

# Survey

## SURVEY OF IOWA TAX LAW AND PROCEDURE—1975-1976

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Although the 1975 session of the Iowa Legislature did not produce major overhauling of the Iowa tax system, there were several significant changes affecting deductions and rates for income tax purposes, and revising procedures for inheritance taxation. The 1976 session took several steps toward amelioration of the burden of property taxation, enlarged inheritance tax exemptions for children and other lineal descendants, and made several minor modifications in the income and other tax laws. The Supreme Court of Iowa decided eleven tax cases in the period covered by this survey (October 1974 through September 1976); several others are pending. Several cases from the Board of Tax Review, a number of Attorney General opinions, and the beginning of operation under the Administrative Procedure Act (APA) round out current developments in this area.

### I. ADMINISTRATIVE PROCEDURE ACT

The Iowa Administrative Procedure Act<sup>1</sup> became effective July 1, 1975. It prescribes a uniform minimum procedural code for all state agencies. In the tax area, the APA applies to the Department of Revenue, but not to county and city assessors, review boards, or county appraisers of property for inheritance taxation.

Under the APA, each agency must adopt procedural and descriptive rules. The Department of Revenue's (Department) procedural rules are found in chapter seven of the Department's rules.<sup>2</sup> The rules now provide for the use of hearing examiners in contested cases,<sup>3</sup> plus informal settlement procedures before commencing a contested case proceeding.<sup>4</sup> Provision is also made for discovery procedure;<sup>5</sup> for prehearing conferences;<sup>6</sup> for rehearing;<sup>7</sup> for declaratory rulings;<sup>8</sup> and for rulemaking proceedings.<sup>9</sup> Before the APA became effective, the Department also issued revised and renumbered income tax rules and sales, service and use tax rules. Subsequent rule changes will have to be published

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1. IOWA CODE ch. 17A (1975).

2. 730 IOWA AD. CODE ch. 7 (1975).

3. *Id.* § 7.16(1).

4. *Id.* § 7.10 (1976).

5. *Id.* § 7.14 (1975).

6. *Id.* § 7.15.

7. *Id.* § 7.18.

8. *Id.* § 7.23.

9. *Id.* § 7.24.

in the Iowa Administrative Code and interested persons must be given an opportunity to make written, and in some instances, oral presentations before a rule can be adopted.<sup>10</sup>

Although deficiency assessments and refund claims for alleged overpayments of income, sales and use taxes have been handled through administrative processes—followed by appeals to the Board of Tax Review or district courts—from the inception of the Iowa use of these taxes,<sup>11</sup> similar problems in connection with inheritance taxes have been processed through appropriate district courts.<sup>12</sup> A change which will affect the practice of many Iowa lawyers brings the inheritance tax deficiency and refund procedure into the administrative process.<sup>13</sup> Now the only matter which a district court will deal with originally will be appeals from valuations by inheritance tax appraisers.

In the first year of operation under the APA, 190 protests regarding tax audits were filed with the Department of Revenue.<sup>14</sup> Ninety-six were disposed of, including fourteen that were settled after becoming contested cases.<sup>15</sup> This contrasts with the approximately thirty-five per year that had been handled administratively in prior years.<sup>16</sup>

As procedure before the Board of Tax Review is subject to the APA, the Department of Revenue now may appeal from Board decisions.<sup>17</sup> There were twice as many appeals to the Board from departmental action in this period as had occurred in the preceding one.<sup>18</sup>

## II. FEDERAL TAX LIENS

In many circumstances liens for federal taxes have priority over claims of other creditors of the debtor.<sup>19</sup> However, one recent district court decision held, on the facts before it, that the state's lien for taxes has priority over the federal lien.<sup>20</sup>

## III. INCOME TAX

Since the Iowa income tax incorporates many federal terms by reference, usually the same figures can be used in both state and federal returns for many purposes. To avoid any question of unconstitutional incorporation by reference,

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10. *Id.*

11. IOWA CODE §§ 422.67-.75 (1975); 730 IOWA AD. CODE (1975).

12. IOWA CODE §§ 450.59, 450.94 (1975).

13. Civil Service, H.F. 679, § 2, 1975 Iowa Acts ch. 226.

14. Interview with Harry Grieger, Chief Counsel, Legal Staff, Iowa Department of Revenue (Sept. 1976).

15. *Id.*

16. *Id.*

17. IOWA CODE § 17A.2(1) (1975).

18. Interview with Harry Grieger, Chief Counsel, Legal Staff, Iowa Department of Revenue (Sept. 1976).

19. See, e.g., *J.K. & W.H. Gilcrest Co. v. A. & R. Concrete Co.*, 253 Iowa 332, 339, 112 N.W.2d 366, 370-71 (1961).

20. *Mingo Trust & Sav. Bank v. Hawkeye Security Co.*, No. 87229 (Jasper County Dist. Ct., filed Apr. 1975).

the Iowa reference is to the Internal Revenue Code of 1954, as amended to a specified date.<sup>21</sup> Annually the date is restated to permit incorporation of federal changes. Thus, the reference time was changed from January 1, 1974, to January 1, 1975,<sup>22</sup> and to January 1, 1976, for tax years beginning in or after 1975.<sup>23</sup> Because 1976 amendments to the Internal Revenue Code substantially affect computation of the 1976 federal return, Iowa income tax returns for the year will not be in synchronization with federal returns unless the 1977 Legislature updates the reference and also provides different treatment for such items as sick pay exclusion and child-care credits.<sup>24</sup>

For some years the Iowa income tax has started at  $\frac{3}{4}\%$  on the first \$1000 of taxable income, increasing in relatively even steps per \$1000 up to 5% on the fifth through seventh \$1000 of income, and to 7% on all income over \$9000.<sup>25</sup> The 1975 rate change reduces the rates for the first, second and third bracket by  $\frac{1}{4}\%$  and for the fourth bracket by  $\frac{1}{2}\%$ .<sup>26</sup> However, for incomes over \$15,000, there are now additional brackets,<sup>27</sup> and the rate rises to 13% for incomes over \$75,000.<sup>28</sup> An effect of this change is to reduce the tax on incomes below approximately \$16,500, and increase it for incomes over that figure.

Formerly, the maximum optional standard deduction permitted to any taxpayer who did not itemize deductions was the lesser of \$500 or 10% of net income after deducting federal income tax payments.<sup>29</sup> Taxpayers who did not itemize deductions for federal income tax purposes were forbidden to itemize for state purposes.<sup>30</sup> As a result, some taxpayers itemized deductions for federal purposes even though this caused greater federal tax liability than if they had claimed the optional standard deduction, because the higher federal tax was offset by the larger decrease in the state tax.<sup>31</sup> A 1975 change both increases the maximum Iowa optional standard deduction to \$1000 for single people or married couples filing jointly,<sup>32</sup> and also eliminates the requirement to itemize

21. IOWA CODE §§ 422.4(17), 422.32(4), 422.61(4) (1975).

22. References to Internal Revenue Code, H.F. 56, 1975 Iowa Acts ch. 206.

23. Internal Revenue Code Updated, S.F. 1060, 1976 Iowa Acts ch. 1192.

24. Tax Reform Act of 1976, Pub. L. No. 94-455, § 504, 90 Stat. 1563 (repealing I.R.C. § 214; amending I.R.C. § 213) (to be codified as I.R.C. § 44A) (changed the deduction for child care expenses to a credit against tax and revised the manner of computation and amount available); *Id.* § 505, 90 Stat. 1566 (amending I.R.C. § 105) (permits exclusion of sick pay from income tax in more limited situations than formerly).

25. IOWA CODE § 422.5 (1975).

26. Income Tax, H.F. 764, § 1, 1975 Iowa Acts ch. 207 (amending IOWA CODE § 422.5 (1975)).

27. *Id.*

28. IOWA CODE § 422.9 (1975). See generally Margulies, *An Overview of State Taxation of Individual & Corporate Income in Iowa*, 26 DRAKE L. REV. 55 (1977) [hereinafter cited as Margulies].

29. *Id.* § 422.9(2)(b).

30. For some time the Internal Revenue's computer system automatically refunded the amount which thus was "overpaid" on federal income tax liability, so that the taxpayer was getting the best possible of both worlds.

31. IOWA CODE § 422.9 (1975).

32. Income Tax, H.F. 764, § 2, 1975 Iowa Acts ch. 207.

federally in order to do so on state returns.<sup>33</sup> One consequence of this was that the instructions on the state form<sup>34</sup> were expanded to cover itemizable deductions.<sup>35</sup>

For returns applicable to 1977 and subsequent years, a partial exemption has been provided for annuities received from federal civil service retirement programs by persons who were either disabled or at least sixty-two.<sup>36</sup> The maximum permissible exclusion is reduced by any social security benefit received.<sup>37</sup>

Beneficiaries who received accumulation distributions of trust income under federal law also similarly had taxable income for state purposes but no offsetting credit for taxes paid by the trust.<sup>38</sup> The 1976 change, effective for tax years beginning during 1976, provides for credit of any Iowa tax paid by the trust in a manner corresponding to the credit allowed on the federal return for federal tax paid.<sup>39</sup>

Iowa returns may now be filed on the basis of a twelve-month year, either calendar or fiscal, or on a year composed of fifty-two or fifty-three weeks as is permitted for federal returns.<sup>40</sup>

The Department indicated that returns could be filed on privately reproduced copies of original forms rather than on state supplied forms, if conforming in size and using paper of the same weight.<sup>41</sup> If practitioners do this for their clients on a large scale, prior approval from the Department should be obtained.<sup>42</sup>

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33. *Id.* § 3.

34. The state income tax forms have a new numbering system so that each form's number corresponds with the number of the comparable federal form.

35. The instructions spell out the extent to which the annual automobile license fee may be claimed as a deduction. They also make it clear that income taxes paid to another state are a deductible item (though taxes paid to Iowa are not), even though the taxpayer is also claiming a credit against Iowa tax based on the same tax payment under Iowa Code § 422.8(1) (1975). Form No. IA 1040 41D102.

36. Mobile Home Tax Reduction, H.F. 1590, § 5, 1976 Iowa Acts ch. 1106 (amending Iowa Code § 422.5).

37. *Id.* The maximum exclusion is \$4,250 for a person filing a separate state income tax return or \$6,500 for a married couple filing a joint state income tax return. However, the amount excluded under this amendment must be included in net income for purposes of determining whether the taxpayer can claim the \$4,000 exclusion provided in § 422.5.

38. Iowa Code § 422.6-7 (1975).

39. Trust Distributions—Income Tax, H.F. 1321, § 1, 1976 Iowa Acts ch. 1193 (amending Iowa Code § 422.6). The trust cannot claim a refund for any taxes paid and must maintain detailed records to verify computation of the tax. It would appear that where a trust pays income tax to another state, the Iowa beneficiary cannot receive a credit for such tax on an Iowa return.

Another credit permitted has been for fuel tax paid for nonhighway use. While this was to be allowed only if the claimant had cancelled his refund permit for such payments, the credit may be allowed for 1975 and 1976 despite failure to cancel the permit. Fuel Tax & Income Tax Credit, H.F. 1401, § 1, 1976 Iowa Acts ch. 1196.

40. Tax Year For Income Taxes, H.F. 392, § 1, 1976 Iowa Acts ch. 1191 (amending Iowa Code § 422.4(4)); see I.R.C. § 441(f).

41. Letter from the Iowa State Department of Revenue to Commerce Clearing House (Oct. 4, 1974). The letter points out that white paper may be used even though official forms are on colored paper, and that the reproduction may appear as black ink even though official forms use a different color.

42. *Id.*

Affiliated corporations often wish to file a consolidated income tax return for the group rather than the separate returns for each member. For many years the Iowa Code provided that, under regulations prescribed by the director, the filing of such returns "may . . . be permitted, and upon demand of the director shall be required."<sup>43</sup> The Department took the position that such returns would not be permitted if total taxable income for the combined corporations would be reduced.<sup>44</sup> The Iowa Supreme Court held that this approach conflicted with the statute.<sup>45</sup> Thereafter, the Legislature rewrote the statute, applicable to years beginning after January 1, 1975.<sup>46</sup> An affiliated group<sup>47</sup> may now elect to file a consolidated return, or the Director of the Iowa Department of Revenue may require it to do so, if seven specified requirements are met.<sup>48</sup>

In *Iowa Movers & Warehousemen's Association v. Briggs*,<sup>49</sup> the Iowa Supreme Court upheld a trial court decision that the Association lacked standing to challenge a 1971 change in the corporate tax which provided that the sales factor in the computation would mean goods delivered in Iowa rather than those "sold and delivered in Iowa."<sup>50</sup> The only new case pending in the supreme court is *Moorman Manufacturing Co. v. Blair*.<sup>51</sup> It involves an Illinois manufacturer of feed and related products, who makes some sales and deliveries from Iowa warehouses. Plaintiff challenged the single-factor formula used in apportioning income to Iowa (goods sold and delivered in Iowa), arguing that it is unconstitutional and that some two or three-factor formula should be used.<sup>52</sup>

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43. IOWA CODE § 422.37(1) (1975).

44. IOWA DEPARTMENTAL RULES, Revenue Dep't Reg. 22.37-1 (1968).

45. Iowa Nat'l Indus. Loan Co. v. Iowa State Dep't of Revenue, 224 N.W.2d 437 (Iowa 1974).

46. Corporate Income Tax, H.F. 844, § 2, 1975 Iowa Acts ch. 209 (amending Iowa CODE § 422.37).

47. "Affiliated group" is defined as a group of corporations meeting the test of Internal Revenue Code of 1954 section 1504(a). "Unitary business" is defined as business carried on partly within and partly without Iowa, where the portion within depends on or contributes to the portion without. *Id.* § 1.

48. *Id.* The factors are (1) that a consolidated return be filed for federal income tax purposes for the same year; (2) that all members of the group join in filing the Iowa return, to the extent of being subject to tax under Iowa Code section 422.33, or have operations constituting part of a unitary business of one or more members subject to Iowa tax; (3) that members of the group exempt from tax under section 422.34 not be included; (4) that all members of the group use the statutory method of apportionment and allocation unless the Director grants all members permission to use an alternative method; (5) that each member consent to filing on a consolidated return basis, by filing specific written authority at the time the return is first filed; (6) that the filing on a consolidated basis continue as long as the taxpayer corporation remains part of the affiliated group, unless the Director determines that the filing of separate returns will more clearly disclose the taxable income of each member (if the taxpayer wants to be outside the return group, the taxpayer must request this determination); (7) that in computing taxable income, the methods used for filing a federal return will be followed. *Id.*

49. 237 N.W.2d 759 (Iowa 1976).

50. Iowa Movers & Warehousemen's Ass'n v. Briggs, 237 N.W.2d 759, 771 (Iowa 1976).

51. No. CE3-1595 (Polk County Iowa Dist. Ct., filed Dec. 17, 1976).

52. The trial court's decision was rendered in December, 1976, and held the corporate income tax to be unconstitutional under both the commerce clause and the fourteenth amendment to the United States Constitution. This result was foreshadowed by General



Iowa now is the sole jurisdiction using a single-factor formula as its basic apportionment method.<sup>53</sup> Of three district court cases pending in 1974, one has been tried and is now on appeal.<sup>54</sup>

Since the spring of 1973, forty-nine indictments have been returned or informations filed charging failure to file income tax returns, resulting to date in forty-eight guilty pleas or convictions.<sup>55</sup> Several attorneys who filed reports for client security fund purposes have asserted therein their fifth amendment privilege against self-incrimination and refused to answer questions concerning filing tax returns.<sup>56</sup> Each assertion of this type is referred to the Department of Revenue.<sup>57</sup>

Two taxpayers appealed to the Board of Tax Review from assessments for late filing; one succeeded in having the penalty waived.<sup>58</sup> A third was success-

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*Motors Corp. v. District of Columbia*, 380 U.S. 553 (1965). However, it should be noted that the Iowa law does not discriminate between foreign and domestic corporations which have comparable sales in Iowa—they would pay the same tax to Iowa. If both corporations had identical sales in Iowa and in the jurisdiction of the other firm, if each had its plant and labor force primarily in its own jurisdiction, and if the other used a three-factor formula to tax corporate income from sales, the foreign corporation would owe more tax to its own jurisdiction than would the Iowa firm. Only if Iowa and the other jurisdiction used the same three-factor formula and taxed at the same rates would the two corporations pay the same total tax. It is unusual to hold that a state discriminates by treating two people the same way, which Iowa does. If the court were to adopt the reasoning of the *Dorrance* cases, *Dorrance v. Martin*, 116 N.J.L. 362, 184 A. 743, *cert. denied*, 298 U.S. 678 (1936); *In re Dorrance*, 115 N.J. Eq. 268, 170 A. 601 (1934); *Dorrance's Estate*, 309 Pa. 151, 163 A. 303, *cert. denied*, 287 U.S. 660 (1932), 288 U.S. 617 (1933), and of *Texas v. Florida*, 306 U.S. 398, 569 (1939), it could conclude that the Iowa statute does not offend due process. Since states may use various forms of incentives to induce businesses to locate within their boundaries, it is not clear why the particular form of incentive adopted in the Iowa single-factor formula should offend the commerce clause. Several states have adopted a two-factor formula, using sales and one of the other commonly used factors; several others have a three-factor formulation which weights the sales factor far more than the others.

