August Erling, Jr., et al, Director of Revenue decision, Docket No. 77—237—2C—A (1979).

t. Adjustments to federal taxable income. Section 422.4(1), The Code, provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments specified in section 422.7, The Code, and the modifications relating to federal and state income tax specified in section 422.9, The Code. The modifications have these results:

1. Federal income tax on the income of Iowa situs estates and trusts is deductible for Iowa income tax purposes in the year paid or accrued depending on the method of accounting.

2. Federal income tax owed by Iowa resident decedents at the time of death is a deduction against estate income in the year paid.

3. The federal income tax deduction allowable for estates and trusts with a situs outside Iowa must be prorated on the basis the Iowa gross income subject to tax bears to the total gross income subject to federal income tax.

4. Federal income tax owed by a nonresident decedent at the time of death must be prorated on the basis the Iowa income included in the federal adjusted gross income bears to the total federal adjusted gross income. See subrule 41.3(2) for prorating the federal income tax deduction for nonresident individuals.

5. Iowa income tax paid by the estate is not a deduction in computing Iowa taxable income.

6. The federal exemption allowable estates and trusts under 26 U.S.C. section 642(b), that is, $600.00 for an estate, $300.00 for simple trust and $100.00 for a complex trust, is not deductible for Iowa income tax purposes.

7. Interest and dividends from federal securities, but not capital gain or loss, is exempt from Iowa income tax and, therefore, is not part of the Iowa taxable income of estates and trusts.

8. Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether it is exempt from federal income tax. However, see rule 730—40.3(422) and subrule 89.8(7), paragraph "e" for the exemption for interest on Iowa board of regents bonds.

9. See 89.8(7)"m" for the includibility of the gain, excluded by 26 U.S.C. section 641(c), in the Iowa taxable income of a trust.

10. See rule 40.8(422) for determining the gain or loss on a sale or exchange of property acquired prior to January 1, 1934.

11. See subrule 86.5(11), paragraph "b" for the inheritance tax exemption for the portion of an employee's pension or retirement plan subject to Iowa income tax.

89.8(8) Deductions from gross income.

a. In general. The deductions allowable in computing taxable income of estates and trusts are generally those relating to a trade or business and the expenses attributable to investment income. The important distinction between the deductions allowable in computing federal adjusted gross income and itemized deductions for individual income tax has only limited application in determining the taxable income of estates and trusts. Many deductions in computing the taxable income of an individual have no application to the deductions allowable in computing the taxable income of an estate or trust, due to the nature of estates and trusts and the sources of its income. For example, medical expense and moving expense deductions are applicable only to individuals, but taxes and interest expense can be incurred by both individuals and estates and trusts. Also the deduction for distribution to beneficiaries has no application to individual income tax.

b. Interest expense. Interest paid on obligations secured by property subject to the personal representative or trustee's right of possession is a deduction from gross income in the year paid. Interest on debts or charges which the personal representative or trustee is obligated to pay is also a deduction against gross income in the year paid. Interest on obligations secured by property, not subject to the personal representative's right of possession, is not deductible from the gross income of the estate, but is a deduction for the person succeeding to the encumbered property. No distinction is made between business and nonbusiness interest. See section 633.278, The Code (probate code), for circumstances when the personal representative of the decedent's estate is required to pay the debt and interest on encumbered property, even though it is not subject to the personal representative's right of possession. J. S. Dean, 35 T.C. 1083 (1961); Revenue Ruling 57-481, 2 C.B. 48 (1957).

c. Taxes. The taxes deductible against the gross income of an estate or trust are limited to the taxes deductible for individual income tax purposes under 26 U.S.C. section 164, subject to the adjustments specified in section 422.9, The Code, relating to federal and state income taxes. Real estate and personal property taxes, including the taxes due, but unpaid at death, are only deductible by the estate on the decedent's property which is subject to the personal representative's right of possession. Federal income tax on the income of an estate or trust and federal income tax owing by an Iowa decedent at the time of death, including the federal income tax owing on the decedent's final return for the year of death, are deductible by the estate or trust in the year paid. The federal income tax liability of a nonresident decedent must be prorated. See subrule 41.3(2). Examples of taxes not deductible include, but are not limited to: Federal estate tax (except federal estate tax paid on income in respect of a decedent); Iowa income and inheritance tax; federal gift taxes; and special assessments increasing the value of property. See 26 U.S.C. section 275. See 89.8(7)"r" for the proration of federal income tax for foreign situs estates and trusts. In addition, foreign situs estates and trusts are not allowed a deduction from Iowa gross income for real and personal property taxes paid on property located outside Iowa.

d. Depreciation and depletion—fiduciary's share. If the personal representative of a decedent's estate has the right to the possession of property eligible for the depreciation allowance, the depreciation is a deduction from the estate's gross income if the extent the estate either maintains a reserve for depreciation or accumulates the income from the depreciable property. If a reserve for depreciation is not maintained by the personal representative, the allowance for depreciation follows the income, deductible by the estate or beneficiary, as the case may be. If a portion of the income for the taxable year is distributed and a portion is accumulated, the deduction for depreciation is prorated between the estate and the beneficiary on the ratio of the income distributed to the total income of the estate or trust for the taxable year. The depreciation rules for estates also apply to both simple and complex trusts and to the allowance for depletion under 26 U.S.C. section 611. See 26 U.S.C. sections 167 and 611; federal regulation 1.167 H—1(b); Revenue Ruling 74-530, 2 C.B. 188 (1974).

e. The charitable deduction. The charitable deduction allowed estates and trusts under 26 U.S.C. section 642(c) is not subject to the percentage of income limitation applicable to individual taxpayers under 26 U.S.C. section 170(b). The allowable deduction is governed by the terms of the will or trust instrument, which can provide for unlimited payments for charitable purposes. However, an unused charitable contribution carryover of the decedent remaining after the decedent's individual income tax liability for the year of death is determined, is not available to the estate. The unused carryover

terminates at death, except to the extent it may be used by the surviving spouse. See federal regulation section 1.170A-10(d)(4)(iii). The deduction is limited to payments of gross income or amounts permanently set aside for charitable uses. A simple pecuniary bequest to charity in the decedent's will does not qualify for the charitable deduction from the estate's income. It is a payment from the corpus of the estate. Frank Trust of 1931, 145 F.2d 411 (3rd CA 1949). However, the pecuniary bequest to charity is exempt from the Iowa inheritance tax under section 450.4, The Code, if it meets the exemption requirements.

f. Other deductions. The category of other deductions include those deductions allowable in computing taxable income not receiving special itemized treatment on the Iowa fiduciary return of income. The most common kind of other deductions are the expenses of administration of an estate or trust paid during the taxable year. Expenses of administration include, but are not limtied to: A reasonable fee and the necessary expenses of the attorney employed by the personal representative of an estate or the trustee of a trust; a reasonable fee and the necessary expenses of the personal representative of an estate or the trustee of a trust; accounting fees; court costs; and interest paid on federal estate tax during an extension of time to pay. However, administration expenses are subject to the no double deduction rule. See 26 U.S.C. 642(g) and department subrule 89.8(8), paragraph "g". Salaries or fees paid during the taxable year for the management of a farm or business are expenses directly attributable to the production of a specific kind of income and are more properly deductible on the farm schedule F or the business schedule C.

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration, are proper deductions in computing both the taxable income of an estate or trust (or on the decedent's individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item, as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. section 691(b) and federal regulations section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deductions of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to chapter 450, The Code.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. For estates and trusts not required to file a federal estate tax return, an item is deductible for both Iowa inheritance tax and Iowa income tax purposes.

2. Estates and trusts required to file a federal estate tax return can always claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction for Iowa income tax purposes, if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible for income tax purposes.

This rule applies both to estates and trusts with a situs within and without Iowa.

h. The net operating loss deduction. Subject to the modifications specified in federal regulation section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The modifications especially applicable to estates and trusts are: (1) The deduction for distribution to beneficiaries is disregarded and (2) the charitable deduction allowable under 26 U.S.C. 642(c) is disregarded. See federal regulation section 1.642(d)-1.

The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative as such, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. Refling v. Commissioner, 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carry forward to a future taxable year. Mary C. Westphal, 37 T.C. 340 (1961). However, see subrule 89.8(9)"a" for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available only to the estate or trust and cannot be distributed to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See subrule 40.17(2) for the computation of the net operating loss deduction of a nonresident decedent.

i. Capital loss deduction. The capital loss deduction of an estate or trust is computed in the same manner as the capital loss deduction for individual taxpayers. However it is a deduction only for estate or trust and is not distributable to a beneficiary, except in the year the estate or trust terminates. Grey v. Commissioner, 118 F.2d 153, 141 ALR 1113 (7th CA 1941); Jones v. Whittington, 194 F.2d 812 (10th CA 1952). Capital losses

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do not enter into the computation of the deduction for income required to be distributed currently to beneficiaries. During the period of administration of the estate or trust, capital losses can be used only to offset capital gain for simple trusts required to distributed income currently. However, beneficiaries may derive immediate benefit from capital losses when capital gain is required or permitted to be distributed to beneficiaries prior to closure of the estate or trust, since the losses can be used to offset gain before distribution.

j. The distribution deduction. Estates and trusts are allowed to deduct the amounts of income required to be distributed currently and also other amounts properly paid, credited or required to be distributed to the extent of the distributable net income for the year. For income tax purposes an estate of a decedent is treated as a complex trust, because normally the personal representative of an estate has the discretion whether or not to distribute current income. Therefore, most distributions of income from a decedent's estate fall under the category of "other amounts properly paid, credited or required to be distributed". However, see Colthurst v. Colthurst, 265 N.W.2d 590 (Iowa 1978) for circumstances when the personal representative of an estate is required to distribute current income during the period of administration to a life tenant (the surviving spouse in this case).

The distribution deduction allowed is limited to the distributable net income of the estate or trust for the taxable year. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year, may or may not be includible in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. sections 665 through 668.

Income distributed to a beneficiary of an estate or trust retains the same character in the hands of the beneficiary as it had in the estate or trust, with the exception of unused capital loss distributed on closure to a corporation, in which case the loss is treated as a short term loss, regardless of its character in the estate or trust. See federal regulation section 1.642(h)-1(g). In addition, unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the distributable net income of the estate or trust. See 26 U.S.C. section 662(b) and federal regulation section 1.662(b)-1. The same character and proportionate distribution rule is illustrated by the following:

Example:

Decedent A, a resident of Iowa, died February 15, 1980. Under the terms of the will, all the decedent's property was devised in equal shares to beneficiary B, a resident of Phoenix, Arizona, and beneficiary C, a resident of Cedar Rapids, Iowa. The estate adopted a calendar year as its taxable year. For calendar year 1980, the estate had distributable net income of $50,000, which is composed of:

Interest income	$10,000
Dividend income	5,000
Net Iowa farm income	35,000
Total	$50,000

On December 20, 1980, the estate distributed $12,500 to beneficiary B, and $12,500 to beneficiary C. Beneficiaries B and C have received a distribution for 1980 as follows:

Beneficiary B		Beneficiary C	
Interest income	$ 2,500	Interest income	$ 2,500
Dividends	1,250	Dividends	1,250
Farm income	8,750	Farm income	8,750
Total	$12,500	Total	$12,500

The estate is entitled to a deduction of $25,000 against gross income in 1980 for the distribution to beneficiaries B and C and owes Iowa income tax on the $25,000 income retained in the estate. Since the interest income of the estate is twenty percent of the distributable net income, twenty percent of the distribution to beneficiaries B and C is considered interest income. Likewise, ten percent of the estate's distributable net income is dividends and seventy percent farm income. The distribution to B and C consists of a corresponding percentage of dividends and farm income. Beneficiary C, a resident of Iowa, must report the entire distribution of $12,500 on a 1980 Iowa individual income tax return. Beneficiary B, a resident of Arizona, is only required to report the farm income portion of the distribution ($8,750) on a 1980 nonresident individual income tax return, because dividends and interest are income from intangible personal property and were not derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. See subrule 40.15(5).

k. The dividend exclusion. Estates and trusts are eligible for the dividend exclusion allowed individual taxpayers under 26 U.S.C. section 116 (the Iowa exclusion is $100 for 1981). The exclusion is allocated to the estate or trust if the dividend income for the taxable year is accumulated. The dividend exclusion is allocated to the beneficiaries when all of the distributable net income for the taxable year is distributed. The distribution must not be diminished by the exclusion. The dividend exclusion is then available to the beneficiaries after the dividends

distributed are added to any other dividends received by the beneficiaries during the taxable year. If there is only a partial distribution of the distributable net income of the estate or trust for the taxable year, the dividend exclusion must be prorated between the beneficiaries and the estate or trust on the basis of the percentage of the distributable net income accumulated by the estate or trust and the percentage distributed to the beneficiaries. A partial distribution of the dividends and exclusion is to be reported and used by the beneficiaries for income tax purposes in the same manner as the full distribution of dividends. See federal regulation sections 1.116-1(a) and 1.661(c)-1.

1. The capital gains deduction. 26 U.S.C. section 1202(b) provides that an estate or trust is allowed a deduction for net capital gain received during the taxable year. Except for the requirement of allocation between the beneficiaries and the estate or trust, the deduction is computed in the same manner as the net capital gain deduction allowed individuals. See federal regulation section 1.1202-1(b). If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the net capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust. The gain distributed must not be diminished by the deduction. It must first be combined with any other capital gains and losses of the beneficiary prior to determining whether the net capital gain deduction is applicable for the beneficiary's taxable year.

If the net capital gain for the taxable year is partially allocated to corpus and partially distributed, then the net capital gain deduction is available to the beneficiaries only on the gain distributed and to the estate or trust only on the gain accumulated. A partial distribution of capital gain is treated for purposes of a beneficiary's income tax liability in the same manner as a full distribution of capital gain.

m. The Iowa throwback rule. Section 422.6, The Code, allows a trust beneficiary receiving an accumulation distribution subject to the throwback rules under 26 U.S.C. sections 665 through 668, a credit against the beneficiary's income tax liability for the Iowa income tax paid by the trust on the accumulated income distributed. The Iowa income tax paid by the trust on the accumulated income distributed is deemed distributed to the trust beneficiary, without interest, and is a credit for the year of distribution against the portion of the Iowa income tax liability of the beneficiary which is attributable to the accumulated distribution. The accumulated distribution must be adjusted by the beneficiary to reflect income subject to Iowa income tax. No refund is allowed the trust for the Iowa income tax deemed distributed to the beneficiary. The beneficiary is not allowed a refund if the tax distributed is in excess of the income tax liability attributable to the distribution.

n. Federal estate tax paid on income in respect of a decedent. For Iowa income tax purposes, section 422.7, The Code, makes no provision for adjusting the deduction for federal estate tax paid when the income in respect of a decedent includes interest from federal securities. Therefore, the federal estate tax paid on interest from federal securities, which is classified as income in respect of a decedent under 26 U.S.C. section 691(a), is a deduction for Iowa income tax purposes in the taxable year the interest is received. However, interest and dividends from securities of a state or political subdivision, which are exempt from federal income tax, do not constitute the kind of income in respect of a decedent on which the deduction is computed. Since the deduction under 26 U.S.C. 691(c) does not apply to income exempt from federal income tax, there is no deduction on the Iowa return for the federal estate tax paid on the exempt interest, even though under section 422.7, The Code, this interest is subject to Iowa income tax.

