surer of the original judgment debtor. The trial court sustained the defendant's motion to dismiss on the grounds that the Iowa direct action statute was plaintiff's exclusive remedy and plaintiff did not sue the defendants within the 180 days required by that statute.[82]

The Iowa supreme court reversed. In doing so, it distinguished between indemnity policies and liability policies. In the former, the insurer promises to make payment after the insured has paid the injured third person. In the latter the insurer promises to make payment when the insured becomes legally liable to its insured upon a judgment being rendered in favor of a third person and against the insured. Since this is a debt owed to the insured, a cause of action against the insurer arises and a third person (judgment creditor) is entitled to execute upon this cause of action pursuant to Iowa Code § 626.21.[83]

The Iowa supreme court went on to hold that the enactment of the direct action statute was not intended "to cut down the rights of third persons," nor was it enacted "because third persons were without a remedy in the liability insurance situation, for they could reach the insurer by use of the procedural tools already enumerated [Iowa Code § 626.21]."[84] Rather, it was enacted to provide relief to the third person in the indemnity insurance situation, and thus it was not an exclusive remedy in an instance, such as the *Steffens* case, where the policy was clearly of the liability type.

The 63rd General Assembly made a significant change in rule 123 of the Iowa Rules of Civil Procedure relating to interrogatories. Previously the party to whom the interrogatories were directed was required to file answers or objections within seven days after they were filed.[85] Theoretically, failure to comply is grounds for dismissal.[86] As a result of the 1970 amendment, the time within which to answer has been enlarged to fourteen days, "unless the court for good cause, but not ex parte, shall enlarge the time."[87]

IV. Conclusion

Procedure exists primarily to implement substantive rights. It should give all the parties to a dispute the feeling that they are being fairly dealt with, and that each is given a reasonable chance to present his side before an impartial and not too inconvenient forum. Procedure must serve the cause of administrative efficiency and yield a final and lasting adjudication so that people may enjoy the optimum of security and repose after their respective victories or losses. Finally, lawyers have a duty, within the boundaries of professional courtesy, to insure that those objectives are attained through strict compliance with procedural mandates.

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82 *Id.* at 175.

83 "Judgments, money, bank bills, and other things in action may be levied upon, and sold or appropriated thereunder . . . ." Iowa Code § 626.21 (1971).

84 Steffens v. American Standard Ins. Co., 181 N.W.2d 174, 177 (Iowa 1971).

85 Iowa R. Civ. P. 123 (1966).

86 Iowa R. Civ. P. 216.

87 Iowa R. Civ. P. 123.

IOWA TAX LAW AND PROCEDURE—1971

Edward R. Hayes†

One major concern of the 1971 Iowa legislature was the financing of the several public school systems of the state. This resulted in a so-called "property-tax freeze," an attempt to prescribe a ceiling for increases in school costs, combined with an increase in income tax rates to finance additional state aid to schools and other state expenditures, and the authorization of a local income tax for some school financing. Many other changes in tax laws were adopted, among the more important being significant changes in inheritance tax procedures. The supreme court decided four tax cases in the period covered by this Survey (October 1970 through September 1971); several others are pending. A number of opinions from the Attorney General round out current developments in this area.

I. Preparation and Confidentiality of Returns

Concern that information gleaned while preparing tax returns for others might improperly be disclosed led to subjecting that conduct to criminal penalties. Although the chapter heading in the session laws is "Income Tax Returns Prepared—Confidential," the statute is not limited to income tax returns; it penalizes disclosure of information obtained while in the business of preparing or assisting in preparing "a tax return" of another.[1] A "return" includes "any federal, state, or local form required to be filled out, by or for a taxpayer, incident to the collection or refund of a tax."[2] The act defines "in the business of preparing income tax returns" and also "assisting in preparing of returns"; both include advertising or publicizing, preparing or assisting in preparing, or in doing so for compensation.[3] Disclosure may be made without violating the act if authorized by law or by court order, if necessary to the preparation of the return, or if authorized by the taxpayer in writing in a separate document.[4]

The confidentiality provisions of the Motor Fuel Tax[5] were amended to enlarge the category of state officers to whom disclosure of information in returns may be made by Revenue Department personnel. Added were legislators, legislative committees, and representatives of the state having responsibilities in collecting the tax involved or in proceedings brought under the Fuel Tax Act.[6]

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1 Ch. 214 [1971] Iowa Acts 431.

2 *Id.* § 1(2).

3 *Id.* § 3.

4 *Id.* § 2. The penalty for violation may be a fine of not more than $10,000, or imprisonment in the county jail for not more than one year, or both. *Id.* § 4.

5 Iowa Code § 324.62 (1971).

6 Ch. 192 [1971] Iowa Acts 406.

II. Income Taxation

For tax years beginning on or after January 1, 1971, both individual and corporate rates were increased.[7] The corporate tax is increased 2% in each bracket;[8] there is no increase for individuals in the two lowest brackets, but increases for others range from 3/4% to 1-3/4%.[9] The formula to be used in determining Iowa taxable income for corporations operating in several states, which has been a single-factor formula based on sales,[10] was also revised. It formerly applied to goods sold and delivered in Iowa other than for transportation outside Iowa; the words "sold and" have been deleted.[11]