53. Margulies, *supra* note 28, at 77 n.204.

54. *First Nat'l Bank v. Director of Revenue*, No. 29263 (Wapello County Iowa Dist. Ct. 1974). This is one of four similar cases involving treatment of deductions for bank franchise tax purposes. For some years these banks had been reporting interest income for federal tax purposes at the time they extended a loan, rather than when it was paid. They were required to revise this treatment, and to take ten percent of the change into effect each year for ten years in reducing their federal net income. The change occurred before Iowa subjected the banks to a franchise tax determined by the federal net income, but a portion of the ten-year period is involved. The lower court upheld the state's contention that as the excessive reporting of income occurred in years before Iowa taxed the organization's income, the correction of that error for federal tax purposes should not reduce taxable income for Iowa purposes.

The two cases continuing at the trial court level are *Lucky Stores, Inc. v. Iowa State Department of Revenue*, No. 55267 (Scott County Iowa Dist. Ct. 1974) (refund suit, claiming the right to a separate accounting approach to income of its Iowa stores rather than apportionment, on theory stores are part of a unitary business), and *Lucky Stores, Inc. v. Iowa State Department*, No. 55449 (Scott County Iowa Dist. Ct. 1974) (appeal from penalty assessed in connection with alleged underpayment of income tax; taxpayer had paid the tax less the amount of the refund claimed which is the subject of the suit in the first case, and was informed that this resulted in an underpayment).

55. Interview with Harry Grieger, Chief Counsel, Legal Staff, Iowa Department of Revenue (Sept. 1976).

56. *Id.*

57. Twenty percent of these cases involved lawyers. Total tax collected from the defendants, to date, is approximately \$174,000.

58. *J.L. Marsh, Inc. v. Iowa Dep't of Revenue*, No. 89 (Iowa Bd. of Tax Review

ful in an appeal to a hearing officer.<sup>59</sup> Provisions concerning interest on overpayments or on tax due were revised in 1976.<sup>60</sup>

Another appeal to a hearing officer resulted in a determination that a married student, who had initially enrolled in a graduate program at the University of Iowa, did not become an Iowa resident for tax purposes until he became a teaching assistant in 1973.<sup>61</sup>

The Department advised taxpayers that cash rebates paid by automobile manufacturers to retail purchasers of new cars did not constitute reportable income.<sup>62</sup>

Iowa Code section 432.1, relating to taxes on gross premiums of insurance companies, was amended to exclude from the tax base not only payments under pension, annuity, and profit-sharing plans, but also individual retirement annuities under Internal Revenue Code section 408.<sup>63</sup>

The requirement that fiduciaries get income tax clearance as part of their final accounting was amended to make clear that it applied only to executors, administrators or trustees.<sup>64</sup> Thus, custodians or guardians need not get such clearance in connection with accounting procedures.

#### IV. SALES, USE AND RELATED TAXES

Two of the five cases dealing with the sales and use taxes and pending at the trial level in 1974 were decided and are on appeal;<sup>65</sup> two have been

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1975) (Related companies, each required to file an Iowa return, were merged in May before their returns were due. The continuing company obtained an extension of time to file its return but an extension for the other, merged company was overlooked. When the oversight was noted, the late return was filed promptly with an explanation. The Board held that the failure was due to a reasonable cause and not to wilful neglect.); *Dickinson v. Iowa Dep't of Revenue*, [1974] IOWA TAX REP. (CCH) ¶ 200-136 (Iowa Bd. of Tax Review) (The failure of the taxpayer's secretary to notify him of the deadline for filing was not a reasonable cause.).

59. *Owen Construction Co., Inc.*, No. 75-92-2A-P1 (Jan. 30, 1976) (The secretary inadvertently attached the 1973 state return and check with the file copy rather than mailing them. When the 1974 return was prepared the error was discovered, the return was filed promptly with a replacement check and the old check voided.).

60. Interest Payments & Penalties on Sales & Income, H.F. 749, 1976 Iowa Acts ch. 1195 (amending Iowa CODE §§ 422.16(9), (11), 422.28 (1975)). The interest rate was changed from 6% per annum to  $\frac{3}{4}\%$  per month, starting on the later of thirty days after the return was due or was filed. The waiver for reasonable cause provisions were made inapplicable to the addition to tax specified for underpayment of tax. *Id.*

61. The husband had been teaching in Arizona before entering the University of Iowa in 1967. For several years thereafter, until 1970, the wife taught in Iowa public schools, then she too became a graduate student. At issue was his income from script writing earned in 1971 and 1972. See Iowa CODE § 422.4(8) (1975).

62. Letter from the Iowa Department of Revenue to Commerce Clearing House (Mar. 11, 1975).

63. Taxation of Annuity Premiums, H.F. 881, § 1, 1975 Iowa Acts ch. 217 (amending Iowa CODE § 432.1 (1975)).

64. Probate, S.F. 541, § 1, 1975 Iowa Acts ch. 208 (amending Iowa CODE § 422.27 (1975)).

65. *KTVO, Inc. v. Director of Revenue*, No. 2-385 (Linn County Iowa Dist. Ct. 1974) (This case involved television videotapes, films, records and similar property rented by the owner to a TV station. The state claimed that this was equipment rental subject

settled<sup>66</sup> and the fifth is still pending.<sup>67</sup> Several new cases dealing with these taxes are pending at trial level,<sup>68</sup> and one was decided in the state's favor with no appeal taken.<sup>69</sup> A number of declaratory rulings have also been rendered in this area.<sup>70</sup>

to "sales" tax, and the lessee argued that the payment was a license fee for the privilege of broadcast rather than payment for property rental. The case also involved rental of a playback machine from a sister corporation, and the argument that separate entities should be disregarded in order to hold that no tax was due on the rental. The district court did not decide the latter issue but did hold that the first involved either a license fee for privilege of broadcasting or was not taxable rent because not rented to the general public.); *Ramco, Inc. v. Iowa State Dep't of Revenue* (Linn County Iowa Dist. Ct. 1974), *aff'd*, No. 2-57277 (Iowa Sup. Ct. Dec. 15, 1976) (The owner of coin-operated juke boxes objected to paying both use tax on records used in the boxes and sales tax on proceeds of operating the boxes. He argued that the records were used to process tangible personal property—the sound produced when they were played—and so were exempt from use tax. The district court held for state.).

66. *Seymour Foods, Inc. v. Director of Revenue*, No. 2600 66-57 (Mahaska County Iowa Dist. Ct. 1974) (use tax on rental receipts for egg-breaking machines); *International Stanley Corp. v. Briggs*, No. 45,588 (Webster County Iowa Dist. Ct. 1974) (venue had been transferred to Polk County by agreement); see Hayes, *Survey of Iowa Law, Iowa Tax Law and Procedure—1974*, 24 *DRAKE L. REV.* 370, 375 n.28 (1975) [hereinafter cited as *Hayes Survey*] for a discussion of the latter case.

67. *Village Inn Pancake House, Inc. v. Director of Revenue*, No. 55,461 (Scott County Iowa Dist. Ct. 1974); see *Hayes Survey*, *supra* note 66, at 375 n.28.

68. *Des Moines Park Bd. v. Briggs*, No. CE2-1063 (Polk County Iowa Dist. Ct. 1975); *Des Moines Police Dep't v. Blair*, No. CE3-1591 (Polk County Iowa Dist. Ct. 1975). These cases, consolidated by court order, involve the issue of whether sales tax is due on receipts from admissions to the city swimming pool, golf course and zoo, and from proceeds of auction sales by police. Several similar cases involving other cities are pending.

Other cases at the trial level are: *Corning Laboratories v. Iowa State Dep't of Revenue*, No. 52,561 (Black Hawk County Iowa Dist. Ct. 1975) (service tax on laboratory testing for air pollution; plaintiff sends plates to collect samples to customers outside Iowa who return them to Iowa for testing; plaintiff contends this tax would be on an activity in interstate commerce; no other state is taxing the work done in Iowa); *Brenco Corp. v. Blair*, No. CE-1948 (Polk County Iowa Dist. Ct. 1975) (computer purchaser resold computer to leasing company, then leased it back; Department has claimed sales tax due on resale, as purchase for resale; vendor claims it was casual sale so exempt).

69. *Spencer Foods, Inc. v. Blair*, No. — (Clay County Iowa Dist. Ct. 1975) (purchaser of airplane, purchased outside Iowa and flown in and out of the state, contended that no use tax was due; state argued there was a taxable moment when the plane was not in interstate commerce, so use tax was due).

70. *Natural Gas Pipeline Co. of America*, No. 75-98-6A-DR (Hearing Officer 1976) (drilling of underground storage wells is a service on or connected with new construction, and labor charges incident thereto are exempt from sales tax; to the extent that drilling involves repairs of existing structures, no exemption is available; 730 Iowa Administrative Code § 26.52 is void to the extent that it conflicts with this view); *United Suppliers, Inc.*, No. 75-113-6A-DR (Hearing Officer 1976) (sale of swine semen exempt from sales tax; within exemption for goods used in processing); *Cedar Valley Leasing, Inc.*, No. 75-128-6A-DR (Hearing Officer 1976) (leasing of such items as unloaders for harvestors to farmers under standard equipment lease, which is not security instrument or installment contract, is transaction subject to sales tax); *MacMillan Oil Co.*, No. 76-49-6A-DR (Hearing Officer 1976) (sales tax is assessable on storage charges for petroleum products solely for sale to manufacturer who uses them in manufacturing and processing consumer goods); *Winnebago Realty Corp.*, No. 76-71-6A-DR (Hearing Officer 1976) (a manufacturer of prefabricated structures and rooms which are sold to buyers to be erected by buyer or buyer's contractor and to become integral part of dwelling is a retailer of building materials and is not a construction contractor; isolated "turnkey" project would be taxed under Iowa Code § 422.42(10) (1975)); *Country Properties, Inc.*, No. 76-75-6A-DR (Hearing Officer 1976) (lessor of "Country Kitchen" signs to local restaurants operating under that name, where signs were of uniform size and were located in parking lot of restaurant, derives receipts from advertising services, which are exempt from sales tax,



The principal legislative development in this area was to exempt from tax the sale of oxygen prescribed by licensed physicians, surgeons, osteopaths, or osteopathic physicians or surgeons, for human use or consumption.<sup>71</sup> Gross receipts from sales of food are exempt from sales tax, if the food item involved is eligible for purchase under the federal food stamp program, even though sold by a vendor who was not participating in the food stamp program.<sup>72</sup>

A district court decision that the Iowa "sales" tax on warehousing services applied to goods being moved in or out of Iowa was reversed to the extent that it permitted taxation where the services involved were predominantly moving rather than in storage.<sup>73</sup> However, the supreme court upheld the district court's refusal to estop the state from collecting any tax on the basis of representations made by state officials.<sup>74</sup>

The Iowa Supreme Court, in a case which had been pending for some time, upheld the lower court's decision that receipts from county-owned campgrounds were not to be treated as receipts from operation of a parking lot (which would be subject to the service tax) so long as there was no charge for parking vehicles.<sup>75</sup>

The Department ruled that a cash rebate from a manufacturer to the ultimate purchaser of a new automobile was not a reduction in the retail selling price, so that the use tax is imposed on the latter amount.<sup>76</sup>

The Board of Tax Review held that arrangements whereby a city, through its police department, provided a burglar alarm system to subscribers, involved

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rather than from equipment rental services or rental property, which would be taxable); *The Babka Publishing Co.*, No. 76-87-6A-DR (June 28, 1976) (publications, "The Antiques Journal" and "The Antique Trader Price Guide to Antiques and Collectors' Items," are magazines rather than newspapers, so not within sales tax exemption for newspapers); *Robert T. McPherson*, No. 76-98-6A-DR (July 19, 1976) (taxpayer renders delivery service for manufacturers and publishers of small products primarily consisting of magazines; he places them in plastic bags to facilitate hanging on doorknobs; this is a delivery service rather than a wrapping or packaging service, so not subject to sales tax); *Ruan Leasing Co.*, No. 76-130-6A-DR (Sept. 17, 1976) (vehicle manufacturers ship vehicles to taxpayer's Des Moines location where structural and mechanical alterations are made and the vehicles are moved to out-of-state destinations; the taxpayer acquires title to and pays for those vehicles at the latter destination; the taxpayer argues that the vehicles are under bailment contract while in Iowa and so are not subject to use tax; held, it is a sale, not a bailment, and there is a taxable use in Iowa).

71. Oxygen Exempted From Tax, H.F. 38, § 1, 1975 Iowa Acts ch. 211 (amending IOWA CODE § 422.45 (1975)).

72. IOWA CODE § 422.45(12) (1975).

73. *Iowa Movers & Warehousemen's Ass'n v. Briggs*, 237 N.W.2d 759, 770 (Iowa 1976).

74. *Id.* The decision on the estoppel issue was 5-4. The Association has applied for certiorari to the United States Supreme Court on the basis that oral argument was made to a panel of five judges, including three of the dissenters, and the case was decided by the full bench.

75. *Scott County Conservation Bd. v. Briggs*, 229 N.W.2d 126 (Iowa 1975). Fees were assessed if anyone stayed overnight in a camper or camping trailer, or in a tent whether or not there was also a vehicle. No fee was charged if the camper was left at the campground and no one stayed in it.

76. Letter from the Iowa State Department of Revenue to Commerce Clearing House (Mar. 11, 1975).

neither equipment rental nor taxable sale of services.<sup>77</sup> It also held that offset lithographic plates, which are chemically coated and light-sensitive, are functionally consumed in the offset printing process, and are within the processing exemption of the use tax law.<sup>78</sup>

One act passed by the Legislature, making appropriations to certain state agencies and amending biennial reporting requirements of the state auditor, also attempted to make substantive changes in the service tax on flying services.<sup>79</sup> The Attorney General ruled that this change was void, because it was not covered in the title to the Act, and because, if it had been, the title would embrace more than one subject matter.<sup>80</sup>

#### V. INHERITANCE AND ESTATE TAX

The Iowa Supreme Court held that damages for wrongful death are not subject to inheritance tax in the estate of the decedent for whose death damages are assessed.<sup>81</sup> In another case, a settlement of a dispute between charitable beneficiaries and heirs as to whether decedent had revoked her will resulted in division of the estate between the two sides. The district court permitted the portion received by the charities to be treated as exempt from inheritance tax although it ruled decedent had died intestate. The supreme court reversed, holding that the exemption for charitable bequests was not available.<sup>82</sup> One 1974 case involving valuation of closely-held stock remains pending,<sup>83</sup> and one new case involving the evidentiary use of actuarial tables is now pending.<sup>84</sup>

Appraisers have been directed by the Department of Revenue to include in the value of farm land as of date of death of its owner the value at that date of any growing crops. One estate filed objections to this, but the matter was settled without decision.<sup>85</sup> Another case pending in the trial court challenges inheritance tax appraisers' findings as to fair market value of property on equal protection arguments.<sup>86</sup>

77. *City of Cedar Rapids v. Iowa State Dep't of Revenue*, [1974] IOWA TAX REP. (CCH) ¶ 200-135 (Iowa Bd. Tax Review).