The deduction allowable in any taxable year is limited to a percentage of the total federal estate tax deduction which is determined by the ratio of income in respect of a decedent received for the year to the total amount of the net income in respect of a decedent on which federal estate tax was paid. See 26 U.S.C. section 691(c) and federal regulation section 1.691(c)-1 for the computation of the deduction. Estates and trusts with a situs outside Iowa are allowed a deduction only for federal estate tax paid on income in respect of a decedent from Iowa sources.

89.8(9) The final return—special considerations.

a. General rule. In the year of closure all income received by the estate or trust is considered "other amounts properly paid or credited or required to be distributed" and must be distributed to the beneficiaries according to the terms of the governing instrument. Rev. Ruling 58—423, 2 C. B. 151 (1958). Dividends and capital gains received during the year of closure must be distributed without being diminished by the net capital gain deduction or by the dividend exclusion. See federal regulation section 1.643(a)-3(d). 26 U.S.C. section 642(h) provides for an exception to the general rule that net operating and capital losses are only available to the taxpayer incurring the loss. Therefore, in the year of closure, any capital loss and net operating loss carryover that remains unused by the estate or trust is passed through the estate or trust and is allowed as a deduction to the beneficiaries succeeding to the property. See federal regulation section 1.642(h)-1.

If the estate or trust in the year of termination has incurred deductions in excess of gross income which do not qualify for treatment as a net operating or capital loss, such as administration expenses, the excess deductions are passed through the estate or trust and are available to the beneficiaries succeeding to the property. They are available only for the year the estate or trust terminates and only as an itemized deduction in the case of an individual beneficiary. See Revenue Ruling 58-191 1 C.B. 149 (1958). Excess deductions also includes any unused net operating loss carryover, if the year of the estate or trust terminates is the last carry forward year for the net operating loss. See federal regulation section 1-642(h)-2(b).

b. Exception to the general rule. If in the year of termination an Iowa ancillary estate makes the required distribution of its income to the primary estate which is not being terminated, instead of to the beneficiaries of the estate, it is proper in the year of closure to treat the income as if it were accumulated by the Iowa ancillary estate. Permitting Iowa income tax to be paid on the income in this special case, in effect, allows the distribution to the primary estate to be made on a tax paid basis. This exception to the general rule relieves the primary estate from the obligation of filing a second fiduciary return, which it would be required to do except for this special rule. The special rule prevents duplication of effort.

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89.8(10) Computation of the tax due. The tax due on the taxable income of an estate or trust is computed by using the same tax rate schedule used for computing the individual income tax liability. The provisions of section 422.5, The Code, relating to the maximum net income of an individual ($5,000 for 1980) before a tax liability is incurred, has no application to the tax liability of an estate or trust. The taxable income of a short taxable year is not required to be annualized for the purpose of computing the tax liability. The tax due cannot be paid in installments. It must be paid in full within the time prescribed by law, considering any extensions allowed.

89.8(11) Credits against the tax.

a. The personal exemption credit. The estate of a decedent and a trust, whether simple or complex, are allowed the same credit against the tax as the credit allowed an individual taxpayer, that is, $17.00 for 1980. The personal exemption credit is not prorated for short taxable years. The federal exemption allowed estates and trusts under 26 U.S.C. 642(b), in lieu of the personal exemption for individuals, has no application to Iowa income tax.

b. Credit for tax paid to another state or foreign country. Section 422.8, The Code, grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. To be eligible for the credit, the income must have been includible for income tax purposes both in Iowa and the other state or foreign country. The credit allowable against the Iowa tax is limited to the lesser of (1) the tax paid to the other state or foreign country on the income or (2) the Iowa income tax paid on the foreign source income. The Iowa income tax paid on the foreign source income is computed by multiplying the Iowa computed tax, less the personal exemption credit, by a fraction of which the foreign source income included in the Iowa gross income is the numerator and the total Iowa gross income is the denominator. The resulting amount is the Iowa tax paid on foreign source income. Any tax paid to another state or foreign country in excess of the Iowa credit allowable is not refundable. Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. This rule is illustrated by the following example:

Decedent "A" died a resident of Webster City, Iowa, on February 15, 1980. "A" at the time of death owned income producing property both in Iowa and the state of Missouri. For the short taxable year ending December 21, 1980, "A's" estate had the following income and expenses:

Interest	$ 5,000	Iowa computed tax	$2,587.87
Dividends	7,500	Less personal credit	17.00
Iowa farm income	$20,000	Tax subject to credit for	
Missouri farm income	10,000	for foreign taxes paid	$2,570.87
Iowa gross income	$42,500	Less credit for	
Less allowable deductions	8,000	tax paid Missouri	413.00
Iowa taxable income	$34,500	Iowa tax due	$2,157.87

"A's" estate paid $413.00 income tax to the State of Missouri on the $10,000 Missouri farm income.

The Iowa tax on the foreign source income is $604.91 computed as follows:

Foreign income included in gross income $10,000 x $2570.87* = $604.91

Total Iowa gross income $42,500

*2,570.87 is the Iowa computed tax less the $17.00 personal credit.

The allowable credit for taxes paid the state of Missouri is $413.00, because it is less than the Iowa tax paid on the Missouri income. If the Missouri tax paid had been greater than the Iowa tax on the Missouri income, the allowable credit would have been the Iowa tax on the Missouri income.

See subrule 42.3(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.

c. Motor vehicle fuel tax credit. An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel permit, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

This rule is intended to implement sections 422.4, 422.5, 422.6, 422.7, 422.8, 422.9, 422.12, 422.14, 422.23, 633.471 and Chapter 324, The Code.

730—89.9(422) Audits, assessments and refunds. Department rules 43.1(422) through 43.4(422), inclusive, governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid shall also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement sections 422.25, 422.16, 422.30, 422.70 and 422.73, The Code.

730—89.10(422) The income tax certificate of acquittance.

89.10(1) In general. Section 422.27, The Code, requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Sections 422.27, The Code, refers only to the report of the executor, administrator or trustee. Therefore, other fiduciaries, such as a conservator or guardian, are not within the scope of the statute and are not required to obtain the director's certificate of acquittance. In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

89.10(2) The application for certificate of acquittance. The final fiduciary return of income serves as an application for an income tax certificate of acquittance.

89.10(3) Requirements for a certificate of acquittance. The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of

administration. This includes the obligation to withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in section 633.425, The Code (probate code). If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

89.10(4) The extent of the certificate. An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of section 422.27, The Code, and the Iowa income tax portion of the requirements of sections 633.477 and 633.479, The Code (probate code). Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

This rule is intended to implement sections 422.27, 633.425, 633.477 and 633.479, The Code.

730—89.11(422) Appeals to the director. An estate or trust has the right of appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within ninety days of the notice of assessment and the other matters which are subject to appeal. Chapter 7 of the department's rules of practice and procedure before the department shall govern appeals to the director. See specifically rules 7.8(17A) through 7.23(17A) governing taxpayer protests.

This rule is intended to implement section 422.28 and chapter 17A, The Code.

NOTICE — USURY

In accordance with the provisions of Acts of the Sixty-eighth General Assembly, First Session 1979, Senate File 158, the Superintendent of Banking has determined that the maximum lawful rate of interest provided for in Section 535.2, The Code, as amended, shall be:

September 1, 1979	— September 30, 1979	11.00%
October 1, 1979	— October 31, 1979	11.00%
November 1, 1979	— November 30, 1979	11.25%
December 1, 1979	— December 31, 1979	12.25%
January 1, 1980	— January 31, 1980	12.75%
February 1, 1980	— February 29, 1980	12.50%
March 1, 1980	— March 31, 1980	12.75%
April 1, 1980	— April 30, 1980	14.50%
May 1, 1980	— May 31, 1980	14.75%
June 1, 1980	— June 30, 1980	13.50%
July 1, 1980	— July 31, 1980	12.25%
August 1, 1980	— August 31, 1980	11.75%
September 1, 1980	— September 30, 1980	12.25%
October 1, 1980	— October 31, 1980	13.00%
November 1, 1980	— November 30, 1980	13.50%
December 1, 1980	— December 31, 1980	13.75%
January 1, 1981	— January 31, 1981	14.75%
February 1, 1981	— February 28, 1981	14.75%
March 1, 1981	— March 31, 1981	14.50%
April 1, 1981	— April 30, 1981	15.25%
May 1, 1981	— May 31, 1981	15.00%
June 1, 1981	— June 30, 1981	15.75%
July 1, 1981	— July 31, 1981	16.00%
August 1, 1981	— August 31, 1981	15.50%

ARC 2225

BANKING DEPARTMENT[140]

Pursuant to Section 524.213, The Code, rule 140—8.7(524), Cash Reserve Formula is rescinded.

The Acts of the Sixty-ninth General Assembly at the 1981 Regular Session passed Senate File 300 which provided, in part, for the repeal of Section 524.816, The Code, Cash Reserve Requirements. The Iowa Cash Reserve Requirements were repealed because the Federal Reserve Board instituted new cash reserve requirements for state nonmember banks. Because the state law with respect to Cash Reserve Requirements was repealed, it is no longer necessary to have a rule for a Cash Reserve Formula.

Section 524.816 was repealed effective July 1, 1981 and rule 140—8.7(524) has served no purpose since then. Therefore, the repeal is to be adopted on an emergency basis as public participation provided in Section 17A.4(2), The Code, is considered unnecessary and impractical.

This rescission will become effective upon filing with the Administrative Rules Coordinator pursuant to Section 17A.5(2)"b"(2), The Code.

Pursuant to authority of Section 524.213, The Code, rule **140—8.7(524)**, Cash Reserve Formula is rescinded in its entirety.

[Filed emergency 7/10/81, effective 7/10/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2226

COMMERCE COMMISSION[250]

Pursuant to the authority of section 476.2, The Code, and Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771, the Iowa State Commerce Commission emergency adopts the following revisions to [250] Chapter 7, "Practice and Procedure," Iowa Administrative Code, in order to implement Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771.

House File 771 became effective on July 1, 1981, and requires the Commission to have rules to enable proceedings under Section 476.6, The Code, to be completed within ten months from the date of filing and rate reduction proceedings under Section 476.3, The Code, to be completed in six months from the date of filing of a complaint by the Commission staff. This legislation also sets standards for the setting of interim rates and requires rules to be adopted to consider certain matters in ratemaking proceedings. Therefore, in compliance with Section 17A.4(2), The Code, the Commission finds that public notice and participation is impracticable in that rules are needed immediately in order for the Commission to comply with House File 771. By a separate notice, the Commission is soliciting comment on these rules. [ARC 2227, IAB 8/5/81]

The Commission also finds, pursuant to Section 17A.5(2)"b"(2), The Code, that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on July 10, 1981, as they confer a benefit upon the public through more expeditious handling of cases and by aiding in implementing House File 771. Therefore, these rules are made effective upon filing on July 10, 1981.

The new rules involve treatment of defective filings, filing requirements for Section 476.6, The Code, proceedings involving rate increase applications and other applications by utilities, the procedure to set interim rates and to seek the generating facility exception to the ten-month limitation, information to accompany filed direct testimony and exhibits, the order of procedure, rate investigations, the setting of procedural schedules, briefs, oral arguments and the consideration of current test years and certain known and measurable changes.

The Commission adopted these rules at a meeting on July 1, 1981.

These rules implement Sections 476.2, 476.3, 476.6, 476.8, and 476.10, and Chapter 476, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771.

ITEM 1. Add new subrule 7.2(10) as follows:

7.2(10) Defective filings. There will be accepted for filing only such applications, pleadings, documents, testimony and other submittals as conform to the requirements of any applicable rule or order to the commission or applicable statute. Applications, pleadings, documents, testimony and other submittals tendered for filing which fail so to conform will be considered defective and will be rejected unless waiver of the relevant requirement has been granted by the commission prior to filing. Motions to reject filing shall be made within fifteen days of the filing date, and any resistances shall be made within seven days thereafter. Acceptance for filing by commission employees shall not waive any failure to comply with any statutory provision, these rules, or commission order, and such failure may be cause for rejecting the filing.

ITEM 2. Amend the introductory paragraph of subrule 7.4(6) as follows:

7.4(6) Evidence. Unless otherwise authorized by the commission *in writing prior to filing*, a utility ~~shall~~ *must* when proposing changes in rate schedules, which changes relate to a general increase in revenue, prepare and submit with its proposed tariff the following evidence *in addition to the information required in 7.4(11)*:

ITEM 3. Amend subparagraph **7.4(6)**"e", item 23 as follows:

23. All testimony and exhibits in support of the rate filing *attached to affidavits of the sponsoring witnesses. All known and measurable changes in costs and revenues upon which the utility relies in its application shall be included.*

See also item 13

ITEM 4. Add new subrule 7.4(11) as follows:

7.4(11) Applications pursuant to section 476.6, The Code. At the time a rate-regulated public utility, other than a rural electric cooperative, files for new or changed rates, charges, schedules or regulations, it shall submit the following:

a. Any cost, revenue, or economic data underlying the filing.

b. An explanation of how the proposed tariff would affect the rates and service of the public utility.

COMMERCE COMMISSION[250] *(cont'd)*

c. All testimony and exhibits in support of the filing attached to affidavits of the sponsoring witnesses.

ITEM 5. Add new subrule 7.4(12) as follows:

7.4(12) Requests for interim relief pursuant to section 476.6, The Code.

a. At the time of filing a request for temporary authority to place in effect any or all of suspended rates, charges, schedules or regulations, a utility shall submit:

(1) A list of any and all regulatory principles relied upon, together with an indication of where and when they were previously established.

(2) A calculation of the rate of return sought and an explanation of the source of the weights and cost rates used.

b. Within thirty days of the filing for interim relief, any party may file an objection to any or all of the interim relief sought. An objection to interim relief shall include an explanation of the disputed regulatory principles or interim rate of return. Within fifteen days of the filing of the objection, the utility may file a reply. The commission or examiner may shorten the time periods for objection and reply for good cause.

c. No objection or failure to object shall prevent a party from presenting evidence and argument with respect to any matter including previously established regulatory principles or rate of return. A hearing on interim relief before the commission or examiner shall be held upon request, or may be held on the commission's own motion, where there is an issue of adjudicative fact as to the nature, applicability or effect of previously established regulatory principles or rate of return.

d. Oral argument may be had with respect to interim relief at the commission's discretion.

e. The commission's decisions on interim relief shall not constitute precedent or the law of the case with respect to test period, the nature, applicability or effect of any regulatory principles, rate of return or the appropriateness of any figures used.