A portion of the income tax paid by taxpayers of each school district is now distributed to the "basic school district tax equalization fund."[12] In order that each district receive its proper credit, each return must identify the district in which the taxpayer resides. Recognizing that school costs may be overly burdensome if financed primarily by property taxes and the equalization fund, and other methods of financing may become necessary, a school district income tax was authorized.[13] This is a surtax, on the state tax, for the district, to be levied on individuals residing in the district but collected by the Department of Revenue with the state return. The surtax may be levied when a district wants to exceed its "maximum district cost" otherwise allowable, if the state's School Budget Review Committee approves and if a proposed budget and surtax rate are approved by the voters of the district. The surtax, once voted, may be continued for up to five years without further election, but may be reduced or discontinued by the school board during that period. Residence in the district is determined by the taxpayer's residence on the last day of his tax year.[14]

In order to simplify the preparation of income tax returns, Iowa some years ago adopted the use of computations based on federal adjusted gross income and itemized deductions.[15] Several years ago the first deviation from this concept occurred, with the allowance of a deduction (of up to $100 per taxpayer) for political contributions.[16] This year a second deviation was introduced, as part of a revision of adoption laws. Now a taxpayer may also deduct the amount by which his expenses in adopting a child exceed 3% of his "net in-

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[7] Ch. 165 [1971] Iowa Acts 352.

[8] *Id.* § 36, amending Iowa Code § 422.33 (1971).

[9] Ch. 165 § 35 [1971] Iowa Acts 352, amending Iowa Code § 422.5 (1971). The highest rate, on taxable income over $9,000, is 7%.

[10] Iowa Code § 422.33(1)(b) (1971).

[11] Ch. 165 § 37 [1971] Iowa Acts 364.

[12] Iowa Code ch. 442 (1971).

[13] Ch. 165 §§ 15-20 [1971] Iowa Acts 358-9.

[14] *Id.* § 15(1)(b). A tax service summary of this incorrectly describes the individuals subject to tax as those residing in the district on December 31 or the last day of the *district's* fiscal year. CCH Iowa Tax Rep., No. 38, p. 2 (June 30, 1971).

[15] Iowa Code §§ 422.4, .7, .9, .32, .35 (1971). *See* Miller, *The New Iowa Income Tax Law*, 41 Iowa L. Rev. 85 (1955); Hayes, *The New Iowa Income Tax Regulations*, 5 Drake L. Rev. 15 (1956).

[16] Iowa Code § 422.9(2)(c) (1971).

come".[17] Allowable expenses include the medical and hospital expenses of the natural mother incident to birth if taxpayer paid them, "welfare agency fees, legal fees, and all other fees and costs" relating to adoption of a child placed by a child-placing agency licensed under Iowa law.[18] The section raises several questions. Can any of the costs be deducted if placement was not effected through an Iowa-licensed agency? Does use of an agency licensed by another state make any difference? While a reasonable grammatical construction of the section could subject only the part referring to "all other fees and costs" to the Iowa-licensed-agency limit, a more restrictive reading is not foreclosed. If only the latter portion is so limited, can such fees and costs of a non-Iowa agency qualify as "welfare agency fees"? If not, why make such a distinction?

Adoption of "Subchapter S" treatment by the federal government for income of electing corporations[19] poses additional problems for a state incorporating federal income and deduction concepts into its own income tax system. While some states chose to ignore this special method of handling income of such corporations, Iowa, until 1971, consistently seems to have followed the federal pattern—corporation reports but pays no tax; shareholder reports his portion of both distributed and undistributed corporate income. But this has caused at least two problems which surfaced for decision this year, and the answers given have raised questions for future exploration.

If the Iowa Subchapter S corporation is now free of state corporate tax, what happens when the income is distributed to a shareholder who is not a resident of Iowa? Normally, as the recipient of a dividend from an Iowa corporation, he would have no Iowa taxable income; if he were a partner in an Iowa partnership, his share of its income would be taxable by Iowa. In *Isaacson v. Iowa State Tax Commission*,[20] in which all the corporation's income was distributed and all the shareholders were nonresidents, the Iowa court ruled that they must report this income to Iowa and pay tax on it. The court commented: "It cannot be presumed our legislature intended to allow nonresident shareholders of Iowa corporations to elect not to be taxed at all."[21]

The other problem involved the Iowa shareholder of a non-Iowa Subchapter S corporation, operating in a state which does not follow the federal scheme and which requires the corporation to pay state income tax on its income. This problem was posed in the context of a question to the Attorney General whether the Iowa taxpayer could take a credit on his return for his portion of the tax paid by the corporation to the state where it operated.[22] The opinion interprets the tax credit provision as applicable only to the person who *paid* the tax

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17 Ch. 259 § 9 [1971] IOWA ACTS 524.

18 IOWA CODE ch. 238 (1971) licenses such agencies.

19 INT. REV. CODE OF 1954 § 1371-78. *See* E. HAYES, IOWA PRACTICE—CORPORATION LAW AND PRACTICE §§ 1031-55 (1969).

20 183 N.W.2d 693 (Iowa 1971).

21 *Id.* at 695.

22 The credit is allowable if within the terms of IOWA CODE § 422.8(1) (1971).

to the other state, and holds that this is the corporation.[23] Unfortunately, it adds, the Iowa shareholder must pay tax to Iowa "on earnings *distributed*" (italics added) to the shareholder during the shareholder's taxable year, to be treated as dividends taxable by Iowa "only in the year of receipt". This statement seems inconsistent with the non-dividend treatment which the court utilized in the *Isaacson* case. It raises serious questions about the present treatment of Subchapter S income. Does it mean that the Iowa shareholder should not be taxed on undistributed taxable income (which he is taxed on at the federal level)? Or that he isn't so taxed only where the income is from a non-Iowa Subchapter S corporation? Why doesn't the federal concept follow through, regardless? In view of *Isaacson*, what happens to *undistributed* corporate income of Iowa Subchapter S corporations when the shareholder is not a resident of Iowa? If the income distributed is a *dividend*, shouldn't it qualify for the $100 dividend exclusion? The language in the opinion is unfortunate, if Iowa is to continue applying the federal approach to Subchapter S income, and was unnecessary to the opinion. A better reason for not allowing the tax credit is that, in computing Subchapter S income for federal purposes, the state tax was an allowable deduction, and the Iowa resident already has received all the advantage of this state corporate tax that he should be entitled to.