78. *Denison Newspapers, Inc. v. Blair*, No. 90 (Iowa Bd. of Tax Review 1976).

79. Auditor, Treasurer, Comptroller, Data Processing, City Finance, Revenue Departments, S.F. 566, § 3, 1975 Iowa Acts ch. 5.

80. Iowa Attorney General Opinion (July 11, 1975).

81. *Estate of Dieleman v. Department of Revenue*, 222 N.W.2d 459 (Iowa 1974).

82. *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

83. *In re Estate of Mihm*, No. 24,903 (Dubuque County Iowa Dist. Ct. 1974); see *Hayes Survey*, *supra* note 66, at 378 n.43.

84. *Estate of George Evans*, Probate No. 12,589 (Jackson County Iowa Dist. Ct. 1974), appeal docketed, No. 2-58502 (Iowa Sup. Ct. July 14, 1975). In this case, decedent left property in trust, remainder to charity, after a life interest for a sixteen year old niece. The estate wanted to show that the niece had a severe case of cerebral palsy, and physicians would testify that her life expectancy was forty years, which is less than the actuarial life expectancy. The trial court would not admit this evidence. The estate is appealing, arguing that this amounts to making actuarial tables a conclusive presumption of expectancy and that such a presumption is unconstitutional. The state argues that this is not a presumption, but simply a method of determining value. Briefs have been filed.

85. *Estate of Mary Klingaman*, Probate No. 7,853 (Madison County Iowa Dist. Ct. 1975).

86. *Estate of Reuben Drake*, No. — (Benton County Iowa Dist. Ct. 1976) (estate

The new Iowa provision for inclusion of only one-half of the value of joint tenancy property in a decedent's estate was interpreted by the Board of Tax Review to permit exclusion of the entire value of a specific item plus fifty-percent of the value of others, where the survivor could establish that she had contributed all the consideration for the one item.<sup>87</sup>

In a 1975 case, a decedent's will left personal property to his wife outright, and real property to her for life with remainder to their children. One son was given an option to acquire one tract, at its inheritance tax value, on the wife's death; the proceeds were to be substituted for the property. Several months before the father died he sold that farm to the son on contract. The state contended that this sale adeemed the bequest as to that land, and that the contract rights were personal property which passed to the wife. This contention was upheld by the hearing officer; the matter was settled before decision on appeal to the district court.<sup>88</sup>

When a court hears objections to appraisal and finds that the property involved was not subject to tax, it is to order entry on the lien book of cancellation of any lien for inheritance tax, after expiration of the time to appeal from its finding.<sup>89</sup> This section of the Code was amended to increase from twenty to forty-five days the period in which objections to an appraisal could be filed.<sup>90</sup>

As noted in an earlier part of this survey, the original judicial jurisdiction over most inheritance tax matters (other than appeals from appraisers' valuations) has been deleted, and the procedure respecting deficiencies and overpayments now is comparable to that followed in income tax and sales tax situations.<sup>91</sup> In cases where a deficiency is claimed, the Department is to notify the taxpayer of the amount due plus interest thereon, stating a sum certain to be due if paid on or before the last day of the month the notice is postmarked, or the last day of the next month if postmarked after the twentieth day of the month and before the first day of the next month.<sup>92</sup> If overpayment is involved, the excess is to be refunded, with interest after sixty days from date of payment at six percent per annum.<sup>93</sup> Either determination may be made by the Department. Claims for refund may be filed with the Department, and must be filed within five years from the time the tax payment became due or one year after payment, whichever is later.<sup>94</sup> Departmental determinations now become final unless the estate, trust, heir, beneficiary, transferee, or other person aggrieved thereby appeals to the director for review within ninety days from the postmark

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argues that the appraisers handled other property differently; appraisers deny that the alleged differences occurred).

87. *Jepsen v. Blair*, No. 85 (Iowa Bd. of Tax Review 1975).

88. *In re Lillian Voetteler*, No. 75-70-3-A (Hearing Officer 1975).

89. IOWA CODE § 450.35 (1975).

90. Inheritance Tax, H.F. 230, § 1, 1975 Iowa Acts ch. 221 (amending IOWA CODE § 450.35 (1975)).

91. See notes 11-13 *supra*, and accompanying text.

92. Civil Service, H.F. 679, § 2, 1975 Iowa Acts ch. 224 (amending IOWA CODE § 450.94 (1975)).

93. *Id.*

94. *Id.*

date of notice of the Department's determination.<sup>95</sup> The appellant is entitled to an administrative hearing.<sup>96</sup> The director's decision following the hearing is to be sent by certified mail to appellant, and it becomes final unless judicial review is sought within sixty days from the postmark date of this notice.<sup>97</sup> Judicial appeal must comply with the provisions in the Iowa Administrative Procedure Act, except that appeal may be filed in the district court of the county where the decedent resided at the time of death, or where the estate is administered.<sup>98</sup> If the decedent was not a resident, appeal may be filed in a county where some of the property involved is located.<sup>99</sup>

The maturity date for the Iowa estate tax, which applies if inheritance taxes applicable to the estate are not sufficient to equal the credit for state death taxes allowed for federal estate tax purposes,<sup>100</sup> was changed in 1975 to fifteen months following the date of death, rather than eighteen months.<sup>101</sup>

The inheritance tax exemption for property transferred to children was increased from \$15,000 each to \$30,000 each and, in cases of transfer to other lineal descendants, from \$5,000 each to \$10,000 each.<sup>102</sup> Changes, mostly minor, were made in the section specifying who must pay the inheritance tax. "Executors, administrators, trustees" was changed to "fiduciaries except guardians and conservators"; "estate subject to the tax provided for in this chapter" was changed to "estate or trust from which a tax is due under this chapter"; "collect and pay" was changed to "file a final inheritance tax return with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and pay."<sup>103</sup> With regard to the payment of tax on deferred interests, the owner of the future interest is now required to "file a supplemental final inheritance tax return and pay to the department of revenue the tax due."<sup>104</sup> An addition was made that "final inheritance tax returns shall be in the form prescribed by the director."<sup>105</sup> In 1976, the maturity dates for inheritance and estate tax were reduced from fifteen months to twelve months,<sup>106</sup> except that the fifteen month provision relating to taxes on estates where property is transferred with life or term and successive interests seems not to have been changed.<sup>107</sup>

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95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* § 2 (amending IOWA CODE § 450.59 (1975)).

99. *Id.*

100. IOWA CODE § 451.2 (1975).

101. Inheritance Tax, H.F. 230, § 2, 1975 Iowa Acts ch. 221 (amending IOWA CODE § 451.6 (1975)).

102. Tax Reductions, H.F. 1590, § 8, 1976 Iowa Acts ch. 1106 (amending IOWA CODE § 450.9 (1975)). The increased exemptions clearly apply where the decedent's death was after June 1976. It is unclear whether they are available to estates which had not settled the amount due for inheritance tax by that time.

103. Inheritance Tax, S.F. 418, § 1, 1975 Iowa Acts ch. 222 (amending IOWA CODE § 450.53 (1975)).

104. *Id.*

105. *Id.*

106. Mobile Home Tax Reduction, H.F. 1590, § 7, 1976 Iowa Acts ch. 1106 (amending IOWA CODE § 450.6 (1975)).

107. See IOWA CODE § 450.45 (1975).

The Iowa Probate Code was amended to provide that court costs, which are part of the cost of administration of an estate and as such are deductible in computing inheritance taxes, will also include expenses of selling property in the estate.<sup>108</sup> The alternative provision for order of abatement of bequests, which had been involved in several cases before both the state and federal courts, was amended to provide that the court may determine the order, upon application to it by the fiduciary or a distributee, after notice to all interested parties, if the court finds it clear and convincing that the provisions of the will, the testamentary plan, or an express or implied purpose of a devise, would be defeated by the normal order of abatement provided.<sup>109</sup>

A substantial revision was made in the provisions for disclaimers of interests.<sup>110</sup> However, the addition of a disclaimer provision to the federal estate and gift tax law may reduce the importance of the Iowa revision.<sup>111</sup>

## VI. PROPERTY TAXES

### A. Tax Levies

One step taken in 1976 to reduce the likelihood of substantial increases in property taxes on individual properties was a limitation as to the amount most political subdivisions could increase their levies for many purposes. For 1977, the limit is nine percent above the 1976 levy; for 1978 and 1979, increases are limited to seven percent of the preceding year's budget.<sup>112</sup> Districts which claim a higher levy is justifiable may appeal to a State Appeal Board.<sup>113</sup> The Appeal Board arranges for a public hearing in the appropriate county before deciding whether to permit a higher increase.<sup>114</sup>

Counties are required periodically to levy taxes to provide a "county indemnification fund," maintained in the office of the treasurer of Iowa, to be used to pay or indemnify certain county officers and their assistants for amounts they are legally obligated to pay because of negligent acts, errors, or omissions in the performance of their legal duties.<sup>115</sup> Formerly, the treasurer was to

108. Probate, S.F. 541, § 2, 1975 Iowa Acts ch. 208 (amending IOWA CODE § 633.3(8) (1975)).

109. *Id.* § 12 (amending IOWA CODE § 633.437 (1975)).

110. *Id.* § 5 (amending IOWA CODE § 633.704 (1975)).

111. Tax Reform Act of 1976, Pub. L. No. 94-455, § 2008, 90 Stat. 1893 (to be codified as I.R.C. § 2518).

112. Property Tax Relief & Political Budget Limitations, S.F. 1062, § 2, 1976 Iowa Acts ch. 1097. These limitations affect: (a) levies by cities for general or emergency fund purposes under Iowa Code §§ 384.1, 384.8, and funds within § 384.12(8), (10)-(18); (b) levies by counties under Iowa Code §§ 24.6, 37.8, 52.3, 111A.6, 164.23, 165.18, 174.13, 174.17, 232.22, 250.1, 309.7, 317.19, 317.20, 330A.15, 332.3, 332.32, 346.23, 346A.2, 350.8, 358B.13, 358B.18, 444.9, 444.11, 455B.81, 467B.9 and 565.8; (c) levies by special districts, under Iowa Code §§ 357.25, 357B.3, 357B.5, 357C.7, 357C.11, 466.4, 467A.20 and 483.1; and (d) agricultural extension education programs under Iowa Code § 176A.10.

113. *Id.* § 7(1).

114. *Id.* § 7(2).

115. IOWA CODE §§ 332.36-38 (1975). The fund does not cover the first \$500 of a claim. *Id.* § 332.36.



notify the board of supervisors of each county to make a levy of  $\frac{1}{2}$  cent per \$1000 assessed value for each year in which the balance in the fund, as of September 30, fell below \$300,000.<sup>116</sup> The latter figure has been increased to \$600,000.<sup>117</sup> A city of 500 or less population which has a final judgment entered against it for more than \$85,000 in excess of liability insurance coverage may arrange to pay the insured part of some judgments over a period of not more than ten years, with interest on the unpaid balance.<sup>118</sup>

The maximum levy per \$1000 for memorial buildings or monuments was decreased from \$1.35 to eighty-one cents, and the levy for support of symphony orchestras was increased from  $3\frac{3}{8}$  cents to  $13\frac{1}{2}$  cents.<sup>119</sup>

Township trustees have authority to establish and maintain township cemeteries and to have taxes levied for those purposes.<sup>120</sup> The power of the board of supervisors was enlarged to enable them to act for the same purposes, and also for cemeteries not owned by the township, where the township trustees have failed to have taxes levied therefor.<sup>121</sup>

The Iowa Code provides for various types of benefits for many veterans of military service. The periods recognized as qualifying for service during World War II and the Korean conflict have been enlarged.<sup>122</sup> This affects, in part, the tax levied for veterans' relief costs.<sup>123</sup> Burial expenses payable were increased from \$200 to \$250; grave marker costs payable were increased from \$3.50 to \$10.00.<sup>124</sup>

The maximum interest rate payable for general obligation bonds and for general obligation bonds issued to pay for sanitary disposal projects was increased from five percent to seven percent.<sup>125</sup>

An Attorney General opinion pointed out that unless there is a county library system, there is no present authority for a single county-wide tax levy to support all existing libraries in a county.<sup>126</sup> Property outside cities may be

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116. *Id.* § 332.38.

117. County Officers Indemnified, H.F. 12, § 2, 1975 Iowa Acts ch. 189 (amending IOWA CODE § 332.38 (1975)).

118. Judgments Against Cities, H.F. 1362, § 1, 1976 Iowa Acts ch. 1183. This Act is limited to final judgments entered but not fully satisfied before the effective date of the Act. *Id.*

119. City Code, H.F. 723, § 25, 1975 Iowa Acts ch. 197 (amending IOWA CODE § 384.12(2), (3) (1975)).

120. IOWA CODE §§ 359.30-.33 (1975).

121. Cemetery Property, S.F. 38, §§ 1-2, 1975 Iowa Acts ch. 187 (amending IOWA CODE § 332.3 (1975)).

122. Dates of Wars & Conflicts, H.F. 411, 1975 Iowa Acts ch. 76 (amending IOWA CODE §§ 19.16, 70.1, 250.1, 250.3, 250.13, 250.16, 250.21, 332.5, 400.10, 410.7 (1975)). World War II is now defined as extending from December 7, 1941, to December 31, 1946 (formerly to September 2, 1945). The Korean conflict is defined as covering June 25, 1950 (formerly June 27) to January 31, 1955 (formerly July 27, 1953).

123. See IOWA CODE § 250.1 (1975).

124. Dates of Wars & Conflicts, H.F. 411, §§ 6-7, 1975 Iowa Acts ch. 76 (amending IOWA CODE §§ 250.13, .16 (1975)).

125. City Government, S.F. 526, § 5, 1975 Iowa Acts ch. 203 (amending IOWA CODE ch. 75 (1975)); Sanitary Disposal Projects, S.F. 33, § 1, 1975 Iowa Acts ch. 202 (amending IOWA CODE § 228.3 (1975)).

126. Iowa Attorney General Opinion No. 75-4-6 (Apr. 2, 1975).

taxed to obtain funds to use in contracting with city libraries so that residents of unincorporated areas may have access to a city library.<sup>127</sup> A 1976 law provides that the regional library board may require governmental subdivisions to continue in effect the tax levy for library maintenance purposes that was in effect on July 1, 1973.<sup>128</sup> Beginning July 1, 1977, each city, within its boundaries, and each county, within unincorporated areas, is to levy at least a 6¾ cents per \$1000 assessed value tax to provide financial support to the public library offering library service within the respective jurisdictions. When funds for a library are obtained from non-tax sources, those amounts can be applied to satisfy this requirement.<sup>129</sup>

Those public agencies that previously could arrange for joint financing of sanitary collection and sewage systems, swimming pools and golf courses may also do so for water supply systems.<sup>130</sup> Counties, parts of counties, and cities may establish unified law enforcement districts and, with voter approval, levy a tax for a period of not over five years to support such districts.<sup>131</sup>

A city of 40,000 or less population may levy a tax for support of a municipal band, where authorized by popular vote.<sup>132</sup> Once a valid petition for that action has been filed, voted upon, and approved by the voters, the city must then levy a tax not to exceed 13½ cents per \$1000 assessed value.<sup>133</sup>

School districts and counties may levy taxes in excess of the normal statutory limits<sup>134</sup> to meet obligations for employee retirement funds under the Iowa Public Employees' Retirement System (IPERS).<sup>135</sup> Where voters have approved a levy for purchase and construction of a schoolhouse, if the fund voted is not fully expended therefor, the balance may be used to improve places and facilities other than the school building itself.<sup>136</sup> For purposes of tax levy and state aid to public schools, the enrollment<sup>137</sup> in a school system was important

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127. *Id.*

128. Library Services, S.F. 1191, § 2, 1976 Iowa Acts ch. 1160 (amending Iowa CODE § 303B.9 (1975)).

129. *Id.*

130. Water Supply Systems, H.F. 1129, § 1, 1976 Iowa Acts ch. 1070 (amending Iowa CODE § 28F.1 (1975)).

131. Unified Law Enforcement, S.F. 1210, § 2, 1976 Iowa Acts ch. 1072. The maximum levy is \$1.62 per \$1000 assessed value. *Id.* § 3. Any city or county general fund used for law enforcement may not be reduced because of such assessment. *Id.* § 2.