ITEM 6. Strike existing subrule 7.7(1) and replace with the following:

7.7(1) Investigations.

a. The availability of discovery pursuant to section 17A.13, The Code, or the rules of civil procedure referenced therein shall not be construed to limit the investigatory powers of the commission and its representatives, particularly those powers conferred in section 475.7(2), The Code, relating to the duties of the commerce counsel and section 476.2, The Code, relating to the duty of the commission to inquire into the management of the business of all public utilities in order to keep itself informed as to the manner and method in which the management of public utilities is conducted.

b. The commission shall commence a rate investigation upon the motion of the commission staff alleging that a rate-regulated utility's annual report indicates that the earnings of that public utility may have been or will be excessive. The commission may also commence a rate investigation upon the motion of any interested person.

c. If a public utility objects, does not understand or cannot comply with a data request lodged by the commission staff during a rate investigation or contested case, the public utility shall file an appropriate motion within seven days of receipt of the data request. Intervenors making a discovery request may ask the commission or examiner for a shortened period for response pursuant to the rules of civil procedure.

ITEM 7. Strike existing subrule 7.7(6) and replace with the following:

7.7(6) Order of presenting evidence.

a. At evidentiary hearings upon complaints, applications, or petitions, the complainant, applicant, or petitioner shall open and close the presentation of evidence. At evidentiary hearing on several proceedings on a consolidated record, the commission or examiner shall designate who shall open and close.

b. Intervenors shall follow the parties on whose behalf the intervention is made, and, in all cases where the intervention is not in support of either original party, the commission or examiner shall designate at what stage the intervenors shall be heard.

c. The commission or examiner may direct departures from the foregoing order of procedure for efficiency and justice.

ITEM 8. Strike subrule 7.7(12), renumber subrules 7.7(9) through 7.7(11) as 7.7(10) through 7.7(12), respectively, and add new subrule 7.7(9) as follows:

7.7(9) Prepared testimony and exhibits. In any case where these rules or commission order requires the filing of a party's prepared direct testimony and exhibits prior to hearing, that filing shall include:

a. All supporting workpapers.

b. An indication of the derivation or source of all figures used which were not generated by workpapers.

c. Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

ITEM 9. Renumber subrule 7.7(13) and 7.7(16) and add new subrule 7.7(13) as follows:

7.7(13) Briefs.

a. Unless waived by the parties with the consent of the commission or examiner, whether oral argument is heard or not, the commission or examiner, as soon as practicable after the commencement of the proceeding, shall fix times for the filing and service of briefs.

The initial brief shall be filed by the party or parties upon whom rests the burden of proof, except that the commission or examiner may direct that briefs be filed simultaneously if the circumstances or exigencies so require.

b. Six copies of a party's brief if the matter is before the commission and four copies if before an examiner shall be filed with the commission and at least two copies served upon each of the other parties or their representatives, unless the commission or examiner orders otherwise.

c. Briefs shall contain a concise statement of the case and any argument, claimed to be established by evidence, shall include references to the specific portions of the record in which the evidence may be found. Every brief of more than twenty pages shall contain on its front leaves a subject index, with page references, and a list of all legal authority cited, alphabetically arranged, with references to the pages where the citations appear.

ITEM 10. Add new subrule 7.7(14) as follows:

7.7(14) Oral arguments. When, in the opinion of the commission or examiner, the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the commission or examiner may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

COMMERCE COMMISSION[250] *(cont'd)*

ITEM 11. Add new subrule 7.7(15) as follows:

7.7(15) Procedural schedule in sections 476.3 and 476.6, The Code, proceedings.

a. In any proceeding initiated as a result of the filing by a public utility of new or changed rates, charges, schedules or regulations, the commission or examiner shall set a procedural schedule to be followed based on the following guidelines, unless otherwise ordered by the commission or examiner pursuant to this rule:

Prepared direct testimony and exhibits supporting the public utility's case-in-chief to be filed—date of filing.

Hearing for solicitation of public comments—as soon as practicable after date of filing.

Cross-examination of public utility's case-in-chief—within one and one-half months after date of filing.

Prepared direct testimony and exhibits of commission staff and intervenors to be filed—within two months after close of initial hearing. If commission staff testimony recommends a rate reduction, this shall be considered a complaint alleging excessive rates under section 476.3, The Code, and the commission's rules.

Cross-examination of commission staff and intervenor testimony—within one month after filing of this testimony.

Prepared direct rebuttal testimony and exhibits to be filed by public utility—within two weeks after close of intermediate hearing.

Cross-examination of rebuttal case—within three weeks after filing of this testimony.

Public utility's initial brief to be filed—within one month after close of rebuttal hearing.

Briefs of commission staff and intervenors to be filed—within one month after filing of initial brief.

Public utility's reply brief to be filed—within two weeks after filing of commission staff and intervenor briefs.

b. In a rate reduction proceeding initiated as a result of the filing of a complaint pursuant to the second paragraph of section 476.3, The Code, the following procedural schedule shall be followed, unless otherwise ordered by the commission or examiner:

Prepared direct testimony and exhibits supporting the commission staff's case-in-chief to be filed—date of filing complaint.

Public utility and intervenor direct testimony and exhibits to be filed—within one month after filing of complaint.

Prepared direct rebuttal testimony and exhibits of commission staff—within one month after filing of public utility and intervenor cases.

Cross-examination of all testimony—within two weeks after filing of rebuttal case.

Commission staff initial brief to be filed—within one month after close of hearing.

Public utility and intervenor briefs to be filed—within one month after filing of initial brief.

Commission staff reply brief to be filed—within two weeks after filing of public utility and intervenor briefs.

c. In setting the procedural schedule in a case, the commission or examiner shall take into account the existing hearing calendar and shall give due regard to other obligations of the parties, attorneys and witnesses. The commission or examiner may on its own motion or upon the motion of any party, including commission staff, for good cause shown change the time and place of any hearing. Any effect such a change has on the remainder of the procedural schedule or the deadline for decision shall be noted when the change is ordered.

d. Additional time may be granted a party, including commission staff, upon a showing of good cause for the delay, including, but not limited to:

(1) Delay of completion of previous procedural step.

(2) Delays in responding to discovery or commission staff data requests.

Any effect such an extension has on the remainder of the procedural schedule or the deadline for decision shall be noted in the motion for extension and the commission order granting the extension.

e. If any party, including commission staff, wishes to utilize the electric generating facility exception to the ten-month decision deadline contained in section 476.6, The Code, it shall expeditiously file a motion seeking this exception including an explanation of that portion of the suspended rates, charges, schedules or regulations necessarily connected with the inclusion of the generating facility in rate base. Any other party may file a response to such a motion.

ITEM 12. Add new rule 250—7.10(476) as follows:

250—7.10(476) Consideration of current information in rate regulatory proceedings.

7.10(1) Test period. In rate regulatory proceedings under sections 476.3 and 476.6, The Code, the commission shall consider the use of the most current test period possible in light of existing and verifiable data respecting costs and revenues available as of the date of commencement of the proceedings.

7.10(2) Known and measurable changes. In rate regulatory proceedings under section 476.3 and 476.6, The Code, the commission shall consider verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within twelve months after the date of commencement of the proceedings.

ITEM 13. Amend subrule **7.4(6)** "e", item 10, to read as follows:

10. All monthly or periodic financial and operating reports to management beginning in January two years preceding the year of filing. The item or items to be filed under this rule include: (a) Reports of sales, revenue, expenses, number of employees, number of customers, or similar data; (b) related statistical material; ~~and (c) other reports concerning the operations of the utility which are reviewed by company's management at monthly or periodic management meetings or similar meetings.~~ This requirement shall not be a continuing one, to remain in effect through the month that the rate proceeding is finally resolved. Notwithstanding other provisions concerning the number of copies to be filed, one copy of each report shall be filed under this rule.

These rules are intended to implement sections 476.2, 476.3, 476.6, 476.8 and 476.10 and Chapter 476, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, House File 771.

[Filed emergency 7/10/81, effective 7/10/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

See also ARC 2227, p. 161

ARC 2219

CONSERVATION COMMISSION[290]

Pursuant to the authority of Sections 107.24, 109.38 and 109.39, The Code, the State Conservation Commission at their regular meeting on July 7, 1981, adopted the following amendments to Chapter 102, "Rabbit and Squirrel Hunting Seasons", Iowa Administrative Code.

Notice of Intended Action was published in IAB, March 4, 1981, as ARC 1822.

These rules give the regulations for hunting rabbits and squirrels and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

The only change from the published Notice of Intended Action is the insertion of definite closing dates.

These rules implement sections 109.38, 109.39, and 109.48, The Code.

The commission finds, pursuant to section 17A.5(2)"b"(2), The Code, that the normal effective date of these rules thirty-five days after publication should be waived as they confer a benefit and remove a restriction on a segment of the public. Therefore, these rules shall become effective on September 1, 1981, after filing with the Administrative Rules Coordinator.

ITEM 1. Rule 290—102.1(109) is amended to read as follows:

290—102.1(109) Cottontail rabbit season. Open season for hunting cottontail rabbits shall be from September ~~6~~ *5*, ~~1980~~ *1981*, through February 28, ~~1981~~ *1982*. Bag limit shall be ten per day; possession limit twenty. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 2. Rule 290—102.2(109) is amended to read as follows:

290—102.2(109) Jackrabbit season. Open season for hunting jackrabbits shall be from November ~~1~~ *7*, ~~1980~~ *1981*, through January ~~4~~ *3*, ~~1981~~ *1982*. Bag limit shall be three per day; possession limit six. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 3. Rule 290—102.3(109) is amended to read as follows:

290—102.3(109) Squirrel season. Open season for hunting squirrels (fox and gray) shall be from September ~~6~~ *5*, ~~1980~~ *1981*, through January ~~4~~ *3*, ~~1981~~ *1982*. Bag limit shall be six squirrels per day; possession limit twelve. Entire state open.

[Filed emergency after notice 7/9/81, effective 9/1/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2221

CONSERVATION COMMISSION[290]

Pursuant to the authority of Sections 107.24, 109.38, and 109.39, The Code, the State Conservation Commission at their regular meeting on July 7, 1981, adopted the following amendments to Chapter 109, "Common Snipe, Sora and Virginia Rail, Woodcock and Ruffed Grouse Seasons", Iowa Administrative Code.

Notice of Intended Action was published in IAB, March 4, 1981, as ARC 1827.

These rules give the regulations for hunting common snipe, Virginia rail, sora, woodcock and ruffed grouse, and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Items 1 through 3 are identical to the published Notice of Intended Action. Item 4 was changed to enlarge the area where hunting is permitted.

These rules implement sections 109.38, 109.39, and 109.48, The Code.

The commission finds, pursuant to section 17A.5(2)"b"(2), The Code, that the normal effective date of these rules thirty-five days after publication should be waived as they confer a benefit and remove a restriction on a segment of the public. Therefore, these rules shall become effective on September 1, 1981, after filing with the Administrative Rules Coordinator.

ITEM 1. Rule 290—109.1(109), is amended to read as follows:

290—109.1(109) Common snipe season. Open season for hunting common snipe shall be from September ~~6,~~ *5* ~~1980,~~ through December ~~21~~ *20*, ~~1980~~*1981*. Shooting hours shall be from sunrise to sunset each day. Daily bag limit, eight birds; possession limit, sixteen birds. Entire state open.

ITEM 2. Rule 290—109.2(109) is amended to read as follows:

290—109.2(109) ~~Sora and~~ Virginia rail *and sora* season. Open season for hunting ~~sora and~~ Virginia ~~rails~~ *rail and sora* shall be from September ~~6,~~ *5* ~~1980,~~ through November ~~14~~ *13*, ~~1980~~ *1981*. Shooting hours shall be from sunrise to sunset each day. Daily bag limit, fifteen and possession limit, twenty-five in aggregate of both species. Entire state open.

ITEM 3. Rule 290—109.3(109) is amended to read as follows:

290—109.3(109) Woodcock season. Open season for hunting woodcock shall be from September ~~20,~~ *19* ~~1980,~~ through November ~~23~~ *22*, ~~1980~~ *1981*. Shooting hours shall be from sunrise to sunset each day. Daily bag limit, five; possession limit, ten. Entire state open.

CONSERVATION COMMISSION[290] *(cont'd)*

ITEM 4. Rule 290—109.4(109) is amended to read as follows:

290—109.4(109) Ruffed grouse season. Open season for hunting ruffed grouse shall be from October ~~11~~ *10*, ~~1980~~ *1981*, through January ~~11~~ *31*, ~~1981~~ *1982*. Shooting hours shall be from sunrise to sunset ~~daily~~ *each day*. Bag limit, three; possession limit, six.

109.4(1) ~~Closed portion of the state. Closed portion of the state shall be west of U.S. Highway 63 and south of U.S. Highway 20.~~ *Portion of the state open to hunting. The area open to hunting shall be that portion of the state lying north and east of a line described as follows: Beginning at Sabula, Iowa; thence west along State Highway 64 to U.S. Highway 151; thence west along U.S. Highway 151 to State Highway 13; thence north along State Highway 13 to U.S. Highway 20; thence west along U.S. Highway 20 to U.S. Highway 63; thence north along U.S. Highway 63 to the state line.*

109.4(2) Reserved.

[Filed emergency after Notice 7/9/81, effective 9/1/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ITEM 1. Amend subrule **132.6(1)**, paragraph "b" as follows:

b. The service program shall, as a minimum standard, use emergency medical transport vehicles that meet the federal KKK-A-1822 specifications *and amendments in effect* at the time of ~~the original purchase of the vehicle~~ *procurement*. ~~Any new vehicles purchased, leased, or otherwise procured after service program authorization shall meet the current federal KKK-A-1822 specifications and amendments in effect at that time.~~ *Current KKK-A-1822 specifications shall be considered to be those approved by the Commissioner, Federal Supply Service, General Services Administration, Washington, D.C., 20406, as amended through March 31, 1980.* These specifications *and amendments* shall not apply to vehicles used for routine or convalescent transfers.

ITEM 2. Subrule 132.7(3) is amended as follows:

132.7(3) All vehicles used in service programs shall be equipped, as a minimum, with the "Essential Equipment for Ambulances" published by the Committee on Trauma, American College of Surgeons, as of ~~May~~ *June*, 1981.

These rule changes are intended to implement section 147A.5, The Code, and shall become effective July 15, 1981.