Iowa law permits the statutory period of limitations on collection of taxes or refunds to be extended by "waiver" agreement between taxpayer and the Department of Revenue.[24] Although the applicable section says "in consideration of such agreement, interest due in excess of thirty-six months on either a tax deficiency or tax refund shall be waived," a taxpayer who executed such an agreement and who was found to have overpaid his tax has claimed and was awarded by the trial court interest for the entire period. This matter is on appeal.[25]

A Revenue Department letter indicates that supplemental unemployment benefits paid after December 31, 1970, are subject to withholding for state income tax to the extent includable in the employee's gross income.[26]

The Tax Reform Act of 1969[27] requires that non-profit corporations and charitable trusts and foundations which qualify for exemption of their income from income tax be subject to certain limits on their powers with respect to self-dealing, excess business holdings, investments and expenditures. Iowa law was changed to automatically impose these limits on the powers of such organizations, unless their members or creators reject those limits.[28]

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23 1971 Op. Iowa Att'y Gen. No. 71-4-1.
24 Iowa Code § 422.25(7) (1971).
25 Northern Natural Gas Corp. v. Forst, Eq. No. 72,811 (Polk Co. 1971).
26 Dept. of Revenue Letter, Feb. 11, 1971, CCH Iowa Tax Rep. ¶ 200-075 (1971).
27 83 Stat. 487 (1969).
28 Ch. 241 [1971] Iowa Acts 493 (nonprofit corporations); Ch. 269 [1971] Iowa Acts 533 (trust and foundations).

III. Sales, Use and Similar Taxes

Retailers are required to report their sales tax collections to the state on a quarterly basis. Those who collect more than $500 in any month in a quarter have been required to deposit their collections with the state promptly after that month ends. Many collecting lesser amounts could also make monthly deposits, if they chose.[29] The applicable provisions were changed, initially, in 1971 to require deposits from all collecting more than $50 in a month; a subsequent revision permitted those collecting more than $50 but not more than $500 to deposit either the amount collected or an amount not less than 30% of the preceeding quarter's collection.[30] Another change makes clear that payments by a delinquent taxpayer will be applied first to penalty and interest, rather than to the tax due.[31]

The method for taxing sales and resales involving traded-in items has been changed. Formerly, in sales other than motor vehicles the tax was based on price less trade-in allowance; in motor vehicle sales the sales price determined the tax, except that the sales price of a used car could be reduced for this purpose by any trade-in allowance made on its acquisition by the vendor.[32] As a result of the change, tax in all cases is to be based on the sales price less any allowance made to the buyer for items traded in by him as part of that sale (in effect, on the "cash difference"). Sales of used motor vehicles are now subject to use tax just as are sales of new ones, rather than to sales tax as they formerly were.[33]

A new sales and use tax exemption has been provided for tangible personal property used or to be used as railroad rolling stock or as materials or parts thereof.[34] A proposal to repeal the present use tax exemption for property used in interstate transportation or interstate commerce[35] (which has as yet not been adopted) was ruled as not of itself violative of the commerce clause of the federal Constitution.[36] (Presumably the use tax would continue to be subject to federal constitutional limitations even if this section were deleted.) Purchases made using "food stamps" furnished by the federal government are fully taxable, despite the federal financing.[37] An Illinois ruling to the contrary[38] was held to be distinguishable, as involving a tax imposed on the retailer who will be paid directly by the federal government, rather than imposed on the consumer, as in Iowa. A nonprofit organization which adminis-

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29 Iowa Code § 422.52(1) (1971).
30 Ch. 210 [1971] Iowa Acts 424, as revised by Ch. 211 [1971] Iowa Acts 425. Both permit optional deposits when the monthly collection is over $25 and "less than $50"; neither provide for the treatment of collections of exactly $50.
31 Ch. 212 [1971] Iowa Acts 426.
32 Iowa Code §§ 422.42(6)(b), .43, .45(4) (1971).
33 Ch. 213 [1971] Iowa Acts 427.
34 Ch. 165 [1971] Iowa Acts 352.
35 Iowa Code § 423.4(2) (1971).
36 1971 Op. Iowa Att'y Gen. No. 71-3-4.
37 1971 Op. Iowa Att'y Gen. No. 71-6-3.
38 Adm. Rul. 200-554, Ill. Dept. Rev. (Sept. 9, 1970).

tered batteries of tests to and provided questionnaires for high school students, which are used in obtaining their admission to colleges, claimed its purchases were exempt from sales and use tax on the theory it was an educational institution, but the court held it did not fit the category.[39]

A special excise tax on the sale of soybeans was enacted, the revenue to be used for promotion of soybean marketing. Approval by referendum of producers is required before the tax can be imposed.[40]

IV. Inheritance Taxes

A major revision of inheritance tax procedures adopted in 1971[41] should simplify obtaining tax clearances, and should also reduce costs of compliance.