132. Iowa CODE § 384.12(1) (1975).

133. Iowa Attorney General Opinion No. 75-3-16 (Mar. 31, 1975). Where a band tax had been authorized, but not collected for many years because band costs were paid from the recreation fund, if the council decided to discontinue this use of the recreation fund, it could resume collecting the band tax levy until the levy was eliminated by popular vote or by council action to that effect. *Id.* No. 76-5-10 (May 27, 1976).

134. See generally Iowa CODE chs. 442, 444 (1975).

135. 40 IOWA OP. ATT'Y GEN. 739 (1974). Iowa CODE § 295.16 (1975) permits a school district to provide for the benefit of its employees annuities that can qualify for special tax treatment under I.R.C. § 403(b). The 1974 amendments to the Internal Revenue Code including mutual funds within that section do not thereby authorize the purchase of mutual funds for school employees under Iowa law. The attorney general so concluded under the theory that incorporation by reference of federal law does not include subsequent amendments to that law. Iowa Attorney General Opinion No. 76-2-22 (Feb. 25, 1976).

136. Iowa Attorney General Opinion No. 75-7-23 (1975).

137. Where shared-time or part-time instruction was provided for non-public school

until 1976, at which time the use of funds to improve sites became permissible regardless of the number of pupils in the district.<sup>138</sup> The Attorney General was asked whether area school boards could build facilities for physical education that could also be used for interscholastic athletics. His ruling stated that the boards could not use funds derived from tuition, taxes, bonded indebtedness or state funds to construct or maintain buildings, grounds or facilities used exclusively for athletic purposes, but they could use federal funds, student fees, donations and gifts.<sup>139</sup>

When a courthouse is used exclusively for court and court-related functions, the court expense fund may be used to supplement amounts budgeted in the general fund for custodial staff and maintenance and repair of the courthouse (including boiler repair but not boiler replacement).<sup>140</sup> However, the general fund may be supplemented for these purposes only when necessary.<sup>141</sup> In addition, no part of the salary of bailiffs, including those who, as municipal court bailiffs, would have half their salary paid by the court expense fund, may now be paid from that fund; rather, they should be paid from the same fund as deputy sheriffs.<sup>142</sup> When a new district judge provides his own office facilities because there is no space in the courthouse, the payment for his office equipment should be from the general fund. If that fund is insufficient, then the court expense fund may be used.<sup>143</sup>

A nonprofit fire fighting corporation organized under Iowa Code chapter 504 may build housing for its fire equipment.<sup>144</sup> Township trustees may levy a tax, after authorization by election, for housing fire equipment, but may not do so to support the fire fighting corporation, absent a joint agreement.<sup>145</sup> Proceeds from the levy may be divided between benefitted fire districts and cities providing fire protection under a Code chapter 28E agreement.<sup>146</sup> A fire depart-

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pupils, such pupils could be counted even if they did not actually reside in the district. 40 IOWA OP. ATT'Y GEN. (1974).

138. Schoolhouse Sites, S.F. 74, § 1, 1976 Iowa Acts ch. 1156 (amending IOWA CODE § 297.5 (1975)) eliminated the requirement of at least 600 pupils if a district was to levy for this purpose. The Act also permits use of funds for "improvement of sites" and defines improvements of sites to include:

grading, landscaping, seeding and planting of shrubs and trees; constructing new sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; original surfacing and soil treatment of athletic fields and tennis courts; furnishing and installing for the first time, flagpoles, gateways, fences and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for capital improvements such as streets, curbs and drains.

"Purchase of sites" includes "legal costs relating to the site acquisition, costs of surveys of the sites, costs of relocation assistance under state and federal law, and other costs incidental to the site acquisition." Unencumbered funds collected on this levy before July, 1976, can be used for site improvement despite Iowa Code § 291.13. *Id.* See also *id.* No. 76-7-17 (July 22, 1976).

139. *Id.* No. 76-2-15 (Feb. 10, 1976).

140. *Id.* No. 75-2-9 (Feb. 6, 1975).

141. *Id.* at 5.

142. *Id.* at 6.

143. *Id.* No. 76-5-8 (May 27, 1976).

144. *Id.* No. 75-5-2 (May 5, 1975).

145. *Id.*

146. *Id.* No. 76-5-7 (May 25, 1976).

ment of a benefitted district must protect all property within the district, including government property which was not subject to taxation.<sup>147</sup> The attorney general ruled that the act requiring township trustees to provide fire protection for the township was not void for vagueness.<sup>148</sup> Furthermore, the township could be divided into areas and different agencies could contract to protect different areas.<sup>149</sup>

Funds for airport purposes, whether raised by taxation or otherwise, are under the full and absolute control of the airport commission, if one is established, and do not go into the general fund.<sup>150</sup>

Funds allocated to the county government assistance fund may be used only for projects and programs for citizens residing outside incorporated cities.<sup>151</sup> Thus, these funds may be used to develop grounds for holding county fairs, if the board of supervisors determines that the county derives benefit from such a project.<sup>152</sup> If more than one fair society exists in a county, the proceeds of the fairground fund should be apportioned in accordance with the budget estimates each society certified to the board.<sup>153</sup>

That portion of the secondary road fund budgeted for payment to employees of the county engineers' office may be used to cover workers' compensation costs for these employees.<sup>154</sup>

The cost of a county soil survey to determine quality of soil for assessment valuation purposes may be paid from the assessment expense fund.<sup>155</sup> A levy for this is required when the assessor's budget has been certified by the county conference board.<sup>156</sup>

Duties of the county attorney include providing advice to township trustees; he is to represent them in litigation not adverse to the interest of the county, if county population is less than 35,000.<sup>157</sup> According to an attorney general opinion, trustees in larger counties may employ counsel other than the county attorney and may levy a tax to defray expenses of litigation.<sup>158</sup>

### B. Assessments

In an appeal by a property owner of an award of damages where the property had been condemned by a city, the Iowa Supreme Court reversed the award decision on several grounds. One ground of relevance here was that admission

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147. *Id.* No. 76-4-9 (Apr. 20, 1976).

148. *Id.* No. 76-2-11 (Feb. 9, 1976).

149. *Id.* The opinion does not indicate whether the cost may be assessed on any basis other than uniform through the township.

150. *Id.* No. 76-4-5 (Apr. 8, 1976); see IOWA CODE §§ 330.17, 21 (1975).

151. *Id.* No. 76-6-7 (June 16, 1976).

152. *Id.*

153. *Id.* No. 76-7-25 (July 25, 1976).

154. *Id.* No. 76-8-13 (Aug. 30, 1976).

155. *Id.* No. 76-3-26 (Mar. 26, 1976).

156. *Id.*

157. IOWA CODE § 359.18 (1975).

158. Iowa Attorney General Opinion No. 76-7-32 (July 27, 1976).

of the property's assessed valuation as substantive evidence violated the hearsay rule.<sup>159</sup>

In *Avery v. Peterson*,<sup>160</sup> the supreme court affirmed dismissal of a challenge, by the owner of residential lakeside property, to an order of the Director of Revenue to increase values of residential property in a county inside incorporated areas for equalization purposes. No like increase had been ordered for lakeside residential property outside incorporated areas. The court indicated that the plaintiff had not properly preserved for appeal the basis of his objection before the Board of Review, had failed to carry the burden of proof necessary to overcome an action within the Director's discretion, and had insufficient evidence to establish that the classification system used denied equal protection.<sup>161</sup>

The Iowa Administrative Procedure Act provisions for contested cases were amended so as not to apply to any matters involving equalizations of valuations between classes of property, under Iowa Code chapters 421 and 441, except as to hearings before the State Board of Review.<sup>162</sup> Four Board of Review opinions and a district court decision rejected challenges to equalization orders.<sup>163</sup>

Both sessions of the Iowa Legislature made various changes relating to equalization orders and assessment procedures. Most of the 1975 changes<sup>164</sup> were not altered significantly in 1976, but there were additional changes in 1976 that are of major importance. Real property now is to be assessed every two years instead of every four, with equalized values included in the assessments for the property for the year following determination rather than for the current

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159. *Vine St. Corp. v. City of Council Bluffs*, 220 N.W.2d 860 (Iowa 1974).

160. 243 N.W.2d 630 (Iowa 1976).

161. *Avery v. Peterson*, 243 N.W.2d 630 (Iowa 1976).

162. *Equalization of Property Valuations*, H.F. 885, § 1, 1975 Iowa Acts ch. 204.

163. *Linn County v. Iowa Dep't. of Revenue*, No. 1228 (Linn County Iowa Dist. Ct. 1976); *Olson v. Iowa Dep't of Revenue*, No. 92 (Iowa Bd. of Tax Review 1976) (appeal by mayor, members of council and city assessor of Des Moines from order for ten percent increase in aggregate value of residential real estate; one argument rejected was that, since equalization was proper only if values were at least five percent more or less than actual value, the order should bring the revised value within a five percent variation rather than to actual value); *Gavin v. Iowa Dep't of Revenue*, No. 94 (Iowa Bd. of Tax Review 1976) (appeal by Polk County supervisors from order for 44% increase in agricultural realty, 24% increase in rural residential realty and 15% increase in other residential realty); *Board of Supervisors v. Iowa Dep't of Revenue*, No. 95 (Iowa Bd. of Tax Review 1976); *In re Assessed Valuations of Leo*, No. 114-128 (Iowa Bd. of Tax Review 1976) (220 Des Moines property owners who had unsuccessfully appealed to the city board of review the adjustments described in No. 95 above).

164. *Tax Equalization Orders*, S.F. 545, 1975 Iowa Acts ch. 205. Iowa Code section 421.20, concerning actions by the Director to compel compliance with an equalization order, formerly provided that the Director was to sue in the district court most accessible to the subject matter, and forbade removal by defendants on grounds they were nonresidents of the county or that the subject matter was not located there. As changed, the Director is to file the action in the district court in which the defendants perform their official duty, but the Director may move for change of venue, to be granted upon showing of good cause as provided by Iowa Rule of Civil Procedure 167, except that he need not file affidavits of disinterested persons. *Id.* § 1.

Iowa Code section 421.21 now has the added requirement that in assessing and determining the actual value of special purpose industrial real estate and tangible personal prop-



year.<sup>165</sup> Other appraisal methods are permitted when market value cannot readily be determined.<sup>166</sup> The timetable for administrative and appellate action is revised to permit additional time in the year when reassessments are made (earlier dates apply in the other year).<sup>167</sup> In addition, it now is possible for the assessor to appeal from actions of the Director of Revenue.<sup>168</sup>

Because of concern over the effect on valuations of substantial increases in selling prices of agricultural land, the Legislature provided for use of a percentage composed of income value per acre in 1975 over 1975 actual value per acre, in determining the 1976 actual value of such land.<sup>169</sup> A proposed method

erty with an actual value of \$5,000,000 or more, the value is to be equalized with actual values of comparable special purpose industrial property in other counties. Special purpose industrial property includes structures designed and erected for operations of unique and special use, not rentable in existing condition, *e.g.*, chemical plants. If a variation of ten percent or more between actual values of comparable properties is found, the assessors involved are to consult each other and the Department of Revenue to determine whether adequate reasons for the variation exist. If no such reasons are found, the values are to be adjusted to provide for variation of ten percent or less. *Id.* § 2.

Iowa Code section 441.48, regarding adjustment to valuations by the Director, amended to provide that the ten day notice of adjustment go to the county auditor (rather than the assessor), and that the county or assessing jurisdiction (rather than the assessor) may appear at the hearing. Appearance may be by the city or county attorney; in addition, it may be by city council, board of supervisors, or other city or county officers (rather than by assessors, or otherwise). *Id.* § 3.

Iowa Code section 441.49 was stricken and rewritten. It now provides that the Director complete review and adjustment procedure by the third Monday of October, notifying each county auditor by mail of his final action and specifying adjustments in value of any kind or class of property for the jurisdiction. The county may request use of an alternate method of adjustment, if it produces a final valuation equivalent to the increased valuation ordered. Such request is to be made within ten days of receipt by the auditor of the Director's notice. Value adjustments are to be completed by December 31. The Director is to adjust values when five percent above or below actual value. The auditor is to notify by publication any class or classes of property affected by an equalization order, then add or deduct the required percentage, ignoring fractions of fifty percent or less and rounding up if over fifty percent. The local board of review is to meet in special session from November 1st through the 30th to hear protests from affected property owners or taxpayers. Grounds for protest to be permitted are that the value per the notice would result in greater tax value than is permitted under section 441.21, and the objector shows to the satisfaction of the local board that inequity would result if the provisions of the notice are applied to his property. Protests may be made only during the first fifteen days following the date the board convenes. The board may recommend to the Director adjustments to all or part of the percentage increase the Director ordered, by adjusting the tax value to 100% of actual value, but it may not increase the percentage increase called for in the notice. Recommendations must be reported to the Director. *Id.* § 4.

165. Tax Assessments, H.F. 1564, 1976 Iowa Acts ch. 1199 (amending Iowa CODE § 428.4 (1975)).

166. *Id.* § 2 (amending Iowa CODE § 441.21 (1975)).

167. *Id.*

168. *Id.* § 13 (amending Iowa CODE § 441.49 (1975)).

This has been interpreted to permit a county-wide mass reappraisal effective January 1, 1979, as well as requiring reappraisal per the statute as of January 1, 1978; but the extended dates for administrative action and review do not apply to the 1979 reappraisal. Iowa Attorney General Opinion No. 76-8-4 (Aug. 6, 1976).

169. Property Tax Relief & Political Budget Limitations, S.F. 1062, § 17, 1976 Iowa Acts ch. 1067 & Item Veto Message. The Attorney General stated that the use of 1975 actual value, referred to "as determined by the Director of Revenue," could permit the Director to use those values as he had already determined them to be or other values if he could properly be persuaded to change his mind and to use another basis for determining them. The Director had previously directed most assessors to increase their 1975 determinations of actual value for residential and agricultural land by specified percentages varying from assessment district to assessment district; this had caused much stir. Iowa Attorney General Opinion No. 76-4-7 (Apr. 12, 1976).

for valuing agricultural property as of January 1, 1977, by use of productivity and net earning capacity capitalized at a rate representing fair return on investment, was approved by the Legislature but was item vetoed by the Governor.<sup>170</sup> A task force consisting of legislative and lay members to study local government and financing, including property valuation, was created.<sup>171</sup>

The requirement that an abstract of assessment must include the aggregate taxable values and number of each type of animal has been amended. Abstracts should now include such "other facts as may be required by the director of revenue."<sup>172</sup>

Persons whose property is assessed are to be notified of the assessed valuation if they have requested notice in writing or if the valuation is increased or decreased.<sup>173</sup> The latest date for notification was changed from April 1 to April 15, although a later date will now apply every other year because of the new rules regarding reassessments.<sup>174</sup>

The auditor may now order owners of property to obtain and file a plat, for assessment purposes, when the description cannot be made sufficiently accurate without noting metes and bounds.<sup>175</sup> If no plat is made and filed within sixty days after notice, the auditor may have a plat made and costs therefor assessed against the area platted.<sup>176</sup> Objectors to the order to plat have thirty days to appeal the order.<sup>177</sup>

For some years appointments of assessors have been required to be from a list of persons certified by the Director of Revenue on the basis of a written examination.<sup>178</sup> The Director has now been authorized to grant a "restricted certificate" to any assessor or deputy assessor holding such office on January 1, 1976.<sup>179</sup> The person so certified may be reappointed to the same position but is not eligible for a different position unless the examination-certification process is satisfied.<sup>180</sup>

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170. Property Tax Relief & Political Budget Limitations, S.F. 1062, § 18, 1976 Iowa Acts ch. 1067 & Item Veto Message.

171. *Id.* §§ 34-39.