[Filed emergency 7/15/81, effective 7/15/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2230

HEALTH DEPARTMENT[470]

Pursuant to the authority of Section 147A.4, The Code, the Iowa State Department of Health and the Iowa State Board of Medical Examiners emergency adopts and implements the following changes to correct a date certain, and to reflect the concern of the Administrative Rules Review Committee that ambulance and rescue squad service programs seeking authorization to provide advanced emergency medical care are not unduly penalized because of changes in, or questionable requirements of, federal ambulance specifications.

In compliance with Section 17A.4(2), The Code, the department and the board finds that public notice and participation is unnecessary as these changes involve the corrections of a date certain and an editorial change that does not substantially alter policy.

In compliance with Section 17A.5(2)"b"(2), The Code, the department and the board finds that immediate implementation of these changes confers a benefit upon the public as without this action effective July 15, 1981, the department would be bound to enforce standards that are unreasonably strict and force an unnecessary financial hardship on potential ambulance and rescue squad service programs seeking authorization to provide advanced emergency medical care.

These changes have been reviewed and approved by the department and board on July 15, 1981, and discussed with the Administrative Rules Coordinator.

These changes are to implement Section 147A.5, The Code, effective July 15, 1981.

ARC 2232

ARTS COUNCIL[100]

Pursuant to the authority of Sections 304A.4 and 304A.6, The Code, the Arts Council hereby amends Chapter 2, "Policies and Procedures", Iowa Administrative Code. These rules were adopted by the Director of the Iowa Arts Council on July 17, 1981.

Notice of Intended Action was published in IAB, May 27, 1981, as ARC 2051.

Changes from such notice are as follows: Numerous minor grammatical changes as recommended by the Administrative Rules Review Committee, also —

2.3(8) and all subrules following have been renumbered as 2.3(9) and following to accommodate a new subrule which will be eventually adopted as 2.3(8). References to changes in subrules are now listed by the new numbers.

2.3(9)"a"(6) no longer gives sponsors until June 15 to file evaluation forms.

2.3(10)"c" excludes contract form P-2 from application procedures.

2.3(12)"b" alters application procedures.

2.3(12)"d"(3) removes form P-26 as a requirement.

2.3(13)"e"(1) adds a procedure to applications by artists.

2.3(14)"c" corrects and specifies which report forms are required.

2.3(16)"d" is less specific on the membership on building art selection committees.

The adopted rule describes the policies and procedures of the artists-in-schools, solo artists, touring arts team, arts and older Americans, arts in county care, arts and the handicapped, touring exhibitions, and art in state buildings programs.

The policies and procedures of these programs have changed since the rules were written. The present rules include some out-of-date information and omit some of the current guidelines and procedures. It was felt that it would be advantageous to completely reorganize and rewrite the rules concerning these programs to provide greater clarity.

These rules are intended to implement Sections 304A.4 and 304A.6, The Code.

This rule will become effective on September 9, 1981.

ITEM 1. Rescind **2.1(5)**"a" to "f".

ITEM 2. Amend rule 2.3(304A) by adding the following subrules:

2.3(9) Artists-in-schools (AIS) program. This program places professional performing/visual/literary artists, folk artists and crafts people in elementary and secondary learning centers for periods from five days up to nine months.

a. Sponsor guidelines. Sponsors must meet the following guidelines to be eligible for an AIS residency.

(1) Official sponsors must be nonprofit, tax-exempt organizations; however, local public, private and commercial co-sponsors may contribute funds, supplies, facilities, and services to AIS residencies.

(2) Local sponsor(s), artist(s), and the Iowa arts council must join in tripartite contract agreement for each program.

(3) Local sponsors must match the total cost of the AIS residency with matching cash, services, and cash equivalents.

(4) Artists must be selected from outside the local sponsor's immediate community and generally are Iowa residents. (For exceptions see 2.3(9)"f"(1), (2), (3) and (4).)

(5) Programs are usually at least five days in length and may be up to nine months in length. No more than four and one-half hours per day may be scheduled without the artist's expressed donation of time over that sanctioned by the AIS contract.

(6) Sponsors must complete an evaluation-budget form for each program which must be received by the Iowa arts council within two weeks after completion of the program.

b. Sponsor participation. To participate in the AIS program sponsors must do the the following:

(1) Fill out and return application P-1. Applications are accepted at any time throughout the year but, because of limited funds and the number of applicants, it is suggested that applications be received by the Iowa arts council no later than August 1, preceding the school year during which the residency is requested.

(2) Choose an artist from the artists approved by the Iowa arts council. (Detailed information on each artist is available for the sponsor.)

(3) Fill out and return contract P-2.

(4) Meet with the artist.

(5) Fill out and return evaluation-budget form P-3.

c. Artist application procedures. Artists interested in participating in AIS must do the following:

(1) Submit a resumé which includes biographic information, education or learning experiences, work, teaching experiences, special workshops, awards, publication, and participation in shows, galleries, performances or readings.

(2) Submit a paragraph of philosophy about personal art form, relating it to schools and communities.

(3) Submit samples of the artist's own work in the form of slides, copies of writing, tapes, photographs, films, or a list of performances.

(4) Submit three professional references with complete addresses and telephone numbers.

d. Artist evaluation. The artist's work will be evaluated by a panel chosen by the Iowa arts council for expertise in the field.

e. Artist participation. The artists will be notified of acceptance in the AIS program and asked to fill out and return information form P-5. Information about the artist will then be made available to potential sponsors. Artists are not obligated to accept any proposed residency. Upon acceptance, the artist must complete and return contract P-2.

f. Out-of-state artist participation policy. In the employment of artists for Iowa arts council programs, preference in all disciplines and programs is given to Iowa artists. When artists from outside of Iowa are employed, specific reasons must be sufficient to balance the loss of support to Iowa artists. Reasons may include:

(1) Lack of qualified, available artists in a specific discipline, or lack of the particular combination of skills required for a particular residency.

(2) Need to establish a model for which no Iowa artists seem appropriate.

(3) Benefit of bringing in an outside expert for the stimulation of Iowa artists as well as program participants, and of involving this expert in an event that ultimately stimulates interest, support, and funding from increased activity by local artists.

(4) Response to requests by local sponsors for artists from outside when the requests are supported by strong local support and objectives consistent with Iowa arts council philosophy.

2.3(10) Solo artists program. Solo artists make it possible for professional artists to present programs of up to one day in length to communities, schools, arts organizations, clubs and businesses. Performing, visual, and literary artists, folk artists and craft people are available.

a. Sponsor guidelines. Sponsors must abide by the following guidelines:

(1) Any nonprofit organization may apply for a solo artists program; however, funding preference will be given organizations that might not otherwise locate funds to cover expenses of the program. The local sponsor pays one-half of the annually published fee and the Iowa arts council pays the balance.

(2) A maximum of three programs may be allowed per local sponsor during one Iowa arts council fiscal year.

(3) Artists must be approved by the Iowa arts council and must be selected from outside the local sponsor's community.

(4) Programs must be at least two hours in length, and may not exceed four and one-half hours unless artists volunteer additional time.

(5) Artists available through this program are Iowa residents. If an artist is not available from within Iowa the local sponsor may select an out-of-state artist. The Iowa arts council funding assistance will remain the same, with all extra costs assumed by the sponsor. A professional resumé of the out-of-state artist must be submitted with the request for funding assistance.

(6) Applications from sponsors for programs should be received by the Iowa arts council two weeks or more prior to the program date, and planning at least two months in advance is advised. The Iowa arts council will not fund solo artists programs "after the fact".

(7) Sponsors must submit an evaluation form about their solo artists program immediately following the event. Before an artist will be paid by the Iowa arts council for a program that has taken place, this evaluation form must be received by the Iowa arts council.

b. Sponsor procedures. To participate the sponsor must do the following:

(1) Select a discipline and request biographical information on artists available in that discipline from the Iowa arts council.

(2) Select the artist from the Iowa arts council listing or present data to the council regarding the desired artist.

(3) Contact the artist directly to discuss availability, program content, and all other arrangements.

(4) If the artist is available and agrees to an engagement, complete and return sponsor application P-7 to the Iowa arts council. (Contracts for the sponsoring group and the artist will be prepared and funds reserved for each program only upon receipt of this form.)

(5) Contract P-8 will be sent to the sponsor. Sign and return it within seven days of the date of receipt.

(6) Pay the artist one-half of the currently published fee on site immediately after completion of the program.

(7) Complete program evaluation form P-9 and return it to the Iowa arts council within seven days. (The Iowa arts council will pay the remaining one-half of the artists fee upon receipt of this report.)

c. Artists application and participation procedures. Follow the procedures stated in 2.3(9)"c" to "e" (excluding contract form P-2).

2.3(11) Touring arts team (TAT). The touring arts team has five to seven professional artists who do one to three day residencies in towns of population of fifteen hundred or less. Residency dates run from mid-June to July. Each stop allows for citizens of all ages to participate in varied arts activities. Classes take place during the day; evenings allow for informal performances by artists and local participants.

a. Community guidelines. The community guarantees to meet the following guidelines.

(1) The community must provide a local co-ordinator and committee to manage local details of the TAT residency.

(2) The community must assure general public awareness of the purposes, nature, and schedule of the TAT.

(3) The community must provide necessary spaces, utilities, and services.

(4) The community must protect the personnel and property of the TAT.

(5) The community must provide accommodations and meals for TAT members.

(6) All communities must pay a fifty dollar materials and equipment fee.

(7) Repeating sponsors must pay one hundred dollars directly to the Iowa arts council to help cover project costs.

b. Community application procedures. To apply for the TAT, communities must do the following:

(1) Request the TAT packet from the Iowa arts council.

(2) Complete application P-11 and return it to the Iowa arts council by March 31, preceding the program dates. (Applications are processed in order of receipt.)

(3) Repeating sponsors attach a letter stating compelling reasons for the TAT's return to their community.

(4) A municipal official, a school administrator, and a local citizen — co-ordinator must sign the application for the community to be considered for the program.

c. Sponsor notification. All applicants will be officially notified of the results of their application within sixty days of the application deadline. Participating communities will be sent dated commitment contract P-12 which should be signed by the local co-ordinator and returned to the Iowa arts council.

d. Sponsor reporting. The local co-ordinator must fill out and return report P-13 within ten days of the TAT residency.

e. Artists application procedures. Preference will be given to Iowa artists. Artists who want to participate in the TAT must do the following:

(1) Complete and return TAT application form P-14.

(2) Submit a plan for short-intensive classes and workshops for a varied age group.

(3) Submit a resumé or biography. Include samples of current work.

f. Artists audition. All artists must audition to participate in TAT or be previously qualified through the AIS program.

g. Artists notification. All artists will be officially notified of the results of their applications within sixty days of the application deadline. Participating artists will be sent contract P-15. It should be signed and returned to the Iowa arts council.

h. Artist payment. Artists will be paid the currently published fee by the Iowa arts council.

2.3(12) Arts and older Americans. Arts and older Americans serve Iowans sixty years and older. Programs may vary from a one-day session to year-round programming. A single elderly group or a consortium of

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community-based groups may be involved. Sponsors may include community arts councils, churches, community colleges, area aging agencies, schools or private facilities co-operating with nonprofit, tax-exempt groups.

a. Program guidelines, option A. The expansion arts co-ordinator arranges for an Iowa arts council approved artist to conduct classes. Sponsors must agree to the following guidelines to be eligible for the program:

(1) The local sponsor must provide at least fifty percent of the program cost.

(2) The program must be participatory in nature.

(3) The program must be directed by an Iowa arts council approved professional artist.

(4) The program should have a minimum of ten participants, each of whom is over sixty years of age.

(5) The program may be in either the performing, visual, or literary arts and involves creative rather than hobby-kit approach.

(6) One local person must be designated to co-ordinate among the Iowa arts council, local sponsor and the participants.

(7) The local sponsor should arrange for facility preparation and maintenance.

(8) The program should be held in a place where seniors generally congregate.

(9) The program must be held at a time which is conducive to mass participation.

(10) The program must meet a minimum of two hours each week.

(11) The program must be open and made available to the entire community.

(12) Some form of media coverage should be arranged and copies should be sent to the Iowa arts council.

b. Guidelines and procedures for artists, option A. Artists must be approved by the Iowa arts council. Guidelines and procedures are the same as stated in 2.3(9)"c"(1), (2), (3) and (4), and 2.3(9)"d", "e", (excluding contract P-2) and "f". The artist must do the following:

(1) Keep a log of classes which includes the number of students involved and a brief description of the class activity each week.

(2) Purchase the supplies. (The Iowa arts council will inform the artist of the supplies budget.) Left over supplies are left with the group.

c. Program guidelines, option B. The sponsoring group designs the program, arranges for an artist (Iowa arts council approved), and distributes the program funds. Guidelines are as stated in 2.3(12)"a"(2), (3), (5), (6), (12), and the following:

(1) Local arts or civic groups must provide an advisory committee of at least three persons to work with administrators and activity directors of senior centers. The committee must include an authorized, bonded fiscal officer, a local co-ordinator to arrange details with the Iowa arts council, and a person responsible for raising local matching funds.

(2) The local group must provide at least one-third of the funds for the project.

d. Procedures for sponsors. The following procedures apply to sponsors involved in option A or option B.

(1) The local sponsor should fill out and return application P-16 for option A or application P-20 for option B. The sponsor will be notified in writing within thirty days of receipt of the application by the Iowa arts council of the status of the application.

(2) Successful application will receive contract P-17 or contract P-21. The contract should be signed and returned within seven days of the date of receipt.

(3) Sponsors must complete and return evaluation and fiscal report P-19 within thirty days of the final class meeting.

2.3(13) Arts in county care. This program provides assistance in designing and implementing weekly activities in performing, visual, and literary arts for residents in Iowa county care facilities.

a. Program guidelines and description.

(1) Each county care facility will determine the type of art discipline to be used.

(2) Classes must be taught by an Iowa arts council approved artist and meet two hours each week for fourteen consecutive weeks. (Exceptions: Conflicts with a national holiday, hazardous road conditions, or serious emergency or illness.)

(3) The facility co-ordinator may suggest an artist with whom he/she is familiar; however all participating artists must be approved by the Iowa arts council. If the sponsor requests it the council staff will identify and approve artist for the site.

(4) The sponsor must provide a staff person to co-ordinate the program with the Iowa arts council and the artist.

(5) The sponsor must provide space and basic equipment necessary for the classes.

(6) The sponsor must attempt to provide community interaction by arranging local performances or exhibitions of residents' work at the end of the program.

(7) Participation by the residents is voluntary.

(8) Individual works created by the residents will belong to the residents; however residents may contribute to a group effort.

b. Funding. The funding year starts July 1. Funds are distributed on a first-come-first-serve basis. Applications will be accepted at any time but it is suggested that application be made early. The level of funding for each facility is determined by the following guidelines:

(1) The Iowa arts council will entirely fund the first program in any facility.