One major area of simplification involves appraisal of the property in the estate. Now, ordinarily appraisal may be required only by the Department of Revenue—interested parties may obtain appraisal when seeking to remove an inheritance tax lien. This should reduce the frequency and thus the costs of appraisal.[42] Appraisers' compensation will now be controlled by the Probate Code.[43] The time for filing objections to appraisal has been increased from 20 to 45 days.[44] The procedure for judicial relief from appraisement, including use of court orders finding nonliability for tax, has been discontinued.[45]

The lien for inheritance tax, which applies automatically without any filing thereof, at one time was unlimited but recently has been subjected to limits in cases of estates of decedents dying before July 4, 1951.[46] Now, except for estates with deferred interests,[47] the lien will extend for ten years when an estate is probated or twenty years if not probated.[48] However, the Department of Revenue may release the lien at any time by filing one of three documents with the appropriate clerk of court: (1) receipt for full payment of tax; (2) certificate of nonliability (on all property reported); (3) release or waiver of lien as to all or a specific part of decedent's property. Furthermore, if property subject to the lien is sold by personal representatives pursuant to a testamentary direction or power, or by court order, the lien is divested from the property sold and the personal representative becomes liable for the tax to the extent of the proceeds.[49] The necessary court order can now be obtained without giving

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[39] American College Testing Program, Inc. v. Forst, 182 N.W.2d 826 (Iowa 1970).
[40] Ch. 143 [1971] Iowa Acts 297.
[41] Ch. 218 [1971] Iowa Acts 434.
[42] *Id.* §§ 4, 6-8, 13, amending Iowa Code §§ 450.27, .39, .45, .47, and repealing §§ 450.23, .25, .26, .40-.43.
[43] Ch. 218 [1971] Iowa Acts 434, repealing Iowa Code §§ 450.25-.26 (1971), leaving Iowa Code § 633.21 (1971) as the applicable section.
[44] Ch. 218 § 5 [1971] Iowa Acts 434, amending Iowa Code § 450.31 (1971).
[45] Ch. 218 § 13 [1971] Iowa Acts 434, repealing Iowa Code § 450.40-.43 (1971).
[46] Iowa Code § 450.7 (1971).
[47] *See Id.* §§ 450.44-.50, concerning deferred estates, and § 450.52, concerning removal of liens in connection therewith.
[48] Ch. 218 § 1 [1971] Iowa Acts 434, amending Iowa Code § 450.7 (1971).
[49] If, despite the lien, the proceeds are commingled with other property, scattered, or otherwise unavailable to the state for the payment of the tax, any beneficiary who

notice to the Department.[50]

A procedure to determine tax due without administration of the estate had been available on an optional basis.[51] This procedure must now be used for any estate involving interests in realty, where no regular probate proceedings are had.[52] A nonresident could be an administrator or executor only after giving a bond.[53] The bond requirement has now been eliminated.[54] The inventory or report which must be filed need no longer be verified, if it is "affirmed under penalty of perjury."[55]

A credit against tax has been available with respect to property received by the decedent from another who had died within two years of decedent's death.[56] This provision was changed to limit the credit to tax imposed by Iowa on the other's property, and only with respect to property held by the decedent which he acquired from the other's estate or which was identifiable as exchanged for such property.[57]

Banks, savings and loan associations and similar institutions which have securities, insurance policies and other assets of a decedent in their safekeeping may be responsible for the inheritance tax due thereon if these are improperly released without provision for payment of the tax.[58] Now the restriction on release has been modified, to permit transfer to a personal representative without concern by the institution for payment of the tax—but the Department of Revenue must first be given notice of the proposed transfer and have an opportunity to examine the contents of the safety deposit box.[59]

The Code chapter on group life insurance was amended to authorize the insured to assign his interests in a policy; the amendment states it is to be declaratory of existing law rather than a modification of it.[60] This permits the insured to divest himself of incidents of ownership, so as to remove the property from his taxable estate for federal estate tax purposes[61] and also for Iowa estate tax.[62]

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received the proceeds and the personal representative would incur liability for the tax. IOWA CODE § 450.6 (1971).

50 Ch. 218 § 13 [1971] IOWA ACTS 434, repealing IOWA CODE § 450.41 (1971), which required consent of the department in relief from appraisement proceedings.

51 IOWA CODE § 450.22 (1971).

52 Ch. 218 § 3 [1971] IOWA ACTS 434. This would require action in joint tenancy situations, if no probate is had. Section 12 amends IOWA CODE § 633.481 (1971) to require the clerk to issue a certificate to the auditor concerning each parcel of real estate involved in such proceedings.

53 IOWA CODE § 450.23 (1971).

54 Ch. 218 § 13 [1971] IOWA ACTS 434.

55 *Id.* § 11, amending IOWA CODE § 633.361 (1971).

56 IOWA CODE § 450.10(6) (1971).

57 Ch. 218 § 2 [1971] IOWA ACTS 434.

58 IOWA CODE § 450.86 (1971).

59 Ch. 218 § 10 [1971] IOWA ACTS 434.

60 Ch. 243 [1971] IOWA ACTS 495.

61 INT. REV. CODE OF 1954 § 2042.

62 IOWA CODE ch. 451 (1971), which imposes no tax unless the amount due the state under the inheritance tax is less than the estate tax credit allowable under INT. REV. CODE OF 1954 § 2011. As the proceeds are payable to a named beneficiary, they have not been subjected to Iowa inheritance tax.