172. Abstracts of Assessment, S.F. 109, § 1, 1975 Iowa Acts ch. 219 (amending Iowa CODE § 441.45 (1975)).

173. IOWA CODE § 441.23 (1975).

174. Notice of Property Valuation, S.F. 75, § 1, 1975 Iowa Acts ch. 218 (amending IOWA CODE § 441.23 (1975)).

175. Land Plats, H.F. 909, § 15, 1976 Iowa Acts ch. 1190 (amending IOWA CODE ch. 441 (1975)). The auditor cannot force a platting by refusing to recognize a transfer of land until the survey and plat are completed. Iowa Attorney General Opinion No. 76-5-13, at 5 (May 27, 1976). Nor should homestead exemptions be denied for this purpose. *Id.* No. 76-4-11 (Apr. 21, 1976).

176. Land Plats, H.F. 909, § 15, 1976 Iowa Acts ch. 1190 (amending IOWA CODE ch. 441 (1975)).

177. *Id.*

178. IOWA CODE § 441.11 (1975).

179. Deputy Assessors Certification, S.F. 1063, § 1, 1976 Iowa Acts ch. 1201 (amending IOWA CODE § 441.11 (1975)).

180. *Id.*

Levies for drainage assessments bear interest from the date of levy. This differs from the penalty type of interest which begins when there is delinquency in paying an installment of property tax when it is due.<sup>181</sup>

### C. Property Tax Exemptions

Three Iowa Supreme Court opinions were concerned with the exemption from tax of property used exclusively for "charitable" purposes. The first upheld an award of only a fifty percent exemption for a two-story building, where the first floor consisted largely of a fully-equipped profit-making bar used almost exclusively for the relaxation and entertainment of a lodge's dues-paying members, and where the profits were used primarily for membership entertainment with a small residuum given to charity.<sup>182</sup> The court stated that the lodge had not sustained its burden of proof that the building was used solely for appropriate objects of the lodge, with no view to pecuniary profit.<sup>183</sup> In a second opinion, denial of exemption for hospital property owned by a nonprofit corporation was upheld, where a profit-making corporation had an option to assume the assets of the owning corporation by assuming its liabilities.<sup>184</sup> Lastly, a nonprofit corporation which used property as low rent housing facilities for elderly persons was denied exemption from tax for that property.<sup>185</sup> The use met a community need, but housing was provided only for those persons able to pay the charges for it, rental was fixed at a level to make the facility self-sufficient, and no concessions in rent based on need were made.<sup>186</sup>

An Attorney General opinion reminded its recipient that a church seeking to qualify property for exemption must file a claim therefor by July 1 of the year for which the claim is sought.<sup>187</sup> According to another Attorney General opinion, the "charitable, educational" exemption is available to a nonprofit corporation owning an historic building and using it to educate people as to its historic significance, even if the building is rented in whole or in part to other nonprofit organizations for rent used to maintain the building.<sup>188</sup> A lease of part to a commercial business, however, would destroy the exemption for the portion of the building used by that tenant.<sup>189</sup> Even though the building is exempt, the assessor must still determine its market value.<sup>190</sup> In determining value, the assessor may consider that the building was conveyed to the society by a city which retained a possibility of reverter and may decide that this justifies use

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181. Iowa Attorney General Opinion No. 75-9-12.

182. Aerie 1287, *Fraternal Order of Eagles v. Holland*, 226 N.W.2d 22 (Iowa 1975).

183. *Id.* at 25. The court notes that there was no appeal by the county from the allowance of at least a fifty percent exemption, and comments that it therefore is not deciding whether any percentage exemption was appropriate. *Id.* at 24.

184. *Northwest Community Hosp. v. Board of Review*, 229 N.W.2d 738 (Iowa 1975).

185. *Dow City Senior Citizens Housing, Inc. v. Board of Review*, 230 N.W.2d 497 (Iowa 1975).

186. *Id.* at 498-99.

187. Iowa Attorney General Opinion No. 76-1-16 (Jan. 12, 1976).

188. *Id.* No. 76-1-6 (Jan. 5, 1976).

189. *Id.*

190. *Id.*; see IOWA CODE §§ 441.21, 427.1(9) (1975).

of factors other than the willing seller—willing buyer approach to market value.<sup>191</sup>

Although the original act providing for municipally supported low-rent housing projects provides that the property is exempt from all taxes and special assessments,<sup>192</sup> subsequent changes in other sections of the act<sup>193</sup> were interpreted to require payment of at least ten percent of the rents and supplemental rental aid annually, as taxes, to the county treasurer.<sup>194</sup> If the project is to provide housing for elderly and handicapped persons, however, no payment is required until the original mortgage on the project is paid in full or expires.<sup>195</sup>

Under the provisions of the chapter on municipal support of industrial projects, pollution control property is exempt from tax, even though owned by a municipality.<sup>196</sup>

As noted earlier, the definitions of the period recognized for military service during World War II and the Korean conflict were enlarged.<sup>197</sup> This enables additional veterans to qualify for military service credits for property taxation.<sup>198</sup> The period in which the Director of Revenue may review allowances of claims for military service and homestead tax credits and determine that they are not justified under law or not substantiated by facts (which had been one year after certification of credit was received by the department) was changed to twenty-four months after July 1st of the year the claim was filed.<sup>199</sup> The Attorney General ruled that, if a claim is based on active service during the Vietnam conflict, the veteran must have been honorably separated, placed on an inactive status, or discharged, as well as have served at some time between the statutorily specified dates in order to qualify.<sup>200</sup> Thus, a Vietnam veteran who was discharged and then re-entered service can qualify, but one who re-enlisted at the expiration of his term of service, never having been released or terminated from active duty, cannot.<sup>201</sup> A person occupying an apartment in a retirement home as life tenant, with reversion in a nonprofit corporation holding legal title, is not entitled to a homestead tax credit, but may be able to claim the military service tax credit.<sup>202</sup>

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191. Iowa Attorney General Opinion No. 76-1-6 (Jan. 5, 1976).

192. IOWA CODE § 403A.10 (1975).

193. IOWA CODE § 403A.27, which requires a tax payment of ten percent of the rents and supplemental rental aid, was originally applicable only to projects approved under § 403A.26. However, since § 403A.26 was repealed by 1972 Iowa Acts ch. 1092, the requirement must now apply to all other projects under the act.

194. Iowa Attorney General Opinion No. 75-12-4 (Dec. 11, 1975).

195. *Id.* No. 76-6-11 (June 24, 1976).

196. *Id.* No. 76-4-8 (Apr. 15, 1976); see IOWA CODE §§ 419.11, 427.1(32) (1975).

197. See note 122 *supra*.

198. IOWA CODE § 427.3 (1975), as amended by Military Service Tax Exemption, H.F. 811, 1975 Iowa Acts ch. 216.

199. Tax Credits, H.F. 182, §§ 1-2, 1975 Iowa Acts ch. 212 (amending IOWA CODE §§ 425.7, 526A.6 (1975)).

200. Iowa Attorney General Opinion No. 75-2-10 (Feb. 24, 1975).

201. *Id.*

202. *Id.* No. 75-5-2 (May 29, 1975).

The amount of the value of property to which the homestead exemption applies was changed to the first \$4,500 of actual value, for claims filed in the appropriate period of 1975, applicable to taxes for 1976.<sup>203</sup> This amount was to be \$5,000 for claims filed in 1976 and 1977, but that provision was item vetoed by the Governor.<sup>204</sup>

The amount of the statutory exemption from property tax for farm equipment, drays and tools was increased from \$300 to \$1,111 taxable value.<sup>205</sup>

Fruit tree or forest reservations are subject only to a minimal property tax.<sup>206</sup> The provisions excluding reservations from this tax treatment were amended to exclude ground on which buildings stand or are erected or on which other improvements (excluding fences) are made.<sup>207</sup>

Several changes were made to the provisions for reimbursement of property taxes paid by persons sixty-five or older, or disabled. The requirement that reimbursement for property taxes on homestead property be by joint payee check, payable to claimant and the county treasurer, and that the proceeds be credited against the April installment of property taxes before any balance is paid to claimant, was removed.<sup>208</sup> Now the check is to be paid to claimant, unless he designates on his claim that the joint payee procedure is to be followed.<sup>209</sup> The term "income," which sets the ceiling on amounts reimbursable, no longer includes any consideration of net worth over \$35,000, and the only income to be considered is that of claimant and spouse, plus actual monetary contributions from other members of the household (rather than all income of the latter).<sup>210</sup> At the same time, "property taxes paid" is limited to those for which claimant and spouse were liable and paid, and now excludes taxes for which another member of the household was liable and paid.<sup>211</sup> Another change was made increasing "rent constituting property taxes paid" from twenty percent to twenty-five percent of the gross rent.<sup>212</sup> A further

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203. Property Tax Relief & Political Budget Limitations, S.F. 1062, § 20, 1976 Iowa Acts ch. 1067. This change was extended to property located within the boundaries of special charter cities that levy and collect their own taxes. Special Charter City Homestead Tax Credit, H.F. 1576, § 1, 1976 Iowa Acts ch. 1197.

204. Property Tax Relief & Political Budget Limitations, S.F. 1062, § 23 & Item Veto Message, 1976 Iowa Acts ch. 1067. It is unclear whether the effect of the veto is to make the \$4500 limit applicable to those later years, or to return the limit for those years to that previously stated in the Code.

205. Farm Equipment Tax Exemption, S.F. 313, 1975 Iowa Acts ch. 215 (amending IOWA CODE § 427.1 (1975)).

206. IOWA CODE §§ 161.1-.13, 441.22 (1975).

207. Fruit Tree & Forest Reservations, H.F. 907, § 1, 1975 Iowa Acts ch. 125 (amending IOWA CODE § 161.3 (1975)).

208. Property Taxes of Elderly or Disabled, S.F. 78, § 1, 1975 Iowa Acts ch. 214 (amending IOWA CODE § 425.19 (1975)).

209. *Id.*

210. Reimbursement For Property Taxes, S.F. 571, § 1, 1975 Iowa Acts ch. 213 (amending IOWA CODE § 425.17 (1975)). IOWA CODE § 425.26 (1975), requiring a statement of net worth from the claimant where his net worth exceeded \$35,000, was deleted. *Id.* § 4.

211. *Id.*

212. *Id.*



change in the definition of "property taxes paid" permitted inclusion of some special assessments.<sup>213</sup> The reimbursement schedule was changed in several respects. As a result, reimbursement is allowed even though claimant's income is higher (up to a total of \$9,000) than before.<sup>214</sup> These changes apply to claims for property taxes paid, and rent constituting property taxes paid, that are filed on or after January 1, 1976.<sup>215</sup> Lastly, the definition of "claimant" was expanded to include "surviving spouse having attained the age of 55 on or before December 31," which may permit a claim by a surviving spouse of that age even though the deceased spouse had been neither disabled nor sixty-five or over at the time of death.<sup>216</sup>

Under Iowa Code section 427A.9 the amount of additional personal property tax credit is revised from time to time by the state comptroller and the Director of Revenue. This amount was increased for 1974 taxes payable in 1975, and thereafter until changed, from \$2,700 to \$7,600.<sup>217</sup> A number of applications for the personal property tax credit were disallowed, either for failure to sign the affidavit required on the form or because only one full credit may be available if several who individually seek full credits are related in specified ways.<sup>218</sup>

#### D. Tax Sales, Tax Collections, Tax Liens

Those items that can be treated like taxes, for collection and lien purposes, were expanded to include rates or charges for services of sewer systems, sewage

213. Property Tax Relief & Political Budget Limitations, S.F. 1062, § 30, 1976 Iowa Acts ch. 1067 (amending Iowa Code § 425.17(10) (1975)). The term may now include "one-half" of any special assessment paid during the year. "Special assessment" is one which was paid under Iowa Code §§ 384.37-.79 (1975). The deduction is in fact limited to five percent of the total assessment if it is paid in one payment, or one-half of the principal amount paid in the base year (plus interest) where payment is in ten annual installments. *Id.* § 31.

214. IOWA CODE § 425.23(1) (1975), as amended by Reimbursement For Property Taxes, S.F. 571, § 3, 1975 Iowa Acts ch. 213; Property Tax Relief & Political Budget Limitations, S.F. 1062, § 32, 1976 Iowa Acts ch. 1067.

215. *Id.*

216. Reimbursement For Property Taxes, S.F. 571, § 1, 1975 Iowa Acts ch. 213 (amending IOWA CODE § 425.17(6) (1975)).

217. Letter from the Iowa State Department of Revenue to Commerce Clearing House (Feb. 1975).

218. Failure to sign the affidavit: Ehlers, No. 97 (Iowa Bd. of Tax Review 1976); Bodnar, No. 101 (Iowa Bd. of Tax Review 1976); Robinson, No. 102 (Iowa Bd. of Tax Review 1976); Rorick, No. 107 (Iowa Bd. of Tax Review 1976); Dolter, No. 108 (Iowa Bd. of Tax Review 1976).

Relationships: Hiland Potato Chip Co., No. 99 (Iowa Bd. of Tax Review 1976) (parent corporation in Polk County and wholly-owned subsidiary in Woodbury County each claimed the full credit; only one is available); Medlang, No. 105 (Iowa Bd. of Tax Review 1976) (Board found that father was in a landlord-tenant relationship with his two sons who operated the farm, and that the sons were joint venturers or partners; father may claim one full credit and the two sons may also claim one credit for their firm's property); Schwarzhoff Bros., No. 106 (Iowa Bd. of Tax Review 1976) (one credit may be claimed for property owned by partnership of three brothers); Askew Farms, Inc., No. 112 (Iowa Bd. of Tax Review 1976) (two corporations had a formal partnership for the operation of several farms; shareholders of one corporation owned twenty-eight percent of the shares of the other corporation; only one credit is available for property under the control of the partnership, but it can divide the credit equally between the two corporations).

treatment, and solid waste collection or disposal.<sup>219</sup> A city may also collect sewer rentals along with water bills.<sup>220</sup> Cities may collect fees for garbage collection and solid waste pickup in advance of performance of services, and may do so even though the resident charged is not using the services.<sup>221</sup> Liens for nonpayment thereof may be placed on the property served.<sup>222</sup>

The Iowa Code provision for free treatment of residents with tuberculosis has been interpreted by the Attorney General to mean that, if a patient receives a free treatment certificate, no lien can be placed on the patient's property, or on that of next of kin, for the cost of treatment.<sup>223</sup>

Until 1974 Iowa provided for old age assistance to elderly individuals and for suspension of their property taxes.<sup>224</sup> The aid was replaced by Federal Supplemental Security Income, but taxes continue to be suspended.<sup>225</sup> Counties have the same right to collect suspended taxes for old age recipients as before the change.<sup>226</sup> Various Code provisions permitting the county to file claims against estates of persons who receive care from the county have been modified to eliminate the county's lien and to subordinate these claims to other types of claims.<sup>227</sup>

An Attorney General opinion states that property taxes become delinquent ninety-two days after certification of the tax list and that county treasurers can begin to collect taxes immediately after the tax list is certified.<sup>228</sup> However, as lists may be certified on or before June 30th, and delinquency cannot occur until October 1st, it is possible for more than ninety-two days to occur between certification and the point of delinquency.<sup>229</sup>

219. City Government, S.F. 526, § 38, 1975 Iowa Acts ch. 203 (amending IOWA CODE § 384.84 (1975)).

220. Iowa Attorney General Opinion No. 75-5-3 (May 5, 1975).

221. *Id.* No. 75-7-20 (July 30, 1975).

222. *Id.*

223. 40 IOWA OP. ATT'Y GEN. 673 (1974), *construing* IOWA CODE § 254.8 (1973).

224. IOWA CODE § 427.9 (1973).

225. *Id.* (1975).

226. 40 IOWA OP. ATT'Y GEN. 690 (1974).

227. Liability For Institutional Care, H.F. 292, 1976 Iowa Acts ch. 1104. This Act affects claims under Iowa Code chs. 125, 222, 230, 252 (1975). The Board must find that the individual cared for is able to pay for institutional care, at the time care begins, before making a claim. It may review the situation from time to time, and if ability to pay arises later, may provide for the claim to begin at that time. *Id.* § 1. The claim will be one "of the sixth class", and is payable only to the extent that there is sufficient funds in the individual's estate after satisfying claims of the first five classes. *Id.* § 5.