(2) The Iowa arts council will provide one-half the currently published fee for any program thereafter. The county care facility will be required to pay the other half of the fee.

c. County care application procedures. County care facilities applying for the first time should submit application/agreement P-22. Facilities that have already had one or more programs should fill out and return application/agreement P-23.

d. Payment. Any fee required of a county care facility should be paid to the Iowa arts council by the seventh week of the program.

e. Artists working in county care facilities. Artists must follow the guidelines and procedures stated below.

(1) Artists must be approved by the Iowa arts council. The procedure is as stated in 2.3(9)"c"(1), (2), (3) and (4).

(2) Artists must legally contract with the Iowa arts council. Contract P-24 should be signed and returned to the council within seven days of the date of receipt.

(3) The artist will spend a minimum of two hours weekly working with one or more classes and give special consultation to activity directors, other staff and volunteers.

2.3(14) Arts and the handicapped program. Programs for the physically, mentally, and emotionally handicapped follow the programs format of artist-guided classes but may be individually designed by sponsors to fulfill the needs of special groups. Activities may include classes, performances, demonstrations, and festivals. Length of program depends upon purpose of each project. Basic

purposes are exposure and entertainment (as short as one day), trial classes (as long as several weeks), and on-going classes (as long as a semester per year).

a. Program requirements. To maintain flexibility in serving unique sponsor-needs guidelines are kept to a minimum. Programs may be designed or outlined by the sponsor and then submitted to the Iowa arts council for approval or the council's expansion arts co-ordinator will design and co-ordinate the program along guidelines which have proven successful.

(1) The sponsor must provide at least fifty percent of the program cost.

(2) The sponsor must submit application P-26. Applications may be accepted at any time during the year.

(3) The artist chosen to carry out the program must be approved by Iowa arts council. The expansion arts co-ordinator arranges for an artist to conduct the program if the sponsor so desires. If the sponsor has chosen a particular artist, a resumé is submitted with the application and the artist is qualified before the project begins.

b. Award of funds. Staff evaluates each application to see that it meets the minimum program requirements and fulfills the intent of the program, which is to make quality arts experiences available to the handicapped. Applications are reviewed on a first-come-first-serve basis.

(1) Applicants are notified in writing within thirty days of receipt of their application as to its status.

(2) Award of program funds is made by the executive director.

(3) Successful applicants are sent contract form P-27 which should be signed and returned within seven days of the date of receipt.

c. Evaluation and fiscal reporting. On completion of the program the sponsor is required to fill out and return evaluation and fiscal report form P-19. In addition to the formal report, six to nine report cards (P-29) are returned by class participants and staff involved in the program.

2.3(15) Touring exhibitions. The Iowa arts council supports tours of special arts exhibitions to communities throughout Iowa. These include exhibitions of art work by Iowa artists and varied collections organized by museums, colleges, universities and individuals. Descriptions of available exhibitions are published annually in the touring programs brochure. Exhibitions available after publication of the brochure are announced in Iowa Arts News.

a. Cost to the sponsor. Many exhibitions do not have an exhibition fee. The sponsor is generally responsible for shipping costs to the next site. (Estimated shipping costs are published in the touring brochure.)

(1) Some exhibits require a fee which is established by the organizer, paid directly to the organizer, and is published in the touring brochure.

(2) Occasionally exhibitions are shipped, or installed by the organizer in which additional fees or arrangements may be required. The Iowa arts council co-ordinator or the organizer will inform the sponsor of any unpublished requirements.

b. Application to participate. Organizations interested in sponsoring a touring exhibit should fill out and return application form P-31 printed in the back of the touring brochure. Applications are processed in order of receipt. Applications are accepted at any time but must be submitted at least one month in advance of the requested exhibition date. Most shows are scheduled at least one year in advance.

c. Requirements. Sponsors must agree to the following conditions.

(1) Exhibit installation. The exhibition must be shown in a dignified and suitable manner and, unless otherwise specifically agreed, must be installed in the location named in the contract. All exhibit spaces must be easily accessible to the general public (hallways, work spaces or rooms not easily accessible to the general public are not considered proper areas for Iowa arts council exhibitions).

(2) Admittance to exhibit. No charge for admission may be levied.

(3) Insurance. Generally insurance for the exhibition is carried by the Iowa arts council, or the organizer. All damages, whether in transit or on the borrower's premise, and regardless of responsible party, must be reported to the council immediately. Exhibitors will be held responsible for items lost or damaged through their carelessness. Repair of all minor damages is to be paid by the exhibitor, after receiving approval from the council for the repairs.

(4) Handling. All packing and unpacking instructions sent by the Iowa arts council must be followed explicitly. Exhibitions may be installed only in buildings which have adequate security and where adequate fire protection is involved. Periodic security inspections must be made during the hours the exhibition is open to the public.

(5) Shipping. The sponsor is required to ship the exhibit within three days after the closing date to ensure schedules. The sponsor is required to ship the exhibit, prepaid, to the next site.

(6) Cancellation. If it becomes necessary for the exhibitor to cancel the exhibit listed, notice of cancellation must be given to the Iowa arts council visual arts co-ordinator at least three months before the scheduled opening date.

d. Contract. The sponsor must enter into a legal contract with the Iowa arts council. Contract P-32 should be signed by the authorizing official and returned to the council within seven days of the date of receipt.

e. Reporting. Sponsors are required to fill out and return the following report forms.

(1) Sponsors are required to fill out and return condition report P-33 as soon as the exhibit is uncrated and its contents inspected.

(2) Sponsors are required to fill out and return touring exhibit evaluation and financial report form P-34 within ten days of the end of the exhibit.

2.3(16) Art in state buildings (AiSB). Iowa reserves one-half of one percent of the cost of state construction projects for the acquisition of fine art in state buildings. The art in state buildings advisory committee, appointed by the executive director of the Iowa arts council, advises the council and other state agencies of the overall operation of the AiSB program. The eleven-member committee includes representatives of the department of general services, department of social services, capitol planning commission, board of regents, state legislature, Iowa museum association, Iowa chapter of American institute of architects, and the Iowa arts council. Serving annual rotational memberships are one additional state agency, a professional visual artist, and one private citizen. The committee meets twice a year to review the program.

a. Eligibility. Visual artists, eighteen years of age or older, are eligible for the AiSB program. Initial preference is given to living or deceased Iowa artists (artists' agents or representatives, art dealers, the heirs of artists

and art collectors). Those individuals ineligible are the project architect or employees of the architect or employees of the architect's firm or consulting firms, building art selection committee, art in state buildings advisory committee, the Iowa arts council staff, and others excluded by council policies or state law.

b. Announcement of projects. Art purchase projects are announced in Iowa Arts News, in mailing to artists, in the artist/slide registry, and in news releases through the media. Project information is available by contacting the Iowa arts council visual arts co-ordinator.

c. Artist/slide registry. The registry is designed to facilitate application to AiSB projects. However it will be used for additional purposes including advising artists of AiSB programs in other states, as a reference for Iowa arts council programs and special projects, and informing public institutions, professional arts organizations, architects, city planners, art directors, publishers, galleries, universities and colleges, and community arts councils seeking information about visual artists. The artist/slide registry will be available for viewing by making prior arrangements with the Iowa arts council visual arts co-ordinator. Artists wishing to be included in the registry should do the following:

(1) Fill out and return application P-35.

(2) Submit five thirty-five MM slides characteristic of recent work. Examples may or may not be available for purchase. (These slides will be placed in a slide carousel and shown to building art selection committees when considering artists for purchase programs.)

(3) Slides are to be marked with the artist's name and the title of the art work. A small dot must be placed in the lower left-hand corner of the slide.

d. Building art selection committee. The Iowa arts council and the state agency appoint a building art selection committee for each building project to recommend the type of purchase program appropriate for the building and budget, method of selecting the artist or art work, placement of art work in the building, and selection of art work to purchase or selection of the artist for commission. The committee acts only as an advisor with final decisions made by the state agency and the Iowa arts council. Members of the committee will be determined by the council and the principal user.

e. Selection criteria. The following selection criteria is used when selecting the artist and work for state buildings:

(1) Quality of art work. Is the art work original and of high quality?

(2) Media. Does the art work meet media requirements, as defined in the project guidelines?

(3) Style and nature of art work. Is the art work appropriate for the site and a public building?

(4) Permanence of art work. Is the structure and surface of the art work sound, and will it withstand weathering, avoid excessive maintenance or repair costs?

(5) Management capabilities. Will the project be completed successfully within the time frame and budget?

(6) Cost. Is the cost reasonable?

(7) Artist background. What are the artist's qualifications?

(8) Iowa artist. Preference is given to Iowa artists.

f. Purchase agreements. The state of Iowa will enter into formal purchase agreements with artists for purchasing existing art work or commission contracts for commissioned art work.

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[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2233

ARTS COUNCIL[100]

Pursuant to the authority of Section 304A.6, The Code, the Arts Council hereby amends Chapter 3, "Forms", Iowa Administrative Code. These rules were adopted by the Director of the Iowa Arts Council on July 17, 1981.

Notice of Intended Action was published in IAB, May 27, 1981, as ARC 2052.

This rule is identical to that published as Notice of Intended Action.

The rule describes the forms used in the artists-in-schools, solo artists, touring arts team, arts and older Americans, arts in county care, arts and the handicapped, and art in state buildings programs.

These forms are not described in the current rules. It was felt that a brief description of each form should be included in the rules.

These rules are intended to implement Sections 304A.4 and 304A.6, The Code.

These rules will become effective on September 9, 1981.

Amend Chapter 3 by adding the following rules:

100—3.2(304A) Artists-in-schools (AIS) forms. The following are forms used in carrying out AIS.

3.2(1) AIS sponsor application P-1 requires information about the school, the program co-ordinator, the subject and objectives of the residency, and the local money committed to the program.

3.2(2) AIS contract P-2 is a tripartite agreement between the Iowa arts council, the school and the artist. The parties legally commit to fulfill their individual responsibilities as stated in the program guidelines.

3.2(3) AIS report P-3. At the end of the program the sponsor is required to fill out a narrative report which includes information about program operation and response, and detailed fiscal information.

3.2(4) AIS evaluation form P-4 is an evaluation postcard passed out to participants requesting their reactions to the program.

3.2(5) AIS artist application P-5 requires information about the artist, the proposed residency, and references.

3.2(6) AIS evaluation P-6 is the artists evaluation of the program.

100—3.3(304A) Solo artist forms. The following are forms used in carrying out the solo artist program.

3.3(1) Solo artists sponsoring group application P-7 requires basic information about the sponsor and the choice of artist.

3.3(2) Solo artist contract P-8 is a tripartite agreement between the Iowa arts council, the local sponsor and the artist in which the parties legally commit to follow the operations guidelines.

3.3(3) Solo artist local sponsor report P-9 requests a brief narrative report on the program operation and an evaluation of the artist.

3.3(4) Solo artist registration form P-10 for artists require basic information, program information, a resumé, references, and samples of work where appropriate.

100—3.4(304A) Touring arts team (TAT). The following are forms used in carrying out TAT residencies.

3.4(1) Touring arts team community application P-11 requires specific information on the community, the site, and the local people involved.

3.4(2) Touring arts team community commitment P-12 commits the community to a specific date for hosting the TAT.

3.4(3) Touring arts team sponsor report P-13 is a narrative evaluation of the TAT and the community response.

3.4(4) Touring arts team artist application P-14 requires basic information, dates of availability, artistic discipline, and references.

3.4(5) Touring arts team artist performance agreement P-15 is a legal contract between the artist and the Iowa arts council which spells out the exact responsibilities of each party.

100—3.5(304A) Arts and older Americans (AOA) forms. The following are forms used in carrying out AOA.

3.5(1) Arts and older Americans option A application P-16 requires basic information on the applicant, the site, the type of program requested, and the signature of an authorizing official.

3.5(2) Arts and older Americans contract P-17 legally commits the sponsor and the Iowa arts council to fulfill their individual responsibilities as stated in the program guidelines.

3.5(3) Arts and older Americans contract P-18 legally commits the artist and the Iowa arts council to fulfill their individual responsibilities as stated in the program guidelines.

3.5(4) Arts and older Americans artists final report P-19 requires a descriptive evaluation of the program.

3.5(5) Arts and older Americans option B application P-20 requires basic information on the applicant, a program outline including objectives and detailed fiscal information.

3.5(6) Arts and older Americans option B contract P-21 legally commits the sponsor and the Iowa arts council to fulfill their individual responsibilities as stated.

100—3.6(304A) Arts in county care facilities (ACCF) forms. The following are forms used in carrying out ACCF.

3.6(1) Arts in county care facilities program 1 application/agreement P-22 requires basic information, program choices, and the signature of an authorized official.

3.6(2) Arts in county care facilities program 2 application/agreement P-23 requires basic information, program choices, a commitment to pay the required fee, and the signature of an authorized official.

3.6(3) Arts in county care facilities artist contract P-24 legally commits the artist and the Iowa arts council to fulfill their individual responsibilities as stated in the program guidelines.

3.6(4) Arts in county care facilities artists final report P-25 requires a narrative evaluation of the program.

100—3.7(304A) Arts and the handicapped (AH) forms. The following are forms used in carrying out AH.

3.7(1) Arts and the handicapped application P-26 requires basic information about the sponsor, the program objectives, the source and amount of local money, the name of the proposed artist if known, and the signature of an authorized official.

3.7(2) Arts and the handicapped contract P-27 legally commits the sponsor and the Iowa arts council to fulfill their individual responsibilities as stated in the contract.

3.7(3) Evaluation and fiscal report P-28 is used for AOA, ACCF, and AH. It requires a narrative evaluation and detailed fiscal information from the sponsor.

3.7(4) Participant evaluation form P-29 is given to participants in AOA, ACCF, and AH. It asks for a personal evaluation of the program.

3.7(5) Photo-release form P-30 is used for AOA, ACCF, and AH. It authorizes the Iowa arts council to use program photographs in publicity.

100—3.8(304A) Touring exhibition forms. The following are forms used in carrying out touring exhibitions.

3.8(1) Touring exhibit request form P-31 requires basic information about the exhibition organization and its facilities.

3.8(2) Touring exhibit contract P-32 legally commits the exhibitor to the exhibition guidelines.

3.8(3) Touring exhibit evaluation report P-33 requests information from the exhibitor about the condition of the exhibition and its reception by the public.

3.8(4) Touring exhibit budget report P-34 requires very specific fiscal information on the exhibit.

100—3.9(304A) Art in state buildings application. Art in state buildings application P-35 requests basic information, the name of the exhibit requested, the date requested and information about the exhibition space.

[Filed 7/16/81, effective 9/9/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2218

CONSERVATION COMMISSION[290]

Pursuant to the authority of Sections 107.24, 109.38, and 109.39, The Code, the State Conservation Commission at their regular meeting on July 7, 1981, rescinded Chapter 101, Iowa Administrative Code, and in its place adopted a new chapter, "Crow Hunting Regulations".

Notice of Intended Action was published in IAB, April 29, 1981, as ARC 1975.