Several cases are pending before the supreme court, two of which were mentioned in last year's Survey as being before the district courts.[63] The department prevailed at the trial level in both of these cases, but was unsuccessful in two other cases described hereafter. In one, the department contends that granting a $15,000 widow's allowance was an abuse of the district court's discretion,[64] where decedent had left $30,000 in assets owned outright plus $80,000 owned jointly with his spouse.[65] In the other, the probate court allowed as a deduction from the gross estate abstracting fees, costs of advertising property for sale, and several other items of administration expense not enumerated in the statute as allowable deductions.[66] The department contends that the statute is an exemption provision which should be strictly construed, so that items not enumerated in it should be nondeductible.[67]

A question was raised about the rights of heirs of a predeceased spouse to money from an estate turned over to the state under the escheat provisions of the Probate Code.[68] It was ruled that the heirs could be paid the money if their claims were properly authenticated, and if their claims were based on inheritance, the payment would be subject to inheritance tax.[69]

V. Property Taxes

A. *Tax Levies*

While cities and towns have long been limited as to the maximum property tax that can be levied for most purposes,[70] school districts have not had such limits. The prospect of further increases in taxes to support schoool systems caused the 1971 legislature to adopt a "property tax freeze" for school purposes.[71] As a result, except for special education expenditures, a district's certification of the amount to be raised by property taxes for its 1971-72 fiscal year general fund budget is to be based on what it received for 1970-71, unless the district gets permission from the state School Budget Review Committee to levy more. Permission is to be based on extraordinary and unusual circum-

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[63] Estate of Ruth Lincoln, Probate No. 10671-32-21 (Poweshiek County, filed Sept. 9, 1970), and Estate of Cecil A. Noe, No. 11901 (Benton County, Nov. 23, 1970), described in Hayes, *Recent Developments in Iowa Tax Law and Procedure—1970*, 20 Drake L. Rev. 626, 631 (1970).

[64] Iowa Code § 633.374 (1971). "The court shall, upon application, set off and order paid to the surviving spouse . . . sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent."

[65] Estate of Andrew deVries, Probate No. 9583 (Sioux County).

[66] Iowa Code § 450.12 (1971).

[67] Estate of John A. Waddington, No. 2791 (Franklin County).

[68] Iowa Code §§ 633.543-.546 (1971).

[69] 1971 Op. Iowa Att'y Gen. No. 71-2-21.

[70] Iowa Code § 404.2 (1971) limits the taxes that may be levied in any year to support the general, street, public safety, sanitation, municipal enterprises, recreation and utilities funds to a maximum of 30 mills on the dollar of assessed value of property within the municipality.

[71] Ch. 72 [1971] Iowa Acts 88.

stances.[72] For the next two fiscal years county boards of education are to certify amounts to be raised by property taxes for general fund budgets that increase no more than 1 1/2% over those for the fiscal year preceding the certification, again excepting special education.[73] Increases for existing special education programs cannot exceed 5.3% per pupil in such programs in the preceding year, although additional money may be certified for new programs under special circumstances.[74]

A portion of the additional financing necessary for school districts has been obtained by allocation to the districts of some of the state's income tax revenue.[75] Now, 40% of this revenue from each district is to go into the "basic school district tax equalization fund," but the allocation rules for the fund are changed.[76] Each district will get the same amount as it received in fiscal 1970-71; excess funds may be allocated by the School Budget Review Committee to districts whose 1971 fall enrollment exceeds 1970 fall enrollment by over 5%, on the basis of need and increase in number of pupils; and funds not allocated revert at the end of the period to the general fund of the state.

Another act provided for a school foundation program for state aid to schools, under which each district levies a 20-mill foundation property tax for the school general fund—the balance of the aid to come from other sources. This act also provides by formula for a maximum general fund budget and additional school district property tax; and a maximum millage per district to be determined per formula by the state comptroller.[77]

The allocation of the mobile home tax (applicable when the home is used as a residence), which formerly was 75% to the school fund of the district where the home was located and 25% as if real property tax, was changed to 100% as if real property tax.[78]

The maximum tax levy for county hospitals in counties of 225,000 or more population (now only Polk County) was increased from 4 1/2 to 5 mills.[79]

Trustees of fire districts were advised that they could not levy an emergency tax in order to accumulate funds for future purchases of fire equipment.[80]

Questions about the proper use of moneys acquired by levies for the schoolhouse fund resulted in an opinion that this fund could not be used to construct a school bus garage or to pay interest on stamped warrants. It could be used to improve existing buildings, to buy mobile classrooms, to revamp playgrounds,

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72 *Id.* § 1.
73 *Id.* § 3.
74 *Id.*
75 IOWA CODE ch. 442 (1971).
76 Ch. 72 § 1 [1971] IOWA ACTS 88.
77 Ch. 165 [1971] IOWA ACTS 352.
78 Ch. 134 [1971] IOWA ACTS 289.
79 Ch. 201 [1971] IOWA ACTS 412.
80 1971 OP. IOWA ATT'Y GEN. No. 71-2-30, construing IOWA CODE § 24.6 (1971).

to buy real estate for school use, to build a stadium, or to pay architects' fees in connection with alteration of an auditorium.[81]

B. *Tax Assessments*

Major changes in assessment standards to be applied by assessors, and in the basis of judicial review of assessors' valuations, were made in 1967 and were further revised in 1969. Two cases involving the 1968 tax year and the 1967 changes came to the supreme court. In both, several witnesses testified that the actual value as determined by the assessor exceeded the fair market value of the property assessed. The assessor testified he followed a guideline booklet from the Department of Revenue, using replacement cost less 17%. In one case the assessor's value had been affirmed by both the board of review and the district court; in the other the court made reductions in the value but had not reduced it to the value asserted by the owner's witnesses.