Liens under § 230.25 are abolished effective January 1, 1977. *Id.* § 11. The Board is to review all pending cases, after July 1, 1976, to determine ability to pay. If it finds that ability is present the county attorney should be asked to enforce the lien and if action is begun before 1977 the lien may continue until the action is completed. *Id.* § 9. Claims which were filed in estates before the effective date of Chapter 1104, if not satisfied by that date, are subject to the limitations of the act. *Id.* § 16.

See Iowa Attorney General Opinion No. 76-8-11 (Aug. 30, 1976), stating that a proposed addition to the Department of Social Services foster care manual concerning liability of parents of mentally retarded children for their care when placed in foster homes was consistent with statutory limitations.

228. Iowa Attorney General Opinion No. 75-7-13 (July 16, 1975).

229. IOWA CODE §§ 443.4, 445.37 (1975).

The Legislature established an Iowa Housing Finance Authority, to assist in attaining adequate housing for members of apparently disadvantaged groups and to support the Iowa homesteading project intended to alleviate problems of slums and blighted areas and to rehabilitate dilapidated and deteriorating housing.<sup>230</sup> The Authority, or cities, counties, or their agencies acting under this statute, are given special preferences to acquire property at tax sales; taxes on the properties involved may be suspended or cancelled for appropriate periods; redemption rights from tax sales are changed; and minimum sale price provisions have been modified.<sup>231</sup>

The tax sale of property for delinquent property taxes discharges all tax liens on the property, including liens for suspended property taxes due and unpaid, even though the treasurer failed to refer to such suspended taxes in the notice of tax sale.<sup>232</sup> Accordingly, the purchaser is entitled to a treasurer's deed for the property.<sup>233</sup> If the treasurer gave no certificate of the amount of taxes due, he incurs no liability to the county or to the purchaser regarding these taxes.<sup>234</sup>

If the holder of a tax sale certificate executes an affidavit of service of notice of expiration of the period to redeem, the affidavit must state that the holder personally made service or that his attorney or agent did so at his direction.<sup>235</sup>

#### E. *Municipal Support of Industrial Projects*

Prior to a 1975 amendment to chapter 419, the Attorney General ruled that this chapter permitted financing of the construction of a discount department store at a shopping center,<sup>236</sup> but not construction of recreational facilities or centers.<sup>237</sup> As controversy over the first matter had earlier come to the Legislature's attention (retail competitors were objecting to this support for their rival), it amended the chapter to apply to projects involving commercial enterprises engaged in "storing, warehousing or distributing" products of agriculture, mining or industry, rather than engaged in "storing, warehousing, distributing or selling" such products.<sup>238</sup>

### VII. LICENSING AND REGISTRATION OF VEHICLES, AIRPLANES, AND VESSELS

The registration fee for airmen and aeronautics instructors was increased from \$1 to \$2, in 1975, but was dropped completely in 1976 and was replaced

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230. Iowa Housing Finance Authority, H.F. 823, § 2, 1975 Iowa Acts ch. 138.

231. *Id.* §§ 1-49.

232. 40 IOWA OP. ATT'Y GEN. 732 (1974).

233. *Id.*

234. *Id.*

235. *Id.* at 695.

236. Iowa Attorney General Opinion No. 75-6-1 (June 2, 1975).

237. *Id.* No. 75-6-9 (June 23, 1975).

238. City Government, S.F. 526, § 1, 1975 Iowa Acts ch. 203 (amending IOWA CODE § 419.1(2) (1975)).

with a provision for site approval and registration of airports, at a reasonable fee.<sup>239</sup> The provision that aircraft registration fees payable to Iowa are subject to credit for fees paid to another state was amended to add an exception for aircraft used in the application of herbicides and pesticides.<sup>240</sup> A similar exception was added to the section permitting refunds of fees where a plane is destroyed, junked or removed from Iowa.<sup>241</sup>

The provision requiring inspection of motor vehicles on transfer of ownership was amended to permit transfers without inspection if between spouses or, if pursuant to a decree of dissolution of marriage, between former spouses, or within one year after a previous inspection if between parent and child or between spouses.<sup>242</sup>

Iowa Code chapter 321E provides for trip permits for moving mobile homes and other oversized factory-built structures on public highways, and allows state or local authorities to waive maximum trip distances. The length and width limits were changed.<sup>243</sup>

The owner of a light delivery or panel truck or pickup who holds an amateur radio license may obtain special registration plates for the vehicle that bear the radio station's call letters (formerly only owners of passenger cars could do this).<sup>244</sup> A motor vehicle owner may obtain an individualized plate, which may include initials, letters, or combinations of numbers and letters requested by the owner. An additional fee is required, in each instance.<sup>245</sup>

Two Attorney General opinions dealt with registration of "gooseneck" trailers. Iowa Code section 321.123(5) (1975) provides that trucks and truck tractors are to be registered for the combined gross weight. However, trucks registered for six tons or less pulling trailers registered as required in that section are not subject to such gross weight registration.<sup>246</sup> One opinion states that "gooseneck" or "5th wheel" trailers are not trailers within that section, and so

239. Herbicides & Pesticides—Application by Aircraft, H.F. 105, § 1, 1975 Iowa Acts ch. 186 (amending Iowa CODE § 328.19(1) (1975)). Section 328.19 was qualified by new section 328.35 which listed exceptions to the registration requirements of Section 328.19. New section 328.35 also states that the minimum safety standards do not apply to registration or renewal of registration of airports owned by anyone other than a governmental subdivision and that there is no requirement for site approval for airports maintained solely for private use and not for hire. Airports & Aeronautics, S.F. 1278, § 11, 1976 Iowa Acts ch. 1175 (amending Iowa CODE § 328.35 (1975)).

240. Herbicides & Pesticides—Application By Aircraft, H.F. 105, § 2, 1975 Iowa Acts ch. 186 (amending Iowa CODE § 328.23 (1975)).

241. *Id.* § 3 (amending Iowa CODE § 328.24 (1975)).

242. Motor Vehicle Inspection, H.F. 432, § 1, 1975 Iowa Acts ch. 179 (amending Iowa CODE § 321.238 (1975)).

243. Mobile Homes Movement, H.F. 479, 1975 Iowa Acts ch. 185. The length limit was increased from eighty feet to eighty-five feet, but the maximum length for housing units was decreased from sixty-eight feet to 67½ feet, excluding hitch or overhang. *Id.* § 2. A single trip permit from a point of origin in Iowa or to a point of destination in Iowa of a unit over twelve feet five inches wide is authorized if the unit is not over fourteen feet five inches wide. *Id.* § 3.

244. Personalized Registration Plates, S.F. 13, § 1, 1975 Iowa Acts ch. 174 (amending Iowa CODE § 321.34 (1975)).

245. *Id.* § 2 (amending Iowa CODE ch. 321 (1975)).

246. Iowa CODE § 321.123(5) (1975).

must be registered for the combined gross weight of the trailer and the towing vehicle.<sup>247</sup> As this type of trailer is not designed for agricultural purposes, it is not within the "instrument of husbandry" exemption from gross weight licensing requirements when pulled behind a farmer's pickup.<sup>248</sup> The sixty foot length limit on combinations of vehicles used to transport other vehicles including self-propelled instruments of husbandry was amended to extend to those used to transport non self-propelled ones.<sup>249</sup>

A registration fee is no longer required for a travel trailer, if it is not used on the highways.<sup>250</sup> It can also be stored if not used for human habitation, and if so stored, it is not subject to the personal property tax on mobile homes.<sup>251</sup>

The fee for registering special trucks for farm use was revised.<sup>252</sup> The provision enabling many truck owners to pay registration fees in two installments per year was modified so that it does not apply to a commercial vehicle subject to registration with a base state other than Iowa.<sup>253</sup> Where owners of commercial vehicles which are subject to reciprocity taxation overpay the amount due, the Attorney General stated that Iowa need not refund the excess if caused by error of another state.<sup>254</sup> He further stated that an Iowa-based fleet could count as instate miles those miles generated in a state granting reciprocity but not those miles in a state which charges a pro rata fee.<sup>255</sup> One new law made a number of changes with regard to registration of motor vehicles and motorcycles.<sup>256</sup>

247. Iowa Attorney General Opinion No. 75-1-7 (Jan. 27, 1975).

248. *Id.* No. 75-2-8 (Feb. 18, 1975).

249. Vehicles & Operation Thereof, H.F. 1332, § 61, 1976 Iowa Acts ch. 1165 (amending IOWA CODE § 321.457 (1975)).

250. Travel Trailer Registration, H.F. 744, § 1, 1976 Iowa Acts ch. 1170 (amending IOWA CODE § 321.123(3) (1975)).

251. *Id.*

252. Vehicles & Operation Thereof, H.F. 1332, § 13, 1976 Iowa Acts ch. 1165 (amending IOWA CODE § 321.121 (1975)). This act changed the fee from \$100 for trucks weighing 8, 9, or 10 tons and \$150 for 11 or 12 ton trucks, to \$100 for an 8 ton truck and an additional \$15 per ton for heavier ones.

253. *Id.* § 16 (amending IOWA CODE § 321.134 (1975)).

254. Iowa Attorney General Opinion No. 76-2-8 (Feb. 6, 1976).

255. *Id.*

256. Vehicle Registration, H.F. 450, 1975 Iowa Acts ch. 171. Iowa Code § 321.24 formerly required the county treasurer to keep one copy of the receipt of motor vehicle registration. Now, the treasurer must maintain a record system that includes information presently on the receipt, which information must be accessible by registration number. Copies of the registration receipt are to be sent to the Department of Transportation, as that Department requires. The certificate of title is to show security interests (formerly, liens). *Id.* § 2. The treasurer now is authorized to require the registrant to provide bond if the treasurer is dissatisfied as to ownership or as to possible undisclosed security interest. *Id.* § 3.

Iowa Code § 321.31 as to files required to be kept by the Department of Transportation was stricken, and a provision for a state and county records system was added. *Id.* § 4.

Authority was added to Iowa Code § 321.42 to issue replacements for registration documents lost in the postal service, without charge. *Id.* § 7.

The fractional year automobile fee requirement in Iowa Code § 321.106 formerly provided that no fee was required for the year in which a new car was delivered if delivered in good faith during December. As amended, no fee for December is required for a vehicle on which there is no delinquency. *Id.* § 10.

Iowa Code § 321.117 was amended to increase the motorcycle registration fee from \$5 to \$10, or \$5 after five registrations. The hearse fee increased from \$30 to \$50. *Id.* § 11.

Registration fees for cars depend upon value and weights. Under Iowa Code §§



A provision for licensing "motorized bicycles" and their operators who are fourteen years of age or older was adopted.<sup>257</sup> The operator's license is required if the individual does not have a valid motor vehicle operator's or chauffeur's license.<sup>258</sup> A person fourteen years old may take a drivers' education course for this purpose but the course need not include highway driving experience.<sup>259</sup> Exemption from operator or chauffeur licensing requirements for persons operating vehicles while in military service was limited to occasions when they operate a military vehicle.<sup>260</sup> Where persons whose licenses are suspended request a hearing, the Department of Public Safety now may set a hearing thirty rather than twenty days after receipt of the request.<sup>261</sup>

Some trucks and trailers may now be licensed using three-year rather than one-year plates, for an additional fee with refund possibilities if the plates are not used for the full period.<sup>262</sup> The Department of Transportation may negotiate licensing apportionment agreements with interstate operators of commercial vehicles on either a vehicle basis or a dollar basis.<sup>263</sup> If the vehicle basis is used, enough vehicles must be registered that the total fee payments are not less than the amount based on the proportion of in-state fleet miles to total fleet miles that would apply if the total fleet were registered in Iowa.<sup>264</sup> Individual trip permits for up to seventy-two hours are allowed, with a fee of \$10, plus a \$1 issuance fee if the permit is issued by the owner or operator of a truck stop.<sup>265</sup>

Property tax relief provisions for mobile home owners who are totally disabled or over sixty-five were amended to permit a younger surviving spouse to claim the reduction; to revise the tax limit and reduction schedule; and to

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321.157 and 321.161, the Department of Transportation was to fix these, for new cars, on or before August 1, based on the original certificate furnished by the manufacturer. For 1975 and subsequent years the Department is to use the certificate from the manufacturer or importer, which is to be filed concurrently with the public announcement or prices or with notification of prices to the dealers, whichever comes first, and the August 1 date is eliminated. *Id.* §§ 12-13.

If a vehicle being transferred does not bear license plates designating either county of purchase or of transferee's residence, under section 321.34 as amended, the purchaser may now apply for new plates which so designate and surrender the old ones. The fee for this is \$5. *Id.* § 16.

Iowa Code § 321.454, dealing with length and outside width of vehicles, was amended to exclude from its application instances where hay, straw or stover is moved on an implement of husbandry. No permit is needed for this movement, but it would be needed if on any other vehicle. *Id.* § 17.

257. Vehicles & Operation Thereof, H.F. 1332, § 2, 1976 Iowa Acts ch. 1165 (amending Iowa Code ch. 321 (1975)). "Motorized bicycle" is a two-wheeled motor vehicle, with engine displacement not greater than fifty cubic centimeters and not capable of speed over twenty-five miles per hour on level ground unassisted by human power. *Id.* § 4 (amending Iowa Code § 321.1 (1975)). The license fee is five dollars. *Id.* § 28.

258. *Id.* § 2.

259. *Id.* § 20 (amending Iowa Code § 321.178 (1975)).

260. *Id.* § 17 (amending Iowa Code § 321.176(1) (1975)).

261. *Id.* § 33 (amending Iowa Code § 321.211 (1975)).

262. Trailer Registration, H.F. 724, §§ 2-4, 1975 Iowa Acts ch. 173 (amending Iowa Code §§ 321.39, .105, .126 (1975)).

263. *Id.* § 7 (amending Iowa Code § 326.6 (1975)).

264. *Id.*

265. *Id.* § 8 (amending Iowa Code § 326.23 (1975)).

change the dates for filing claims.<sup>266</sup> A requirement that manufacturers register the models of their mobile homes with the Department of Public Safety, and list retail prices, was repealed;<sup>267</sup> other means of establishing assessed value must be used.