CONSERVATION COMMISSION[290] *(cont'd)*

This rule gives the regulations for hunting crows and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

The only change from the Notice of Intended Action is to change the season opening date from October 25 to January 2.

This rule implements Sections 109.38, 109.39, and 109.48, The Code.

This rule will become effective on September 9, 1981.

CHAPTER 101

CROW HUNTING SEASON

290—101.1(109) Crow season. Open season for hunting crows shall be from January 25 of each year through February 25 of the same year. Shooting hours shall be one-half hour before sunrise to sunset each day. No bag or possession limit. Entire state open.

This rule is intended to implement sections 109.38, 109.39, and 109.48, The Code.

[Filed 7/9/81, effective 9/9/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2220

CONSERVATION COMMISSION[290]

Pursuant to the authority of Sections 107.24, 109.38, and 109.39, The Code, the State Conservation Commission at their regular meeting on July 7, 1981, adopted the following amendments to Chapter 104, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter and Spotted Skunk Seasons", Iowa Administrative Code.

Notice of Intended Action was published in IAB March 4, 1981, as ARC 1824.

These rules give the regulations for taking furbearers (except groundhog) and include season dates, bag limits, possession limits, and areas open to taking.

Changes from the published Notice of Intended Action are as follows:

1. Specific opening and closing dates are established.
2. An area with a more restricted beaver season has been defined.
3. Subrule 104.1(1) has been rewritten, at the suggestion of the Attorney General's Office, without changing the meaning.

These rules implement Sections 109.38, 109.39, 109.87, and 109.90, The Code.

These rules will become effective on September 9, 1981.

ITEM 1. Rule 290—104.1(109) is amended to read as follows:

290—104.1(109) Mink and muskrat. Open season for the taking of mink and muskrat shall be from 8:00 a.m., November ~~8~~ *7*, ~~1980~~ *1981*, through January ~~4~~ *3*, ~~1981~~ *1982*. Entire state open. No bag or possession limit.

104.1(1) *Molesting or disturbing muskrat houses. Any commission officer may permit trappers to molest or disturb muskrat houses on specific state game management areas as provided in section 109.90, The Code, after finding that muskrats are causing excessive damage by destroying the vegetation essential to the welfare of a marsh and after so posting the area.*

104.1(2) *Reserved.*

ITEM 2. Rule 290—104.2(109) is amended to read as follows:

290—104.2(109) Raccoon, badger, opossum, weasel, and striped skunk. Open season for the taking of raccoon, badger, opossum, weasel, and striped skunk shall be from 8:00 a.m., November ~~8~~ *7*, ~~1980~~ *1981*, through January ~~4~~ *3*, ~~1981~~ *1982*. Entire state open. No bag or possession limit.

ITEM 3. Rule 290—104.3(109) is amended to read as follows:

290—104.3(109) Red and gray fox. Open season for the taking of red and gray fox shall be from 8:00 a.m., November ~~15~~ *14*, ~~1980~~ *1981*, through January ~~18~~ *24*, ~~1981~~ *1982*. Entire state open. No bag or possession limit.

ITEM 4. Rule 290—104.4(109) is amended to read as follows:

290—104.4(109) Beaver. Open season for the taking of beaver shall be from 8:00 a.m., November ~~8~~ *7*, ~~1980~~ *1981*, through March ~~29~~ *28*, ~~1981~~ *1982*, except for ~~that portion of the state along the Mississippi River north of Interstate Highway 80 and east of the Davenport, Rock Island, and Northwestern Railroad tracks and the Chicago, Milwaukee, St. Paul and Pacific Railroad tracks which parallel the Mississippi River~~ *the federal Upper Mississippi Wildlife and Fish Refuge*. In this area the season shall be from 12:00 noon, December ~~27~~ *26*, ~~1980~~ *1981*, through February ~~22~~ *28*, ~~1981~~ *1982*. No bag or possession limit.

[Filed 7/9/81, effective 9/9/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2224

REAL ESTATE COMMISSION[700]

Pursuant to the authority of Section 117.9, The Code, the Iowa Real Estate Commission adopts the amendments to Chapter 2, "Administrative Procedure" on the 8th day of July, 1981, Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume 3, Number 22 on April 29, 1981, as ARC 1993.

The adopted rule will implement the multiyear licensing by which licenses will be issued for years on a staggered basis.

This rule is identical to that published as Notice of Intended Action, however, it has been separated from two additional items: Rules 1.7(117) and 1.13(117). The adopted subrule 2.2(2) is the only portion being considered at this time.

This rule will become effective September 10, 1981.

This rule is intended to implement Section 117.28, The Code.

Amend rule 2.2(117) by adding the following new subrule:

2.2(2) Renewal applications for licenses scheduled to expire December 31, 1981, will be divided by random selection into three groups. One-third of the total will be issued licenses with expiration date of December 31, 1982, one-third with expiration date of December 31, 1983, and one-third with expiration date of December 31, 1984. Thereafter all renewals will be for three years. New licenses issued after January 1, 1982 will be for three years, counting the remaining portion of the year issued as a full year. All licenses shall expire on December 31 of their effective year.

[Filed 7/9/81, effective 9/10/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

ARC 2239

REGENTS, BOARD OF[720]

Pursuant to the authority of Section 262.12, The Code, the State Board of Regents adopts an amendment to Chapter 11, "Administrative Procedures," Iowa Administrative Code.

This amendment will delete references to committees which no longer exist or which are no longer designated as formally constituted subunits of the board of regents.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 13, 1981, as ARC 2029. The rule being adopted is identical to that published under notice.

The amendment was adopted on July 13, 1981, and will become effective September 9. 1981.

This rule is intended to implement section 262.9(3), The Code.

Subrule 11.1(8) is amended to read as follows:

11.1(8) Committees. The board of regents has established interinstitutional committees of professional educators drawn from the institutions and staff under its governance. Their function is to advise the board on matters related to development of policy, and to ensure co-operation among the several institutions, and promote efficiency of operation.

The committees include the committee on educational co-ordination, the registrar's committee on co-ordination, the subcommittee on library co-ordination, the information committee, the regent committee on educational relations, the state extension and continuing education council, ~~the committee on nonacademic personnel,~~ the committee on equal employment opportunity, ~~the classification review committee, the regent case review committee,~~ the co-ordinating council for international studies, and the regent advisory committees on Iowa School for the Deaf and Iowa Braille and Sight Saving School.

This rule is intended to implement section 262.12, The Code.

[Filed 7/17/81, effective 9/9/81]

[Published 8/5/81]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/5/81.

HEALTH DEPARTMENT[470]

THE ADMINISTRATIVE RULES REVIEW COMMITTEE
OF THE GENERAL ASSEMBLY

In Re: Rules Promulgated by the Department of Health Relating to Public Access to Vital Statistics	MEMORANDUM OF OBJECTION Amendments to Chapter 96

Pursuant to the authority of §17A.4, the Code, the administrative rules review committee objects to the "emergency" filing of ARC 2158, on the grounds that filing is an abuse of the power to implement rules without notice and public participation as generally required by §17A.4, and is therefore unreasonable.

It is the opinion of the committee that in this particular instance rules should not have been implemented prior to giving the public an opportunity to comment upon the substance of those rules. ARC 2158 purports to interpret the meaning of "records" which are open to public inspection, as required by H.F. 413, 69th General Assembly, 1st session. These rules have drawn the interest of many concerned persons, and have prompted comment that ARC 2158 does not fairly implement the statutory provisions and in fact voids the legislative intent of those provisions. Because of the great amount of public concern the committee believes these rules should not have permanent effect until notice and public participation has been provided.

Under the provisions of §17A.4(2) the objection imposed upon ARC 2158 will terminate the effectiveness of the "emergency" filing 180 days after this memorandum is filed in the office of the code editor.

EDITOR'S NOTE: ARC 2158 amends chapter 96 — published IAB, 7/22/81.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Nursing Board[590]	Chapter 6 [IAB 4/1/81 **ARC 1908**]	Forty-five days after convening of the next General Assembly pursuant to §17A.8(9)

State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FORTY-ONE

WHEREAS, the criminal justice system in Iowa and the rest of the nation is the framework which helps to protect people while also ensuring basic individual rights; and

WHEREAS, one of the primary needs of criminal justice agencies and planners is for reliable data upon which to base criminal justice system operation; and

WHEREAS, Iowa State Government has had an important leadership role in the development and analysis of criminal justice data relating both to state and local criminal justice agency operation; and

WHEREAS, a Statistical Analysis Center can be formally established by Executive Order in order to permit continued financial assistance from the federal Bureau of Justice Statistics:

NOW, THEREFORE, I, Robert D. Ray, Governor of the State of Iowa, do hereby establish the Statistical Analysis Center, and further direct that it be placed in the Office for Planning and Programming. The Office for Planning and Programming has no direct operational responsibilities in the criminal justice system and yet can ensure the Center's direct access to state and local criminal justice system representatives and information.

RESPONSIBILITIES

I further authorize the center to develop and analyze reliable data relevant to crime and operation of the criminal justice system in Iowa, for the purpose of improving decision-making and maximizing efficiency of the state's criminal justice system.

Specific responsibilities of the Statistical Analysis Center shall be the following:

1. Statistical analysis of data pertaining to:
   a. crime and victimization levels and trends.
   b. offender screening and case processing.
   c. sentencing and paroling practices, including the development and monitoring of sentencing and parole guidelines.
   d. criminal recidivism.
   e. public opinions relating to crime and criminal justice.
2. The collection of data pertaining to the above, if data do not exist or are obsolete and staff resources permit.

3. The provision of statistical and analytical services to the state and local agencies from available information.

4. The provision of technical assistance to state and local agencies concerning the collection, analysis, and dissemination of criminal justice statistics.

5. The development and analysis of management data pertaining to criminal justice system operation, including comparative information on:

   a. salaries and personnel benefits
   b. manpower
   c. departmental policies
   d. opinions of criminal justice system representatives.

6. Coordination and promotion of the development and improvement of computerized and manual information systems pertaining to criminal justice system operation.

7. The development of applications for federal funds provided for state statistical analysis of criminal justice data, and otherwise providing liaison with federal criminal justice research and statistics programs.

8. Providing liaison to Statistical Analysis Centers in other states.

9. Providing a clearinghouse function for criminal justice data in Iowa.

10. The publishing of reports on the above topics.

IN FURTHERANCE WHEREOF, I direct the offices and employees of Iowa State Government to cooperate fully with the Statistical Analysis Center and its representatives in providing Iowans with the best possible statistical and analytical services pertaining to crime and criminal justice in Iowa.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 21st day of July in the year of our Lord one thousand nine hundred eighty-one.

GOVERNOR

Atte

SECRETARY OF STATE

SUMMARY OF OPINIONS OF ATTORNEY GENERAL

THOMAS J. MILLER

June, 1981

CRIMINAL LAW

Evidence, Judicial Notice, Municipal Ordiances. Section 622.62, The Code 1981. The "properly pleaded" requirement is satisfied when the pleading asserting the municipal ordinance refers to the ordinance by the designation appearing in the appropriate city code or city code supplement. (Cleland to McKean, State Representative, 6/9/81) #81-6-3(L)

COUNTIES AND COUNTY OFFICERS

County Compensation Commission. Chapters 340A and 509A, §§ 340A.1, 340A.6 and 340A.8, The Code 1981. When a county governing body provides group insurance and similar fringe benefits to county officers, such benefits need not be included in the determination of compensation pursuant to Chapter 340A. (Fortney to Bordwell, Washington County Attorney, 6/16/81) #81-6-7

Law Enforcement, Policemen and Firemen, Sheriff. Reserve peace officers -- §§ 4.1(18), 80D.1, 80D.8, 80D.9, 337.1, The Code 1981. The requirement that reserve peace officers serve as peace officers only "under the direction of regular peace officers" means that the supervisory regular officers must have knowing control of the subordinate reserve officers. "Under the direction of regular peace officers" does not require that reserve officers be physically accompanied by regular officers at all times. Knowing control of reserve officers by regular officers may be exercised through radio contact. (Richard to Rush, State Senator and Hall, State Representative, 6/16/81) #81-6-9

Secondary Roads. Chapters 17A and 306, §§ 306.3, 306.4, 306.10 and 306.19, The Code 1981. A county has authority to control and restrict necessary for the board of supervisors to adopt written criteria for approval or denial of road access. (Fortney to Criswell, Warren County Attorney, 6/15/81) #81-6-6(L)

GENERAL ASSEMBLY

Legislative Redistricting; General Assembly. §§ 42.3, 42.4, The Code 1981. The redistricting plan submitted by the legislative service bureau to the General Assembly on June 10, 1981, pursuant to §§ 42.3(2) and 42.3(4)(b), does not comply with the redistricting standards set forth in § 42.4(1)(a). The corrected redistricting plan submitted by the legislative service bureau to the General Assembly on June 17, 1981, comports with the intent and purpose of § 42.3(2) and is therefore properly placed before the General Assembly for its consideration. (Miller and Stork to Garrison, Director, Iowa Legislative Service Bureau, 6/23/81) #81-6-13

INCOMPATIBILITY

Incompatibility of Office; Conflict of Interest. Iowa Const. Art. III, § 22. A state legislator is not barred by either Article III, § 22 of the Iowa Constitution or the doctrine of incompatibility of offices from serving as an uncompensated member of a local board of transit trustees. The legislator must exercise discretion to avoid any conflict of interest that could develop in a particular situation. (Stork to O'Kane, State Representative, 6/18/81) #81-6-12(L)

PUBLIC RECORDS

Motor Vehicle Titles and Registration Information. Chapter 68A, The Code 1981. Motor vehicle titles and registration information maintained by a county treasurer are "public records." Such records are available for public inspection. Vountary associations, such as labor unions, are entitled to inspect public records with rights equivalent to those of their individual members. Reasonable fees may be assessed for the expense of copying public records. The uses to which information may be put does not justify a denial of a citizen's right to inspect public documents. (Fortney to Mahaffey, Poweshiek County Attorney, 6/3/81) #81-6-2(L)

REVENUE

Money: Legal Tender. 31 U.S.C. § 371 (1976); 31 U.S.C. § 372 (1976); 31 U.S.C. § 392 (1976); 31 U.S.C. § 452 (1976); Section 535.1, The Code 1981. Federal Reserve Notes are legal tender for the payment of debts and taxes to the State of Iowa, and the monetary units used by the United States Government are the legislatively required denominations of measurement known as money of account. (Miller and Schuling to DeKoster, State Senator, 6/18/81) #81-6-11

Taxation: Special Assessments for Public Improvements Against Property Used and Assessed as Agricultural Property -- Deferral of Installment Payments. § 384.62(4), The Code 1981. Section 384.62(4) requires that the owner of property subject to a special assessment file a deferral statement six months prior to the date that the assessment installment is due. (Kuehn to Danielson, Assistant Cerro Gordo County Attorney, 6/16/81) #81-6-8(L)