Prior to 1967, market value was but one of the factors to be considered in determining actual value, and the burden of proof was on a complainant attacking a valuation as excessive, inadequate or inequitable.[82] As a result, the assessors' values were presumed to be correct and complainant, to succeed, had to show them to be grossly excessive, a product of the assessor's will rather than judgment.[83] After the 1967 changes, actual value cannot exceed fair market value, and while the complainant has the same burden of proof, if competent evidence is offered by two disinterested witnesses that the property's market value is less than that determined by the assessor, "the burden of proof, thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed."[84] This language, according to the court, means that the test courts should use is whether the assessor applied the correct statutory standard; there is no longer a presumption of correctness;[85] and as two disinterested witnesses had testified as to most of the property involved in both cases, the assessor had the burden of proof which his evidence did not meet.[86] (Two

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[81] 1971 OP. IOWA ATT'Y GEN. No. 71-5-11, construing IOWA CODE § 278.1(7) (1971).

[82] IOWA CODE § 444.21 (1966).

[83] The latest decision to this effect was Markwardt v. County Board of Review, 174 N.W.2d 396, 401 (Iowa 1970); *see,* Hayes, *Recent Developments in Iowa Tax Law and Procedure—1970,* 20 DRAKE L. REV. 626, 633-34 (1971).

[84] IOWA CODE § 441.21 (1971).

[85] This presumption was eliminated by IOWA CODE § 441.39 (1971).

[86] Tiffany v. County Board of Review, 188 N.W.2d 343 (Iowa 1971); Juhl v. Greene County Board of Review, 188 N.W.2d 351 (Iowa 1971). In *Tiffany* the assessor's value as to four tracts of farmland and three items of farm machinery was reduced; his value as to one tract of farmland was sustained where the only witness testifying as to its value was the owner; and his value of one item of farm machinery was sustained where the taxpayer claimed that the machine really belonged to and should have been listed to taxpayer's son, but he had given the assessor no documentation in support of this claim. *Juhl* involved the valuation of a grain elevator which had been sold on contract near the valuation date for $35,600, and which the taxpayer's witnesses said was worth $35,000. The assessor's valuation had been $75,000 for the previous year; he reduced it $10,000 for 1968; the trial court reduced it to $45,600; and the supreme court to $35,600.

judges, concurring, argued that the change merely requires the assessor to go forward with evidence while the ultimate burden remains on the complainant, but that the assessor's evidence was insufficient even under that approach.)[87] The 1969 changes should not alter this result.

The value of interests of members of rural electric transmission cooperatives has been treated as real estate for many years, and has been assessed as part of the real estate served by the transmission lines.[88] This is changed.[89] Now, if lines and facilities operate at 34,500 or more volts, they are valued and assessed as any other transmission lines.[90] Lines operating at a lesser voltage are "distribution lines", to be valued at 25% of original cost and taxed as other electric lines. Those parts of these lines within a city or town are to be assessed in the same manner as those of privately operated public utilities.[91]

The assessor will now be required to notify a property owner of the assessed value of his property, and to deliver to him the duplicate assessment roll, only if the value has been increased or decreased or if the owner in writing has requested notice or delivery.[92]

Telegraph and telephone companies have been assessed by dividing the actual value of their properties by the number of miles of line in the state (as determined by the director of revenue); the director advises each county of the proportion that may be assessed by the county, based on miles of line in the county and the "per mile" valuation.[93] What happens when transmission is by microwave relay stations? The Attorney General ruled that for the purposes of the chapter the distance between relay stations is a "line".[94] The same opinion says that underground cables buried parallel to a pole system, and two or more aerial cables strung on the same system, constitute a single "line".

C. *Tax Exemption*

Only minor changes in property tax exemption laws were enacted. A 75 year old exemption from property tax for "private or professional libraries to the taxable value of" $300 was repealed.[95] The recently adopted additional homestead credit for persons over 65 or disabled[96] was expanded slightly, to permit the claimant to qualify if his income (plus his spouse's) does not exceed

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87 The *Tiffany* concurring opinion, 188 N.W.2d at 350, and the *Juhl* concurring opinion, 188 N.W.2d at 353, are by Justice Stuart with Justice Mason joining. Justice Reynoldson did not participate in the decision.

88 IOWA CODE § 437.14 (1971).

89 Ch. 216 [1971] IOWA ACTS 432.

90 IOWA CODE ch. 437 (1971).

91 *Id.* § 437.13.

92 Ch. 217 [1971] IOWA ACTS 433.

93 IOWA CODE ch. 433 (1971).

94 1971 OP. IOWA ATT'Y GEN. No. 71-3-5.

95 IOWA CODE § 427.1(15) (1971), repealed by Ch. 215 [1971] IOWA ACTS 432.

96 IOWA CODE § 425.1 (1971). *See,* Hayes, *Recent Developments in Iowa Tax Law and Procedure—1970,* 20 DRAKE L. REV. 626, 636 (1971).

$4,000 rather than $3,500.[97] Qualification by persons over 65 for the lower tax rate on mobile homes is easier to accomplish; only an affidavit as to age and income must be filed, rather than birth records and copies of income tax returns.[98] Iowa has several interstate toll bridges owned by cities which have been paid for and which continue to charge tolls—the proceeds being used for municipal purposes. To blunt attempts to make those bridges toll-free, the owning city is now permitted (but not required) to subject the bridge to assessment and taxation.[99]

A city or town, which had power to purchase property for park use, now has power to lease it for such use, and apparently to hold the property so leased exempt from taxation.[100] An Attorney General opinion states that where property is leased to an institution that could be exempt if owned by the institution, it will not be if the lessor is a private individual.[101] The opinion does not refer to the new park-leasing statute, and the language of that statute could be read to reach a conclusion contra to that in the opinion.