Provisions for licensing vessels for use in Iowa waters were revised in a number of respects.<sup>268</sup>

### VIII. SPECIAL ASSESSMENTS

When motor fuel tax audits are conducted the state pays the auditor's salary.<sup>269</sup> The taxpayer pays the auditor's food, lodging and travel costs when records involved are located outside Iowa and, in some instances, when records are in the state.<sup>270</sup>

Special assessment procedure was altered to affect the time that assessments become a lien. After the appropriate body adopts the resolution of necessity, its clerk is to certify to the county auditor a copy of the resolution,

266. Mobile Home Tax Reduction, H.F. 1590, §§ 1-2, 1976 Iowa Acts ch. 1106 (amending Iowa CODE § 135D.22 (1975)). A surviving spouse who was at least fifty-five by the end of the base year (calendar year preceding the year the claim was filed) may obtain a reduction. The schedule of relief, depending on total income of claimant and spouse, is: under \$1,000, no tax; \$1,000-\$1,999.99, limit of  $\frac{1}{2}\%$ ; \$2,000-\$2,999.99,  $1\frac{1}{2}\%$ ; \$3,000-\$3,999.99,  $3\%$ ; \$4,000-\$4,999.99,  $4\frac{1}{2}\%$ ; \$5,000-\$5,999.99,  $5\frac{1}{2}\%$ ; \$6,000-\$6,999.99,  $6\frac{1}{2}\%$ ; \$7,000-\$7,999.99,  $7\%$ ; \$8,000-\$8,999.99,  $7\frac{1}{2}\%$ . A claim filed by February 1 may provide relief from both semiannual payments; if filed after February 1 and before August 1, it can apply only to the second payment. However, the county treasurer is to advise the Director of Revenue of the total allowed, by March 15, in order for the county to get reimbursement from the state comptroller. *Id.*

267. Mobile Home Registration, H.F. 1508, § 1, 1976 Iowa Acts ch. 1108 (repealing Iowa CODE §§ 135D.28-.32 (1975)).

268. Vessels, S.F. 511, 1975 Iowa Acts ch. 102 (amending Iowa CODE ch. 106 (1975)). The owner applying for registration must surrender the certificate of origin to the recorder. Nonpowered sailboats, canoes and commercial vessels may have the registration certificate kept on shore, per Conservation Commission rules. A variance for the location of the registration number is permitted for nonpowered boats. *Id.* § 2 (amending Iowa CODE § 106.5 (1975)). A process for biennial registration of vessels which have a valid marine document issued by the United States Bureau of Customs is established. The fee is \$25 plus a writing fee. The owner of a registered vessel which is placed in storage may notify the recorder of this, and apply for renewal when he wants to take it out of storage, but he gets no refund for the remaining portion of the period for which registered. *Id.* § 3. The exemption from registration for vessels licensed under a federally approved system of another state is reduced from ninety days to a maximum of sixty days, but is extended to cover public vessels of the United States or a state if used for enforcement, search and rescue or official research and studies, though not if used for recreational or commercial purposes. *Id.* § 4 (amending Iowa CODE § 106.6 (1975)). Exemptions are added for air mattresses, inner tubes, or other toy or beach type items used in recognized swimming areas (not to exceed 300 feet from shore); inflatable non-power or nonsail vessels seven feet or less in length; and conventional design canoes and kayak type vessels thirteen feet or less in length. *Id.* § 5. A certificate of origin is required upon the sale of a new vessel to a dealer, and a person other than a manufacturer who constructs a vessel or who uses unconventional devices as a vessel for navigation is to submit detailed specifications to the Commission, obtain a hull identification number, cause the number to be permanently affixed to a specified place on the vessel, and to execute a certificate of origin. *Id.* § 8.

269. Iowa Attorney General Opinion No. 76-6-12 (June 24, 1976).

270. *Id.* An audit under section 324.55 which generates a tax liability of over \$500 will result in shifting cost of in-state audit to the taxpayer. *Id.*; Iowa CODE § 324.55 (1975).

plat and assessment schedule.<sup>271</sup> Assessments become a lien from the date the certified copy is filed, rather than on the date the resolution is adopted.<sup>272</sup>

In determining the amount of a project to be financed by the use of bonds, the governing authority may include in the cost of the project such reserve funds as it deems advisable for the project including the issuance of revenue bonds and pledge orders.<sup>273</sup> Revenue bonds can now be issued to refund revenue bonds.<sup>274</sup> Any refunding bond may include an amount to cover interest already accrued on outstanding bonds plus interest that would have accrued absent refinancing.<sup>275</sup>

"Costs of improvement" for levee and drainage district financing was expanded to include normal costs, interest charges for the construction period and a reasonable period thereafter, and a default fund.<sup>276</sup> If a drainage district is partly inside corporate limits of a city located in a county whose population exceeds 200,000, the board of supervisors may use federal grants, revenue sharing money, or other funds not derived from local levies, to the extent it deems proper, to pay the cost of improvements in the district.<sup>277</sup> General obligation bonds may be issued to pay any part of the cost.<sup>278</sup>

A city has the power to require the owner of property abutting a street to maintain all property outside the lot and property lines and inside the curb lines.<sup>279</sup> If the owner fails to do so, the city may perform the required maintenance and assess the costs therefor to the owner.<sup>280</sup> The section of the Code dealing with this power was amended to provide that the city could not require removal of diseased trees or deadwood on the publicly owned property.<sup>281</sup>

Several limitations on general special assessment powers were removed. One was the requirement that a special assessment against a lot cannot exceed 110% of the estimated cost for the project as shown in the preliminary schedule.<sup>282</sup> Another was the limit of an assessment to twenty-five percent of the value of underground connection to private property for gas, water, sewers or

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271. Special Assessments, H.F. 1009, § 1, 1976 Iowa Acts ch. 1185 (amending Iowa CODE § 384.51 (1975)).

272. *Id.* § 2 (amending Iowa CODE § 384.65 (1975)). Certificates should be made to the auditor of each county in which the city involved is located. If a county collects taxes in two or more places, the certificates go to the auditor where the special assessments are collected. *Id.* § 1 (amending Iowa CODE § 384.51 (1975)).

273. City Bonds & Pledge Orders, S.F. 1325, § 1, 1976 Iowa Acts ch. 1186 (amending Iowa CODE § 384.82 (1975)).

274. *Id.*

275. *Id.*

276. Levee & Drainage Districts, S.F. 547, § 2, 1976 Iowa Acts ch. 1203 (amending Iowa CODE § 455.4 (1975)).

277. *Id.* § 1 (amending Iowa CODE ch. 455 (1975)).

278. *Id.*

279. Iowa CODE § 364.12(2)(c) (1975).

280. *Id.* § 364.12(3)(h).

281. City Code, H.F. 723, § 7, 1975 Iowa Acts ch. 197 (amending Iowa CODE § 364.12(2)(c) (1975)).

282. City Government, S.F. 526, § 34, 1975 Iowa Acts ch. 203 (amending Iowa CODE § 384.59(3) (1975)).

electricity.<sup>283</sup> In addition, the maximum interest rate permissible on bonds issued by a city in connection with special assessments was raised to seven percent.<sup>284</sup>

A county board of supervisors may assume and exercise the powers and duties of the governing bodies of some service districts where the body has insufficient members to perform its functions.<sup>285</sup> The board may establish some types of service districts in unincorporated areas of the county, on petition of the number of property owners required by statute.<sup>286</sup> Where a board authorizes establishment of secondary road districts covering several projects, it is to establish priorities for completion of projects.<sup>287</sup>

#### IX. CIGARETTES, BEER AND LIQUOR

The previous survey described five companion cases which were before a district court, dealing with the stamping of cigarette packages by retailers or distributors outside Iowa.<sup>288</sup> The cases remain pending. They may have been rendered moot, however, by a change in the law. This change provides that the Iowa holder of a permit to sell wholesale or retail cigarettes may have a place of business within or without Iowa.<sup>289</sup> Since the holder need not be a distributor in Iowa, it can stamp the packages outside Iowa. The Revenue Department may now inspect a permit holder's premises even if outside Iowa.<sup>290</sup> If inspection outside the state occurs, the permittee is to bear the additional costs of out-of-state travel; in the alternative it may assemble and transport all records required for inspection to the nearest practical and convenient geographic location in Iowa.<sup>291</sup>

Cigarette and little cigar tax stamps are now to be printed under the direction of the Director of the Department of General Services, rather than the Printing Board.<sup>292</sup> The Director of Revenue may determine the design, size, denomination, type and quantity of such stamps. Once printed, the stamps are to be under the control of the Director of Revenue rather than the Comptroller.<sup>293</sup>

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283. *Id.* § 35 (amending IOWA CODE § 384.62 (1975)).

284. *Id.* § 5 (amending IOWA CODE ch. 75 (1975)).

285. County Service Districts, S.F. 1244, § 1, 1976 Iowa Acts ch. 1177 (amending IOWA CODE § 332.3 (1975)).

286. *Id.* The service districts covered include: benefited water districts (ch. 357); rural water districts (ch. 357A); benefited fire districts (ch. 357B); sanitary districts (ch. 358); and drainage and levee districts (ch. 462). *Id.*

287. Secondary Road Construction Program, H.F. 739, § 1, 1976 Iowa Acts ch. 1166 (amending IOWA CODE § 311.7 (1975)).

288. See *Hayes Survey*, *supra* note 66, at 388-89.

289. Cigarette Permits, H.F. 725, § 2, 1975 Iowa Acts ch. 96 (amending IOWA CODE § 98.10 (1975)).

290. *Id.* § 5 (amending IOWA CODE § 98.19(1) (1975)).

291. *Id.* § 6. The amendment defines additional costs as those over costs of similar inspection at the geographic point in Iowa closest to the out-of-state inspection site. *Id.*

292. Cigarette Stamps, H.F. 899, § 1, 1975 Iowa Acts ch. 97 (amending IOWA CODE § 98.7 (1975)).

293. *Id.*

When the Department sells confiscated unstamped cigarettes, it no longer is required to stamp them before sale.<sup>294</sup> Sale is to be to the highest bidder among licensed Iowa distributors, after written notice.<sup>295</sup> If there is no bidder, or if the Director thinks the quantity is insufficient or sale is impractical for any other reason, these cigarettes are to be destroyed or disposed of as the Director determines.<sup>296</sup>

The law prohibiting signs advertising beer on the outside of a licensee's premises was changed to provide that the prohibition did not apply to the inside of fences or similar enclosures which wholly or partially surround licensed premises.<sup>297</sup>

A class "C" beer permit holder may give beer away for consumption on his premises without violating the permit provisions.<sup>298</sup> Private citizens or organizations which have no beer permit may give beer away at functions where admission fees are charged or donations requested.<sup>299</sup> However, bona fide conventions or meetings cannot legally bring their own liquor onto premises of a class "B" beer permit holder.<sup>300</sup>

A class "A" permittee owning and operating a brewery located in Iowa which manufactures less than 50,000 barrels of beer annually is entitled to a rebate of fifty percent of the barrel tax paid.<sup>301</sup> It was ruled that this applies only to beer sold to Iowa retailers, and not to that sold to buyers outside Iowa or to other class "A" permittees.<sup>302</sup>

The manufacturer of native wines must get a manufacturer's license in order to sell wine at wholesale to the Iowa Beer and Liquor Control Department, or to customers outside Iowa.<sup>303</sup> No license is required if he sells at retail on the premises where the wine is manufactured.<sup>304</sup>

The Attorney General also ruled that the Army and Air Force Exchange Service is not required to get an Iowa class "C" beer permit before purchasing beer from class "A" wholesalers for resale at the Camp Dodge PX.<sup>305</sup> The wholesaler may also sell to the Exchange Service without requiring cash payment, despite statutory prohibitions against sale on credit.<sup>306</sup>

Although a city council has the power to approve or disapprove a renewal

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294. Seized Cigarettes, S.F. 153, § 1, 1975 Iowa Acts ch. 98 (amending Iowa CODE § 98.32(5) (1975)).

295. *Id.*

296. *Id.*

297. Beer Signs In Ballparks, H.F. 43, § 1, 1975 Iowa Acts ch. 117 (amending Iowa CODE § 123.51(3) (1975)).

298. 40 IOWA OP. ATT'Y GEN. 728 (1974).

299. *Id.*

300. *Id.* at 752.

301. IOWA CODE § 123.146 (1975).

302. Iowa Attorney General Opinion No. 75-2-17 (Feb. 28, 1975).

303. *Id.* No. 75-3-14 (Mar. 24, 1975).

304. *Id.*

305. *Id.* No. 75-6-8 (June 20, 1975).

306. *Id.*



application for a class "C" liquor license,<sup>307</sup> it may not refer the matter to a referendum of local voters.<sup>308</sup>

#### X. OCCUPATIONAL AND PROFESSIONAL LICENSES; HUNTING AND FISHING LICENSES

Licensed game breeders had been permitted to sell pheasants for food in specified circumstances.<sup>309</sup> They may now sell "game birds and game animals."<sup>310</sup> Accounting offices must now be registered annually, rather than biannually, and permit fees are on an annual basis.<sup>311</sup> Licensing and registration of child day care centers was made mandatory rather than voluntary.<sup>312</sup> The Code chapter on licensing and registration of health care facilities was completely rewritten,<sup>313</sup> as were the provisions concerning barbers and cosmetologists.<sup>314</sup> Substantial changes were also made in those provisions regarding pesticide applicators.<sup>315</sup> The chapter relating to licensing real estate brokers and salesmen was amended to permit licensing of real estate apprentice salesmen.<sup>316</sup> Occupations or professions newly subject to regulation included speech pathologists and audiologists<sup>317</sup> and egg handlers.<sup>318</sup> A commercial breeder who has

307. IOWA CODE §§ 123.32, .37 (1975).

308. Iowa Attorney General Opinion No. 76-1-26 (Jan. 21, 1976).

309. IOWA CODE § 109.61 (1975).

310. Sale of Game For Food, H.F. 262, § 1, 1975 Iowa Acts ch. 105 (amending IOWA CODE § 109.61 (1975)).

311. Accountancy, S.F. 364, § 3, 1975 Iowa Acts ch. 116 (amending IOWA CODE § 116.19 (1975)).

312. Child Day Care Facilities, S.F. 491, § 2, 1975 Iowa Acts ch. 144 (amending IOWA CODE § 237A.2 (1975)).

313. See Health Care Facilities, S.F. 525, 1975 Iowa Acts ch. 119 (amending IOWA CODE ch. 135C (1975)).

314. See Cosmetologists & Barbers, S.F. 1141, 1976 Iowa Acts ch. 1118.

315. Pesticides Application, H.F. 1509, 1976 Iowa Acts ch. 1128. A person who has attended information courses of instruction approved by the secretary of agriculture need not take the written examination for certification or be reexamined. *Id.* § 2 (amending IOWA CODE § 206.5 (1975)). Commercial applicator licensees must have training programs for their applicators, but extension short courses or trade seminars may be part of the program. *Id.* § 3 (amending IOWA CODE § 206.6(4) (1975)). A dealer's license is not required of an applicator who sells pesticides as part of an application service nor of a government agency providing pesticides for its own programs. *Id.* § 4 (amending IOWA CODE § 206.8 (1975)). Exemption from the requirement to have a commercial license for a person using hand-powered equipment to apply pesticides to lawns, was expanded to those using self-propelled equipment for such purposes if the equipment was not over ½ horsepower. *Id.* § 5 (amending IOWA CODE § 206.18(4) (1975)).

316. Real Estate Apprentice Salesmen, S.F. 53, 1976 Iowa Acts ch. 1101 (amending IOWA CODE ch. 117 (1975)). Section 117.27 was amended to provide that any real estate license renewal fee need not be on an annual basis. *Id.* § 13. Section 117.28 was amended to permit the licensing board to set expiration dates for broker's and salesmen's licenses. *Id.* § 14.

317. Speech Pathologists & Audiologists, S.F. 476, 1976 Iowa Acts ch. 1114. Certification is required, for a fee determined as for other health professionals per IOWA CODE § 147.80 (1975). *Id.* § 15 (amending IOWA CODE § 147.80 (1975)). A temporary clinical license may be issued to anyone who meets all licensing requirements except for nine months clinical experience, valid for one year and renewable once, with a fee for each issue to cover administrative costs. *Id.* § 5. A nonresident may get a temporary permit for up to three months. *Id.* § 6.

318. Eggs, H.F. 1490, 1976 Iowa Acts ch. 1126. The act establishes requirements for licensing egg handlers and candlers and graders. The handlers' license fee varies from \$12.50 per year to \$50, depending on the volume of eggs handled in April of the preceding

a valid federal license and a certificate of registration from the Iowa secretary of agriculture is not required to obtain an Iowa commercial breeder's license.<sup>319</sup>

The Board of Medical Examiners now has authority to issue a license to engage in the practice of medicine or surgery to a person licensed elsewhere who has been invited to serve on the academic staff of a medical school in Iowa.<sup>320</sup> The license can be for more than one year, but with an annual renewal fee in an amount sufficient to cover the costs of issue.<sup>321</sup> The license expires automatically when the licensee discontinues serving on the academic staff.<sup>322</sup> It may be cancelled without a hearing, but notice of that action is required.<sup>323</sup> A chiropractor may perform physical therapy without a separate license therefor, but only to the extent that he is engaged in the proper scope of his profession.<sup>324</sup> A temporary licensing procedure for some registered nurses was authorized.<sup>325</sup>

A question arose as to the applicability of the licensing provisions for dealers, brokers or operators of slaughtering houses, where the same company operates several plants in the state. The Attorney General at first ruled that each plant must be separately licensed, as he interpreted the facts submitted to say that each plant was a separate, independent "business unit," maintaining separate records and operating independently of the others.<sup>326</sup> There were three plants, each operated by the parent or a different subsidiary. On reconsideration, the Attorney General ruled that a corporation operating one or more slaughter houses in Iowa could obtain a single license covering all plants, by filing proof of financial responsibility by one of the three methods set out in the statute.<sup>327</sup> If it elects to provide financial statements, net worth should be not less than five times the amount of bond or deposit otherwise required, based on the corporation's average daily value of purchases at all of its plants.<sup>328</sup>

year. *Id.* § 3. If no eggs were handled that month, the Department of Agriculture may use an estimated volume, and can revise the fee after three months of operation. *Id.* A producer who sells eggs from his own flocks direct to handlers or to consumers need not obtain a candlers or graders license; a hatchery must have an egg handlers license if it purchase eggs not used for hatchery purposes. *Id.* § 4. The candling and grading license fee is \$3 per person; a temporary fourteen day permit pending granting of a license is available, where the employer is responsible for the permittee's work. *Id.* § 5. Egg handler's licenses are required for each location at which eggs are candled and graded. *Id.* § 6. All eggs offered for sale by an egg handler to a retailer, establishment or consumer are to be candled and graded. *Id.* § 7. If offered for sale to an establishment, to be no less than USDA consumer grade B. *Id.* § 8.