SOCIAL SERVICES

Juvenile Law: Exceeding "Client Capacity" of County Juvenile Detention Home. Ch. 232, §§ 232.142(1), (2), (3), (4), (5), 232.22, 232.2(12), 232.133, The Code 1981; 770 I.A.C. 105.1, et. seq. Section 232.142, The Code 1981, mandates the Commissioner of Social Services to promulgate rules regarding the establishment, maintenance and operation of a county or multi-county juvenile detention or shelter care homes. Pursuant to that authority the Commissioner has promulgated

770 I.A.C. 105.1, et. seq., which include a limitation on "client capacity" for such facilities. These rules are substantive or legislative rules, having the force and effect of law. No waiver or exemption therefrom is allowed. The violation of the rules would expose the facility, its administrators and the county to possible sanctions. A court order requiring detention in violation of the rules would be illegal and appealable. (Hege to Kopecky, Linn County Attorney, 6/10/81) #81-6-4

Juvenile Law. Chapter 232. Sections 232.2(10), 232.2(18), 232.11, The Code 1981. Foster parents may not execute a written waiver of the right to counsel for a foster child, absent appointment as guardian or custodian. (Hege to Fisher, County Attorney, 6/3/81) #81-6-1(L)

Juvenile Law: Requirements of § 232.54 Relating to the Termination Modification or Revocation of Juveniles. §§ 232.54, 232.103, 232.153, The Code 1981; § 232.54(2), The Code 1979; 1979 Session, 68th G.A., ch. 56, § 31; ch. 242, The Code 1975; 770 I.A.C., 141 (232). Section 232.54 requires court authority and a written order to terminate, modify or vacate and substitute for any original disposition under § 232.52. Notice and opportunity for evidentiary hearing are required. Under provisions of § 232.54(1), (2), (3), the hearing is waivable if not requested by any party or upon the court's own motion. Under provisions of § 232.54(4) and (5), the hearing requirement may not be waived. Similarly, § 232.54 will require court authority and a written order to revoke the parole placement of a juvenile for return to the more restrictive setting of the Eldora or Mitchellville Training Schools. All dispositional orders currently in effect, regardless of adjudication date, must be terminated, modified or vacated and substituted only pursuant to § 232.54. There is no distinction between "old code" and "new code" juveniles. Chapter 232 has provided a court procedure for revocation of parole and the administrative procedure act, contested case hearing has been supplanted by this enactment. (Hege to Reagen, Commissioner, Iowa Department of Social Services, 6/12/81) #81-6-5

STATE DEPARTMENTS AND OFFICERS

Statutes; Rulemaking; Nurses, Advanced Emergency Medical Technicians and Paramedics. Scope of Authority. §§ 147A.1, 147A.4, 147A.8, 147A.10, 147A.11, 152.1, The Code 1981. A registered nurse may provide emergency services within the scope of his/her license as defined in Chapter 152 provided he/she does not profess to be an advanced emergency medical technician or paramedic under Chapter 147A. The Iowa Board of Medical Examiners does not have statutory authority, under § 147A.4, to promulgate rules requiring a registered nurse to be certified under Chapter 147A in order to perform any emergency services. A registered nurse is subject to possible liability under § 147A.11 upon proof that he/she has acted outside the scope of his/her authority in Chapter 152 and in violation of one of three prohibitions contained in § 147A.11. (Stork to Illes, Executive Director, Iowa Board of Nursing, 6/18/81) #81-6-10

STATUTES CONSTRUED

Code, 1981	Opinion
4.6	81-6-9
42.3,4	81-6-13
68A	81-6-2(L)
80D.1	81-6-9
80D.8,9	81-6-9
147A.1	81-6-10
147A.4	81-6-10
147A.8	81-6-10
146A.10,11	81-6-10
152.1	81-6-10
232.2(10)(11)	81-6-1(L)
232.2(12)	81-6-4
232.11	81-6-1(L)
232.22	81-6-4
232.54	81-6-5
232.103	81-6-5
232.133	81-6-4
232.142 (1)-(5)	81-6-4
306.3,4	81-6-6(L)
306.10	81-6-6(L)
306.19	81-6-6(L)
340A.1	81-6-7
340A.6	81-6-7
340A.8	81-6-7
535.1	81-6-8(L)
622.62	81-6-3(L)

Code, 1979	Opinion
232.54(2)	81-6-5

Code, 1975	Opinion
242	81-6-5

68th G.A.	Opinion
Ch. 56, § 31	81-6-5

Iowa Const.	Opinion
Art. III, § 22	81-6-12(L)

U.S. Const.	Opinion
§ 371	81-6-11
§ 372	81-6-11
§ 392	81-6-11
§ 452	81-6-11

Ia. Adms. Code	Opinion
770, 141 (232)	81-6-5
770, 105.1	81-6-5

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - July 15, 1981

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 64551. STATE v. BUFORD.
Appeal from Warren District Court, Van Wifvat, Judge. On review from Iowa Court of Appeals. Decision of court of appeals vacated; district court judgment affirmed. Considered by Reynoldson, C.J., and Harris, Allbee, McGiverin, and Schultz, JJ. Opinion by Reynoldson, C.J. (6 pages $2.40)

We granted the State's application for further review after the court of appeals reversed defendant's conviction of second-degree burglary, in violation of sections 713.1 and 713.3, The Code 1979, on grounds that trial court should have granted defendant's continuance motion, under Iowa Rule of Criminal Procedure 18(5), when the State sought to introduce testimony of a witness not listed in the minutes of testimony. This witness was the wife of a listed witness who was hospitalized and unable to testify. OPINION HOLDS: The substituted witness's testimony, although in this instance not crucial to defense preparations, directly established certain substantive elements of the burglary charge, and we therefore conclude it did not relate to "merely formal matters" so as to foreclose defendant's right to have the trial continued; however, defendant has not suggested how he was prejudiced by trial court's error in refusing to grant a continuance, and we therefore hold no reversible error occurred. II. The State has met its burden to prove defendant's confession was voluntary and was not the result of a promise of leniency by police; defendant's claim he was prejudiced by trial court's failure to discharge a juror or to declare a mistrial after an attempted nighttime theft from a juror's car during trial is without merit.

No. 65010. STATE v. MILLER.
Appeal from Jackson District Court, J. Hobart Darbyshire, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Allbee, and Larson, JJ. Opinion by Reynoldson, C.J. (7 pages $2.80)

Defendant appeals from jury conviction of failure to stop at the scene of a personal injury accident, in violation of section 321.261, The Code. OPINION HOLDS: I. Section 321.26, The Code 1979, requires, "The driver of any vehicle involved in an accident resulting in injury . . . or death . . . [to] immediately stop . . . at the scene . . . ."; proof of the driver's knowledge of the accident or injury is a prerequisite to a conviction for the violation of such a statute. II. Defendant's knowledge of the accident is an element the prosecution must prove, but actual knowledge is required, not the theoretical knowledge of a reasonable person; the State is not required to prove that the defendant also knew the accident has caused injury or death.

No. 65174. STATE v. LeFLORE.
Appeal from Black Hawk District Court, Peter Van Metre, Judge. Affirmed. Considered by Reynoldson, C.J., and Allbee, Harris, McGiverin and Schultz, JJ. Opinion by Schultz, J. (5 pages $2.00)

Defendant appeals from his conviction of second-degree robbery. OPINION HOLDS: Defense counsel can waive the right to a speedy trial on the defendant's behalf without the defendant's express consent.

No. 64689. SNETHEN v. STATE.
Appeal from Polk District Court, C. Edwin Moore, Senior Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J. (11 pages $4.40)

Petitioner appeals from the denial of an application for postconviction relief challenging his conviction of first-degree murder alleging that the trial court erred in finding that he had not proved his claim of ineffective assistance of counsel premised on trial counsel's failure to object to rebuttal expert testimony of a psychiatrist who examined him under court order. OPINION HOLDS: I. The physician-patient privilege did not exist with respect to the psychiatrist's examination of defendant and trial counsel was not ineffective in failing to object on that basis; error was not preserved with regard to petitioner's claim that the testimony should have been objected to on the ground that its admission would be fundamentally unfair; under the totality of the circumstances defense counsel was not ineffective in failing to object to the testimony on the basis that its admission would violate due process; failure to raise the due process objection did not constitute prejudicial error affecting a substantial right. II. The issue of whether counsel was ineffective for failing to assert that the testimony violated the attorney-client privilege was not preserved for appeal because this issue was not presented to the trial court in the postconviction proceeding.

No. 65109. STATE v. DISTRICT COURT.
Certiorari to Shelby District Court, Paul H. Sulhoff, Judge. Writ sustained; remanded for resentencing. Considered by Reynoldson, C.J., and LeGrand, McCormick, Allbee, and Schultz, JJ. Opinion by Schultz, J. (8 pages $3.20)

State challenges trial court's grant of suspended sentences and probation to a criminal defendant convicted of two forcible felonies. OPINION HOLDS: I. Assault while participating in a felony and third-degree kidnapping are forcible felonies for purposes of section 907.3, and the sentencing court therefore lacked authority to grant suspended sentences for these offenses. II. In accepting defendant's plea of guilty of third-degree kidnapping, trial court made no finding of fact concerning use of a firearm, and section 902.7 is therefore inapplicable to that conviction; however, the sentencing court was required to impose a minimum sentence of five years imprisonment under section 902.7 after defendant pleaded guilty to the forcible felony of assault while participating in a felony and trial court specifically found that he was in possession of a firearm during commission of that offense; the application of section 902.7 in conjunction with plea bargaining under Iowa R. Crim. P. 9 does not violate the doctrine of separation of powers. III. Because the suspended sentences were not authorized by statute and were thus void, it is not unfair to resentence defendant.

No. 65330. STATE v. MOORHEAD.
Appeal from Warren District Court, Luther T. Glanton, Jr., Judge. Affirmed. Considered en banc. Opinion by Schultz, J.
(10 pages $4.00)

Defendants appeal via discretionary review from simple misdemeanor convictions for failing to cause their children to comply with the requirement of compulsory school attendance in violation of section 299.1, The Code. OPINION HOLDS: I. The defendants were not prejudiced by the fact the charging document was entitled "information" rather than "complaint." II. The last sentence of section 299.1 provides that in lieu of compulsory attendance in public schools "[a] child may attend upon equivalent instruction by a certified teacher elsewhere"; this sentence does not state an element of the crime (absence of equivalent instruction) but rather states an affirmative defense to the crime; therefore, the burden of initially presenting evidence on alternative instruction rested on the defendants rather than on the State. III. The phrase "equivalent instruction by a certified teacher elsewhere," as used in the last sentence of section 299.1, is not unconstitutionally vague. IV. A party challenging a compulsory education law as violating the free exercise clause of the first amendment has the burden to show how the law infringes upon the party's religious beliefs; the defendants failed to sustain this burden because they failed to present any evidence of their religious beliefs or of the manner in which public education interferes with the exercise of those beliefs. V. The defendants failed to preserve error on their other constitutional issues.

No. 64894. STATE v. CROSS.
Appeal from Pottawattamie District Court, Paul H. Sulhoff, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, McCormick, Allbee, and Schultz, JJ. Opinion by Reynoldson, C.J.
(5 pages $2.00)

Defendant appeals his conviction of first-degree kidnapping, in violation of sections 710.1 and 710.2, The Code. OPINION HOLDS: We find more than enough evidence in the record to allow a rational fact finder to conclude defendant intentionally tortured his victim by acts causing severe combined physical and mental pain and suffering, and that section 710.2 thereby was satisfied.

No. 65246. STATE V. MAGNUSON.
Appeal from Pottawattamie Distric Court, Glen McGee, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and Larson, JJ. Opinion by McCormick, J.
(8 pages $3.20)

Defendant appeals from his conviction and sentence for first-degree murder in violation of section 707.2, The Code. OPINION HOLDS: I. Defendant waived his right to trial within one year of arraignment by waiving his right to trial within the 90-day period of Iowa R. Crim. P. 27(2)(b) and obtaining continuances of trial on two occasions and a stay of trial from this court on a third occasion. II. Warrants for blood and urine specimens were properly issued upon probable cause. III. Taken together, the testimony of three witnesses was sufficient for the court to find that defendant and the victim were the persons involved in an altercation sufficiently close in time and place to the killing that it could be considered an inseparable part of the deed; the evidence was plainly relevant and not unduly prejudicial. IV. Although there was evidence from which the court could have reached a different result, the evidence was sufficient for submission of the case to the court as finder of the facts.

No. 65019. HAESEMEYER V. MOSHER.

Appeal from Polk District Court, Richard A. Strickler, Judge, Affirmed. Considered by Reynoldson, C.J., and Harris, Allbee, McGiverin, and Schultz, JJ. Opinion by McGiverin, J. (9 pages $3.60)

Plaintiffs, former employees of the State of Iowa, appeal from the dismissal of their petition seeking pay for unused vacation time which exceeds twice their annual entitlement. OPINION HOLDS: I. Although the plaintiffs were not generally covered by the merit system because they were under the supervision of the attorney general pursuant to section 19A.3(5), The Code, section 79.1, in regulating vacations of all state employees, has expressly incorporated the merit department's rule on accrual of vacation allowances; therefore, the merit department's rules on accrual of vacation pay apply to these plaintiffs. II. In enacting the 1971 amendments to section 79.1, The Code, and the subsequent amendments the legislature delegated to the merit department the authority to place a limit on accrual of vacation pay; 570 I.A.C. section 14.2(10), the merit department rule limiting accrual of vacation pay, was valid; the trial court correctly dismissed the petition.

No. 65306. STATE V. ANDERSON.

Appeal from Black Hawk District Court, Karl Kenline, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Allbee, McGiverin, and Schultz, JJ. Opinion by McGiverin, J. (15 pages $6.00)

Defendant appeals from conviction of first-degree sexual abuse in violation of sections 709.1-.2, The Code 1979. OPINION HOLDS: I. The defendant's notice of appeal was not timely; a motion for new trial based on newly discovered evidence, filed after judgment and sentence but before the time for appeal has expired, does not extend the time for filing notice of appeal; however, we grant the defendant's application for delayed appeal. II. One of the elements of the crime charged, first-degree sexual abuse, is serious injury to the victim; the Code's definition of serious injury as "bodily injury which creates a substantial risk of death" is not unconstitutionally vague. III. The evidence was sufficient to support the fact-finder's conclusion that the victim suffered serious injury. IV. The trial court did not abuse its discretion by denying the defendant's request for a pretrial lineup under section 810.2, The Code. V. The defendant's pretrial motion to dismiss was overruled after a hearing held outside the defendant's presence during a break in trial; the defendant's absence from the hearing did not deny his right to due process or his constitutional right to confront witnesses; ordinarily a defendant is not constitutionally entitled to be personally present at hearings involving only questions of law; nonetheless we disapprove the trial court's action in the present case in holding the hearing without the defendant's presence. VI. The defendant did not preserve error on his contention that the trial court's delay of over ten months in ruling on his motion for new trial denied his due process right to a speedy conclusion of his prosecution; the trial court clearly failed to comply with Iowa R. Crim. P. 23(2)(e), which provides that a motion for new trial shall be heard and determined within thirty days from the date it is filed, except upon good cause entered in the record; however, since the record does not show that the defendant requested a speedy ruling or suffered prejudice by the delay, we impose no sanction for the violation of rule 23(2)(e).