Three opinions demonstrate the difference in wording of the exemptions for state-owned and for municipally-owned property. City-owned property which is leased to a private business enterprise and from which the city derives income is not exempt.[102] But property conveyed to the state is exempt from tax even though the grantor reserved a 50-year use, operated a golf course and club house on it and had a federal liquor permit for that location.[103] The third opinion says that exemption is available for past, present or future taxes, as to property conveyed to the state or to a county conservation board, even though the seller reserved a life estate and the purchase was after the levy date.[104] As county property is subject to the same "exemption" limits as city property, the latter opinion is questionable where the board acquired the property unless the board is considered to be a state agency rather than a county agency. The thesis of the opinion that the property cannot be taken to satisfy back tax claims seems reasonable; the opinion recognizes that taxes levied at the time the property is condemned can be satisfied from the condemnation award.

After the decision in *South Iowa Methodist Homes, Inc. v. Board of Review*,[105] that a church-related retirement home qualified for property tax ex-

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97 Ch. 165 § 39 [1971] IOWA ACTS 365. A county board of supervisors has no authority to allow this additional credit to those who meet the age (or disability) and income tests, but who failed to file for it by July 1. 1971 OP. IOWA ATT'Y GEN. No. 71-4-4.

98 Ch. 134 § 2 [1971] IOWA ACTS 134.

99 Ch. 165 § 46 [1971] IOWA ACTS 352.

100 Ch. 207 [1971] IOWA ACTS 420, amending IOWA CODE §§ 370.7, .11 (1971).

101 1971 OP. IOWA ATT'Y GEN. No. 71-8-15.

102 1971 OP. IOWA ATT'Y GEN. No. 71-2-6, construing IOWA CODE § 427.1(2) (1971) (exempt while devoted to public use and not held for pecuniary profit).

103 1971 OP. IOWA ATT'Y GEN. No. 71-2-19, construing IOWA CODE § 427.1(1) (1971).

104 1970 OP. IOWA ATT'Y GEN. No. 70-12-1.

105 173 N.W.2d 526 (Iowa 1970), discussed in Hayes, *Recent Developments in Iowa Tax Law and Procedure—1970*, 20 DRAKE L. REV. 626, 636 (1971).

emption, the Attorney General ruled that senior citizens' homes could so qualify, when their property was used for such appropriate nonprofit objectives as care of needy persons or of those with low or moderate incomes—whether it is so used is a question of fact initially to be determined by the local assessor.[106]

If government-owned unplatted lands which are within the boundaries of a school district have been removed from taxation for school purposes, the owning government may be required to reimburse the district for some of the taxes thereby lost.[107] This rule does not apply where the government involved is a municipal corporation located in whole or in part inside the school district.[108] The manner in which the reimbusement is to be computed is based on a formula which, an opinion said, is not so vaguely stated as to render computation impossible.[109]

D. *Tax Sales, Tax Collections, and Tax Liens*

As noted earlier, the provisions relating to inheritance tax lien have been changed.[110] The only other statutory change in this area involves the tax on mobile homes.[111] The county treasurer must now publish a notice to owners of these homes, between 10 and 30 days before each semi-annual tax becomes delinquent. The notice, to be in a newspaper of general circulation in the county, should state the date the tax becomes delinquent and the penalty becomes applicable.[112] An Attorney General opinion states that failure to pay the tax can result in fine or imprisonment.[113] The owner of a mobile home must register with the county treasurer the address, township and school district of the location where the home is parked; failure to do so subjects the owner to a fine of from $100 to $1000 or imprisonment up to six months, or both.[114] There is no statement as to how soon after the home is parked the registration must be made. Whether a trailer home is classed as a mobile home which must comply with Code chapter 135D, or as a travel trailer which need not so comply, is determined by another chapter of the Code; revisions of that chapter are described in a later section of this article.[115] Enforcement of the registration provisions of chapter 135D had been the responsibility of the Department of Public Safety;[116] this responsibility was transferred to the sheriff of the county where the home is parked.[117]

Two Attorney General opinions were written on the power of boards of supervisors to compromise delinquent taxes. One stated the power was avail-

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106 1971 Op. Iowa Att'y Gen. No. 71-3-6.
107 Iowa Code ch. 284 (1971).
108 1971 Op. Iowa Att'y Gen. No. 71-4-9, construing Iowa Code § 284.1 (1971).
109 1971 Op. Iowa Att'y Gen. No. 71-8-5, construing Iowa Code § 284.2 (1971).
110 *See* text supported by notes 46-50, *supra.*
111 Iowa Code § 135D.24 (1971).
112 Ch. 133 § 1 [1971] Iowa Acts 288.
113 1971 Op. Iowa Att'y Gen. No. 71-4-12.
114 Ch. 133 § 1 [1971] Iowa Acts 288.
115 *See* text supported by notes 126-27, *infra.*
116 Iowa Code § 135D.24 (1971).
117 Ch. 133 § 2 [1971] Iowa Acts 288.

able when the situation was within Code §§ 427.10, 445.16, 445.19 or 633.475 "as interpreted by the Attorney General."[118] The other says delinquent taxes on lands offered for sale for unpaid special assessments (under Code § 445.16) may be compromised, but that existing drainage or levee district assessments may not be reclassified retrospectively under § 445.72.[119]

E. *Moneys and Credits*

The five-mill "moneys and credits" tax on loan agencies[120] was extended to apply to each dollar of legal and special reserves of a credit union, and the division of the revenue from this tax between city, county and school district was changed to substitute the state for the school district.[121]