319. Iowa Attorney General Opinion No. 76-2-26 (Feb. 25, 1976).

320. Special Medical & Surgery License, H.F. 459, 1975 Iowa Acts ch. 123 (amending Iowa CODE ch. 148 (1975)).

321. *Id.*

322. *Id.*

323. *Id.*

324. Iowa Attorney General Opinion No. 75-3-1 (Mar. 4, 1975).

325. Nurses, H.F. 1503, 1976 Iowa Acts ch. 1115. A temporary license may be issued to an applicant who applies after the usual annual time for issuance of such licenses, to be valid until the next time for issuing regular licenses. The applicant must be licensed in another jurisdiction, or must be under the supervision of a registered nurse. *Id.* § 9.

326. Iowa Attorney General Opinion No. 75-1-8 (Jan. 29, 1975).

327. *Id.* No. 75-3-8 (Mar. 18, 1975).

328. *Id.*

Where a corporation operating several plants does not operate through subsidiaries, it is a single Iowa unit for purposes of licensing and filing proof of financial responsibility.<sup>329</sup> Another ruling stated that a nonpacker buyer of livestock who did not come within the statutory definition of "dealer" or "broker" of Iowa Code chapter 172A need not be licensed under that chapter.<sup>330</sup>

One Attorney General opinion covered several aspects of the new law permitting gambling licenses. The holder of a class "A," "B," "C" or "D" liquor control license or of a class "B" beer permit who also has a license under section 8 of the Act to allow social gambling on his premises, may also be licensed as a qualified organization under section 9, which permits him to conduct games of skill and games of chance and raffles, including bingo.<sup>331</sup> However, social gambling between individuals should not occur at the same time as the games conducted by the permittee.<sup>332</sup> Both the social gambling licensee and the qualified organization licensee may own any lawful gambling game, cards or paraphernalia therefor, but the social gambling licensee may not actually conduct or operate a gambling game or profit from it other than as a player.<sup>333</sup> Social gambling licenses should not be issued to organizations whose members are charged dues, because the statute provides that no cover charge, participation charge, entrance fee or other charge may be exacted for admission to the premises where gambling occurs, whether or not the gambling is on the premises of a liquor licensee or beer permittee.<sup>334</sup> The act later was amended to permit social gambling on premises for which no gambling license had been obtained, if there is no cover charge for gambling and the only fee is regular dues for membership.<sup>335</sup>

Another opinion was that a private organization could conduct a "foosball" tournament for profit at the state fair, and award prizes, without obtaining a gambling license, as long as the tournament was not held at an "amusement concession" within the meaning of the Act.<sup>336</sup>

It is now possible for Iowa residents who are sixty-five or older to obtain a lifetime fishing, hunting or combination license.<sup>327</sup> The fee is \$6 for either fishing or hunting or \$8 for the combination.<sup>328</sup> The annual license fee for such residents was reduced from \$3 for either hunting or fishing to \$1.25, and from \$5 for a combination to \$2.50. The normal December 31st expiration date does not apply to a lifetime license.<sup>329</sup> The provisions for trapping licenses for non-

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329. *Id.*

330. *Id.* No. 76-6-10 (June 29, 1976).

331. *Id.* No. 75-8-1 (Aug. 7, 1975).

332. *Id.*

333. *Id.*

334. *Id.*

335. Social Gambling, S.F. 1102, 1976 Iowa Acts ch. 1090 (amending IOWA CODE §§ 99B.8, .11 (1975)).

336. Iowa Attorney General Opinion No. 75-8-7 (July 20, 1975).

337. See Fish & Game Licenses, H.F. 48, § 1, 1975 Iowa Acts ch. 112 (amending IOWA CODE § 110.1 (1975)).

338. *Id.*

339. *Id.* § 2.

residents or aliens were deleted, fees for licenses already issued for 1975 were to be returned, and such licenses can be issued to nonresidents only if they are residents of states which sell similar licenses to residents of Iowa.<sup>340</sup> The exemption from licensing requirements for military personnel, which had applied only to personnel during wartime, was changed to exempt anyone on active duty at any time while on authorized leave.<sup>341</sup>

The requirement that the issue of migratory waterfowl stamps be tied to the application for hunting licenses was eliminated.<sup>342</sup> The privileges granted by the stamps now expire on the last day of February following issue.<sup>343</sup> A penalty for violation of the stamp requirement was added, making the violation a misdemeanor subject to a fine of between \$10 and \$100 or up to thirty days in jail.<sup>344</sup>

#### XI. OTHER TAXES, LICENSES AND FEES

A number of fees relating to the operation of the judicial system were increased. The fee for an expert witness, taxable as part of court costs, may now be determined by the court, but is not to exceed \$150 per day.<sup>345</sup> The mileage fees for grand and petit jurors and witnesses were increased from ten cents to fifteen cents per mile, and the compensation of nonexpert witnesses was changed from \$3 per day to \$10 per full day or \$5 for less than a full day.<sup>346</sup> Sheriff's fees were changed in many respects.<sup>347</sup>

Brand recording fees had been \$15; the fee for sale or assignment of a brand had been \$5; and the renewal fee every fifth year thereafter had been

340. Trapping Licenses, S.F. 14, 1975 Iowa Acts ch. 111 (amending IOWA CODE ch. 110 (1975)).

341. Hunting & Fishing By Military Personnel, H.F. 59, 1976 Iowa Acts ch. 1098 (amending IOWA CODE § 110.17 (1975)).

342. Migratory Waterfowl Stamps, S.F. 371, § 3, 1975 Iowa Acts ch. 113 (amending IOWA CODE § 110B.3 (1975)).

343. *Id.*

344. *Id.* § 4 (amending IOWA CODE ch. 110B (1975)).

345. Expert Witness Fees, H.F. 18, § 1, 1975 Iowa Acts ch. 248 (amending IOWA CODE § 622.72 (1975)).

346. Fees of Jurors, S.F. 184, §§ 1-2, 1975 Iowa Acts ch. 246 (amending IOWA CODE §§ 607.5, 622.69 (1975)).

When a municipality brings a criminal action under one of its ordinances and the action is dismissed or the defendant is acquitted, the city pays witness fees, mileage and court costs, but the county pays the sheriff's fee for serving subpoenas. Iowa Attorney General Opinion No. 76-8-5 (Aug. 6, 1976).

347. See Sheriff's Fees, H.F. 891, 1975 Iowa Acts ch. 101. The fees for service of notices are increased from 75¢ for the first person served to \$3, and from 50¢ for each additional person to \$3, except it is \$1 for an additional person in the same household. For serving a subpoena, the fees are increased from 50¢ to \$3; for summoning a jury in a condemnation case, from \$7.50 to \$30 per day; for serving execution, attachment, order for delivery of personal property, injunction, court order, and return thereof, from \$3 to \$5; for certificate or deed for lands sold on execution, or bill of sale for personal property sold, from \$1.50 to \$5; for time used in inventory of personal property attached or levied upon, from \$1 to \$3 per hour; for attending a sale of property, from \$1 to \$3 per day; for conveying a person to a state, county or private institution by court or commission order, from 40¢ per hour to \$3 per hour. The minimum mileage expense for each service of original notice or subpoena is \$1. On the other hand, the fee for a copy of any paper required by law was decreased from 25¢ per 100 words or fraction to 25¢. *Id.* § 4 (amending IOWA CODE § 337.11 (1975)).

\$5.<sup>348</sup> All were changed to an amount established by the proper administrative agency based on the administrative costs of the brand program.<sup>349</sup>

Because of the increased demands on the unemployment compensation benefits funds, an emergency surtax of 0.7% on all contributing employers was levied, for the calendar year 1976 only, and taxable wages for that year were increased from \$4,200 to \$6,000.<sup>350</sup> For 1977, the wage base change was retained, and the surcharge was 0.9%.<sup>351</sup> Employment securities laws were changed in other respects which affected entitlement to benefits.<sup>352</sup>

Cities may enter into agreements concerning mass transit systems, and bonds may be issued and paid for in full from transit revenues.<sup>353</sup> Cities may also issue revenue bonds carrying 7½% interest, except bonds issued in connection with industrial projects.<sup>354</sup> Where public projects are jointly financed by several government agencies, if all the agencies are cities, counties or sanitary districts or combinations thereof, the project itself is a corporation and a political subdivision with normal powers, and it can use revenue bond financing.<sup>355</sup> Limitations on the amount of its capital and surplus that a state bank can invest in revenue bonds of one municipality were revised.<sup>356</sup>

A municipal utility which is not supported by taxes or by debt payable from taxes may use the calendar year in its accounting system rather than the July-June fiscal year.<sup>357</sup> For this purpose, payments to a utility for public use of its service (such as water for fire protection or electricity for street lighting) is not deemed to be support by taxes.<sup>358</sup>

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348. See IOWA CODE §§ 187.4, .8, .13 (1975).

349. Soil Conservation & Agriculture Department, H.F. 780, §§ 3-5, 1975 Iowa Acts ch. 35 (amending IOWA CODE §§ 187.4, .8, .13 (1975)).

350. Employment Security, H.F. 916, §§ 2-3, 1975 Iowa Acts ch. 93 (amending IOWA CODE §§ 96.7, .19 (1975)).

351. Job Service Department, H.F. 1593, § 16, 1976 Iowa Acts ch. 1068 (amending IOWA CODE § 96.7 (1975)). If total trust funds available to pay benefits become less than 20% of the total benefits paid in the previous calendar year of highest benefit payments, during 1977, and remain at that level for more than two weeks, an additional ¼% is to be added for each employer with a contribution rate, and to be collected on 1977 calendar year taxable wages. Should the deficit occur in the third or fourth quarter of the year, the amount due with respect to wages of earlier quarters is to be paid with the payment for the payment for the quarter in which the additional tax becomes due. *Id.*

352. *Id.* §§ 7-8 (amending IOWA CODE § 96.5 (1975)). An employee who quits without good cause attributable to the employer may be disqualified from receiving unemployment benefits. One exception arises when the employee quits to take other employment and becomes unemployed after some service in the new position. Formerly, for the exception to apply with respect to wages earned in the earlier employment, the employee had to receive on the new job an amount at least nine times his weekly benefit; the revision now requires not less than six consecutive weeks of employment on the new job. *Id.* § 8.

Vacation pay in excess of one week's benefits received during unemployment is deemed not to be wages and does not reduce the unemployment benefits available. *Id.* § 9.

353. City Government, S.F. 526, § 3, 1975 Iowa Acts ch. 203 (amending IOWA CODE ch. 28E (1975)).

354. *Id.* § 5 (amending IOWA CODE ch. 75 (1975)).

355. Public Works Joint Financing, S.F. 1321, §§ 1-2, 1976 Iowa Acts ch. 1069 (amending IOWA CODE §§ 28F.1, .3 (1975)).

356. State Bank Investments, S.F. 357, 1976 Iowa Acts ch. 1215 (amending IOWA CODE § 524.901 (1975)).

357. City Government, S.F. 526, § 29, 1975 Iowa Acts ch. 203 (amending IOWA CODE § 380.10 (1975)).

358. *Id.*



Establishment of a corn promotion fund was authorized, if approved by a referendum among corn producers.<sup>359</sup> The act would permit a maximum assessment of 1/10 cent per bushel on corn produced in Iowa and sold to the first purchaser, to provide funds for promotion of corn.<sup>360</sup> It is understood that the first referendum rejected establishment of such a fund.

Uniform removal provisions for advertising devices erected or maintained along highways in violation of state law were established.<sup>361</sup> Such a device was declared to be a public nuisance; removal or repair can be ordered on notice; and if no action to remove or repair occurs within thirty days the device is deemed forfeited to the state.<sup>362</sup> Costs to remove can be assessed against the owner.<sup>363</sup> Any recovered costs and any salvage value are to go to the highway beautification fund.<sup>364</sup> Fees for posting signs on the special information panels near interstate exits were increased.<sup>365</sup>

Custodians of public records which may be examined and copied by members of the public were directed to provide suitable places to do so; if impracticable to provide such a place in the office, the person seeking to copy is to pay the cost of providing a place to copy.<sup>366</sup> If the custodian has access to copying equipment, he may provide a reasonable number of copies of any public record in his office for a fee not in excess of the cost of the service.<sup>367</sup>

The Attorney General ruled that the minimum court costs which may be assessed on guilty pleas entered in magistrate courts to nonindictable misdemeanors is \$8.50, in most cases.<sup>368</sup> The exceptions are certain traffic violations where the statute specifies court costs of \$5, and "admitted" overtime parking meter violations for which no court costs are authorized.<sup>369</sup>

Supervisors were informed that they have the power to establish a user rate for landfills as well as to levy a tax to support the operation.<sup>370</sup>

## XII. FILING RETURNS AND OTHER TAX DOCUMENTS

Occasionally controversy between a taxpayer and a tax agency involves the question of whether a return or other document was timely filed by the taxpayer. The 1976 Legislature has provided guidance toward solution of some of the problems that may arise. If a report, claim, return, statement or payment which

359. Corn Promotion Board, S.F. 449, § 3, 1976 Iowa Acts ch. 1124.

360. *Id.* § 21.

361. See Highway Signs, S.F. 1265, 1976 Iowa Acts ch. 1162 (amending Iowa CODE chs. 306B, 306C (1975)).

362. *Id.* § 1 (amending Iowa CODE § 306B.5 (1975)).

363. *Id.*

364. *Id.*

365. *Id.* § 3 (amending Iowa CODE § 306C.11(5) (1975)).

366. Iowa CODE § 68A.3 (1975).

367. Public Records Copied, S.F. 244, § 1, 1976 Iowa Acts ch. 1079 (amending Iowa CODE § 68A.3 (1975)).

368. Iowa Attorney General Opinion No. 75-3-17 (Mar. 31, 1975).

369. *Id.*

370. *Id.* No. 76-7-31 (July 27, 1976).

was required or authorized to be filed or made to the state or to any political subdivision was sent by the taxpayer through United States mails, and if the material either was not received or was received but its time of mailing was unclear because the cancellation was illegible, incorrect or omitted, the material shall be deemed filed or mailed and received on the date the sender deposited it in the mails.<sup>371</sup> The sender must establish by "competent evidence" that it was so deposited on or before the date for filing or paying.<sup>372</sup>

"Competent evidence" is evidence, in addition to testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature as to reasonably support the determination that the item was mailed on the date specified.<sup>373</sup> Where sent by United States mail, registered or certified, the record authenticated by the post office is competent evidence that the item was delivered to the state or political subdivision to which addressed, and the date of registration or certification is deemed the postmarked date.<sup>374</sup>

In cases of nonreceipt, the sender must file a duplicate within thirty days of receiving written notice of nonreceipt. The duplicate can be considered as filed or mailed on the date the original was submitted.<sup>375</sup>

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371. Evidence Of Reports & Payments To The State Or Divisions, H.F. 1408, § 1, 1976 Iowa Acts ch. 1237 (amending Iowa Code ch. 622 (1975)).

372. *Id.*

373. *Id.*

374. *Id.*

375. *Id.*