No. 64950. RODERICK v. IOWA DEPARTMENT OF JOB SERVICE.
Appeal from Linn District Court, William R. Eads, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin Larson, and Schultz, JJ. Per Curiam. (2 pages $.80)

Iowa Department of Job Service appeals from a decision that the disqualification provision added by 1979 Session, 68th G.A., ch. 33, § 9, to section 96.5(1)(g), The Code 1979, operates prospectively only. OPINION HOLDS: The district court's decision in this case is in line with Cook v. Iowa Department of Job Service, 299 N.W.2d 698, 702-03 (Iowa 1980), and Green v. Iowa Department of Job Service, 299 N.W.2d 651, 656 (Iowa 1980), to which we adhere, and we therefore uphold the judgment.

No. 65441. IN RE ESTATE OF GAUCH.
Appeal from Mahaska District Court, Richard J. Vogel, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and Larson, JJ. Opinion by Uhlenhopp, J. (8 pages $3.20)

Claimants appeal from trial court order denying their damage claim against a life tenant's fiduciary based on waste. OPINION HOLDS: I. The claimants prosecuted their cause as a contested claim in probate pursuant to sections 633.33 and 633.444 and section 633.447, The Code; this claim was thus tried by ordinary proceedings. II. As a result of a trial by ordinary proceedings the appellate court does not review the case de novo but rather it corrects errors of law; and when a trial court finds the facts against the party having the burden of persuasion, we reverse on the facts only if that party proved his case as a matter of law. III. The evidence in the record in the claimant's favor is not so overwhelming that no reasonable inference other than that there was waste could be drawn; on the record we are thus bound by the trial court's finding that waste was not established by a preponderance of the evidence. IV. This conclusion renders moot the several other issues the claimants raise in the appeal.

No. 65178. BARKER'S, INC., v. B.D.J. DEVELOPMENT COMPANY.
Appeal from Johnson District Court, Louis W. Schultz, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick and Larson, JJ. Opinion by Uhlenhopp, J. (10 pages $4.00)

Defendant Unibank appeals from trial court judgment granting a mechanic's lien priority over its mortgage. OPINION HOLDS: I. Section 572.18, The Code 1977, provides that a mechanic's lien became effective for priority purposes from the date work was first done by anyone on the project; as the first work was done on the project prior to the bank's recording of the mortgage, the mechanic's lien in question took priority over the mortgage; although the corporation with which the contracts for the improvements were made was not the owner of the land at the time of contracting or of the commencement of work, the mechanics dealt with the owner in contracting for and making the improvements since the actual owners then were agents of the corporation or the owners of the land as defined by section 572.1(1), The Code; the trial court correctly granted priority to the mechanic's lien over the mortgage. II. The Johnson County tax liens have priority over the mortgage and mechanics' liens; to the extent the requirements of North Liberty regarding residential subdivisions fall within the home rule powers of North Liberty or chapter 409 of the Code they control the rights and obligations of the other parties to this action with respect to the subdivision.

No. 63903. MILLS V. STATE.
Appeal from Des Moines District Cour . B. Hendrickson, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhop, Harris, McCormick and Larson, JJ. Opinion by Larson, J. (6 pages $2.40)

Mills appeals from dismissal of his petition for postconviction relief asserting that denying credit, upon revocation of his probation, for time spent on probation constitutes a denial of equal protection since parolees are by statute granted credit for time served on parole. OPINION HOLDS: We conclude that the test to be applied here is not that of strict scrutiny but whether the disparity of treatment is based upon a rational exercise of state action; we hold that rational bases do exist for disparate treatment of parolees and probationers and that equal protection principles are not offended by giving parolees credit for time served on parole while denying such credit to probationers.

No. 65135. IN RE MARRIAGE OF IVINS.
Appeal from Polk District Court, Anthony M. Critelli, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick and Larson, JJ. Opinion by Larson, J. (6 pages $2.40)

The mother of a minor child appeals from order denying modification of prior order transferring custody of the child to his father. On appeal the mother asserts (1) that the original modification order is a nullity because it was entered without personal jurisdiction, and (2) that the court in the last modification hearing should have granted her application to return the child's custody to her. OPINION HOLDS: I. Whether we deem the mother's two-year delay in challenging the prior custody transfer order to constitute a waiver of her objection to personal jurisdiction, or laches, we conclude she has lost her right to challenge the first modification order on the ground of lack of personal jurisdiction. II. A party seeking a change of custody must show a superior claim, based upon an ability to minister to the child's needs more effectively than the custodial parent, and while the mother was shown to be suitable to have custody, she has failed to demonstrate the superior parenting ability required by our rule.

No. 65310. STATE V. WASHINGTON.
Appeal from Black Hawk District Court, Roger F. Peterson, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick and Larson, JJ. Opinion by Larson, J. (5 pages $2.00)

Defendant appeals from his conviction of first-degree theft, in violation of sections 714.1(1) and 714.2(1), The Code 1979. OPINION HOLDS: I. Theft under section 714.2(1), The Code (the theft of property from the person of another is first degree theft), requires only a taking from the immediate presence of the victim or from the victim's area of control; we do not view the 1978 rewriting of the theft statute as a substantive change but one made to achieve uniform terminology in the new code. II. It was not error to refuse defendant's requested instruction on prior inconsistent statements where the allegedly inconsistent statements were made at trial. III. Under the record here, or lack of it, we cannot say that trial court abused its discretion in denying defendant's motion for mistrial asserting prosecutorial misconduct.

No. 64420. STATE V. RANDOLPH.
Appeal from Polk District Court, Luther T. Glanton, Jr., Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Per Curiam. (2 pages .80)

Defendant appeals from his conviction on two counts of robbery in the first degree in violation of section 711.2, The Code 1979. OPINION HOLDS: The evidence involved here is sufficient to permit a rational finder of fact to find defendant guilty beyond a reasonable doubt of aiding and abetting the robbery.

No. 64910. STATE V. KELDERMAN.
Appeal from Mahaska District Court, Dick R. Schlegel, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Per Curiam. (2 pages .80)

Defendant is appealing from his convictions of criminal mischief in the second degree in violation of sections 716.1 and 716.4, The Code 1979, and theft in the fifth degree in violation of sections 714.1(1) and 714.2(5), The Code 1979. OPINION HOLDS: The dismissal of the count on the burglary charge for failure to indict within the time provided in Iowa R. Crim. P. 27(2)(a) after arrest on that charge does not affect the prosecution on the remaining separate charges, which arose from the same incident and were asserted in the same information.

No. 64460. STATE V. HEMMINGER.

Appeal from Polk District Court, Harry Perkins, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, McCormick, Allbee and Schultz, JJ. Opinion by Allbee, J. (6 pages $2.40)

Defendant appeals his conviction and sentence for robbery in the first degree. OPINION HOLDS: I. The defendant's statutory right to be personally present at all stages of his trial for a felony (Iowa R. Crim. P. 25) was not violated when the trial court heard and sustained in his absence the State's motion to amend the trial information to reinstate language deleted during abortive plea negotiations; the hearing on this pretrial motion was not a stage of the trial within the meaning of rule 25; moreover, it is clear the defendant was not prejudiced by his absence from the hearing; the defendant raised no constitutional challenge to his absence from the hearing. II. A revolver is a "dangerous weapon", within the statutory definition found in section 702.7, The Code, whether or not the State has proven that the revolver is in operating condition; therefore the evidence was sufficient to support the submission to the jury of the crime of robbery in the first degree rather than a lower degree on the theory the defendant was armed with a dangerous weapon. III. A revolver is also a "firearm" whether or not the State has proven that the revolver is in operating condition; the evidence was sufficient to support instructions and special interrogatories which permitted the jury to find that during the crime the defendant had been armed with a firearm or had represented himself to be armed with a firearm, for the purpose of triggering a mandatory minimum sentence. IV. The defendant failed to preserve his complaint that the trial court erred by failing to define "firearm" in its instructions. V. The trial court failed to state on the record its reasons for selecting the particular sentence imposed, as required by Iowa R. Crim. P. 22(3)(d); however, the trial court possessed no discretion in sentencing, because the sentence imposed was mandated by statute; therefore, no purpose would be served by a remand for resentencing in this case.

No. 65633. BURKE V. BOARD OF TRUSTEES.

Appeal from Woodbury District Court, D. M. Pendleton, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and LeGrand, McCormick, Allbee and Schultz, JJ. Opinion by Allbee, J. (6 pages $2.40)

Defendant appeals from declaratory judgment that plaintiff, a retired police officer, is eligible for annual readjustments of his pension. OPINION HOLDS: The legislative background of the 1979 amendment to the pension readjustment eligibility provision, section 411.6(14), The Code 1971, clearly indicates the amendment was designed not to change that statute's meaning, but rather to clarify it; this history and the clarifying amendment leave no doubt that the legislature intended that members of local police retirement systems both serve twenty-two years and attain age fifty-five prior to terminating their employment in order to be eligible to receive annual pension readjustments at the time plaintiff terminated his employment in 1972; plaintiff is not eligible for annual readjustments to his pension.

No. 65738. BALL V. IOWA DEPARTMENT OF JOB SERVICE.

Appeal from Clinton District Court, Margaret S. Briles, Judge. Reversed with directions to dismiss the petition for judicial review. Considered by Reynoldson, C.J., and Harris, Allbee, McGiverin and Schultz, JJ. Opinion by Allbee, J. (4 pages $1.60)

Respondent agency appeals from district court judgment reversing denial of unemployment benefits to petitioner. OPINION HOLDS: The requirement of section 96.6(8), The Code, that any other party to the proceeding before the respondent agency's appeal board be named in the petition for judicial review is jurisdictional; there was a total lack of any compliance with the "naming" requirement of section 96.6(8); we deem this fatal to jurisdiction for judicial review; consequently, the district court should have sustained the department's special appearance.

Nos. 64670 & 65213. IN RE ESTATE OF BRADY.

Appeal from Jones District Court, Robert E. Ford, Judge. Affirmed in part and reversed in part. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and Larson, JJ. Opinion by McCormick, J.

(13 pages $5.20)

This case involves consolidated appeals from orders entered in proceedings concerning the administration of an estate and a conservatorship. OPINION HOLDS: I. The trial court did not abuse its discretion in ordering trial of the probate issues to precede trial of the remaining counts of the law action. II. The 1975 district court order authorizing the bank as an executor named in a prior will to intervene in the Wisconsin probate proceeding did not adjudicate the issues of good faith and just cause for such intervention; the trial court erred in holding the order adjudicated those issues; nevertheless, we find in our de novo review of the record that the bank carried its burden to demonstrate good faith and just cause for its intervention; the trial court did not err in awarding compensation from the estate to the bank and its attorney for the limited Wisconsin litigation. III. The bank did not serve any substantial estate interest in bringing the subsequent Iowa delcaratory judgment action raising again issues of the decedent's residency, undue influence, and testamentary incapacity; there is insufficient evidence of just cause for that litigation; therefore, the trial court erred in awarding compensation from the estate to the bank and its attorney for services in the declaratory judgment action. IV. In our de novo review, we reach the same conclusion as the trial court that the bank met its burden to sustain its final conservatorship report and the objectors to the report did not prove the affirmative allegations of their objections. V. We agree with the trial court that the bank met its burden to sustain its final report in the estate and the objectors to the report did not prove their allegations in objecting to it. VI. The court acted within its discretion in finding the employment of additional counsel for the defense of the bank's final reports was not reasonably necessary for protection of the estate's interests. VII. The malfeasance action was brought against the bank in its individual capacity and its defense of that action was for its personal protection, not for the protection of the estate which would be justified under section 633.199, The Code, compensation for the attorneys defending the action; the trial court did not err in refusing to order compensation from the estate to the attorneys for the defense. VIII. Trial court acted within its discretion in finding the services of an expert witness on attorney fees in support of the fee applications of the attorney in the conservatorship and estate did not benefit the estate. IX. The trial court did not abuse its discretion in finding the attorney's litigation services in defending the final reports were compensable as extraordinary services under section 633.199. X. We allow $2000 from the estate toward the bank's attorney fees and expenses for those appellate services relating to the conservatorship and estate final reports.

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No. 65827. STATE EX REL. PARCEL V. ST. JOHN.
Appeal from Kossuth District Court, Tom Hamilton, Judge. Reversed and remanded. Considered en banc. Opinion by McGiverin, J.

(8 pages $3.20)

Putative father brought interlocutory appeal from trial court's entry of default judgment against him for failing to pay for blood tests in a paternity action under chapter 252A, The Code 1979. OPINION HOLDS: I. Although the respondent purported to appeal as a matter of right from a final judgment, the order appealed from was in fact interlocutory because it established by default only the respondent's paternity, not his support obligation; in the exercise of our powers under Iowa R. App. P. 1(c), we have decided to grant an interlocutory appeal from the order establishing paternity by default; however, the notice of appeal was not timely as to earlier trial court orders rejecting the respondent's constitutional claims to blood tests and counsel at public expense, and we lack jurisdiction to consider those orders. II. The trial court abused its discretion by entering a default judgment against the respondent on the issue of paternity as a sanction pursuant to Iowa R. Civ. P. 134(b)(2)(c) for the allegedly indigent respondent's failure to pay for blood tests he had requested.

No. 66418. STATE V. HALLECK.
Appeal from Butler District Court, Ralph F. McCartney, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Allbee, McGiverin, and Schultz, JJ. Opinion by McGiverin, J.

(7 pages $2.80)

Defendant, a practicing attorney, appeals from his conviction of tampering with a witness in violation of section 720.4, The Code 1979. OPINION HOLDS: I. An offer of restitution is a bribe when the offer is conditioned upon the prosectuion witness changing his position and testimony from favoring prosecution to not pressing prosecution of the charge; an offer of a bribe under section 720.4 is an offer of anything of value or benefit toinduce another to act improperly; defendant's offer was certainly something of value; the evidence was sufficient to find an offer of a bribe. II. There was sufficient evidence to support the trial court findings on the second element of the crime that the defendant believe the person bribed may be called as a witness in a judicial proceeding. III. Although the issue is close, there is sufficient evidence to support the trial court's finding as an element of the crime that the defendant intended to improperly influence the witness to testify that he was not pressing the prosecution because restitution was made.