VI. Motor Vehicles, Airplanes, Boats, Licenses and Fuel Therefor

A number of changes with respect to taxes and fees in this area were adopted, most of them minor in nature. Applications for registration of motor vehicles must now include the type of fuel used.[122] Annual validation stickers may be used on old license plates, rather than new plates each year, at the state's option.[123] Operators' and chauffeurs' licenses of persons going into military service for some time have not expired until six months after the person was honorably discharged from service;[124] that statute was revised to allow six months after initial separation from active duty and to delete the requirement for honorable discharge.[125]

The annual fee for travel trailers was increased, the method for computation redefined, and the definition of travel trailer changed.[126] The period of occupation for human habitation of a trailer in one location, that changed the trailer to a "mobile home", was redefined.[127]

Fees for obtaining certificates of title of vehicles, for transferring certificates, for noting liens on certificates, for duplicate registration and for special registrations and plates were increased, and except for a portion retained by the county treasurer are to go to the state's general fund.[128] The same statute provided for mailing of license plates to applicants who pay a mailing

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118 1971 Op. Iowa Att'y Gen. No. 71-2-14.
119 1971 Op. Iowa Att'y Gen. No. 71-2-34.
120 Iowa Code § 430A.3 (1971).
121 Ch. 165 §§ 32, 34 [1971] Iowa Acts 352.
122 Ch. 175 [1971] Iowa Acts 383.
123 Ch. 177 [1971] Iowa Acts 389.
124 Iowa Code § 321.198 (1971).
125 Ch. 180 [1971] Iowa Acts 392.
126 Ch. 174 [1971] Iowa Acts 380, amending Iowa Code §§ 321.1(68), .123 (1971). The first section had defined a travel trailer as being not more than eight feet wide, 24 feet long or 4,500 pounds weight; the new definition elminates the weight standard and permits a maximum length of 32 feet.
127 Ch. 174 [1971] Iowa Acts 380, amending Iowa Code § 321.1(68) (1971), changing the period to 90 consecutive days in one location, rather than 90 days in any 12-month period in one location.
128 Ch. 176 [1971] Iowa Acts 383.

fee, for affidavits as to sale or transfer when vehicles not acquired for resale are transferred and certificates must be transferred, and for prompt delivery to the county treasurer for noting of security interests when a creditor gets the certificate to have the interest noted. This latter provision, designed to protect other creditors, makes the claimant's interest "void and unenforcible" if he fails to deliver the certificate to the treasurer within thirty days, and requires his forfeiture to the state of any fee he collected from the debtor to have the interest noted.[129] One other provision changed the manner for noting federal tax liens on motor vehicles,[130] but this change has already been ruled to be inconsistent with federal law, and invalid.[131]

After 1971, official motor vehicle inspection stations are to be operated in Iowa; vehicles are to be inspected on first registration Iowa, on sale at retail, or—if a peace officer directs—after being involved in an accident. The fees for inspection are to be set by the Commissioner of Public Safety. No vehicle can be sold, other than to a dealer, unless the owner has a valid certificate of inspection.[132]

The enlargement of the confidentiality limitations in the Fuel Tax Act has already been noted.[133] In addition, the handling of overpayments is changed—formerly these were available only as a credit against future tax liability (with limited exceptions).[134] Now, if the excess is more than $10, a refund may be available. Also, monthly reporting of operations and fuel consumption in Iowa is required.[135] One interstate trucker, who apparently had not been making adequate reports and found his Fuel Tax permit revoked, sought temporary injunction against revocation. The trial court denied his petition; as he could bring up to twenty gallons of fuel in each truck into the state without permit, and could buy more here if needed, no irreparable injury was shown.[136]

Attorney General rulings indicate that a "special truck" for use by the owner in his farming operation cannot be used for his non-farm use,[137] that registration and operation of snowmobiles is controlled by Code chapter 321G and rules promulgated thereunder;[138] and that a truck hauling merchandise in intrastate travel in Iowa must be registered in Iowa even though it is also used in interstate travel in Iowa.[139] Also, the primary road fund may be used to pay salaries of the Iowa Highway Safety Patrol,[140] despite constitutional lim-

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129 *Id.* § 10, amending IOWA CODE § 321.50 (1971).
130 Ch. 176 § 15 [1971] IOWA ACTS 383, amending IOWA CODE § 335.18 (1971).
131 1971 OP. IOWA ATT'Y GEN. No. 71-7-13.
132 Ch. 183 [1971] IOWA ACTS 395.
133 *See* text supported by note 5, *supra.*
134 IOWA CODE § 324.54 (1971).
135 Ch. 191 [1971] IOWA ACTS 404.
136 Gangsted v. Department of Revenue, Eq. No. 75455 (Polk Co. 1971).
137 1971 OP. IOWA ATT'Y GEN. No. 71-1-3, construing IOWA CODE § 321.1(71) (1971).
138 1971 OP. IOWA ATT'Y GEN. No. 71-1-4.
139 1971 OP. IOWA ATT'Y GEN. No. 71-4-26.
140 1971 OP. IOWA ATT'Y GEN. No. 71-5-1.

its on use of that fund,[141] and fees for certificates of title and related fees are not motor vehicle registration fees so are not required to be placed in that fund.[142]

VII. Public Utilities

Pipelines and pipeline companies have been regulated by the Iowa Commerce Commission, under Code chapter 490. The definition of these lines and companies was changed to reach the transmission of any solids, liquids or gaseous substances other than water.[143]

An Attorney General opinion held that a city could not exact a rental fee from a telephone company for use of public streets for its lines and poles.[144]

VIII. Special Assessments

Several cities which have removed Dutch-elm diseased trees, after notice to property owners to do so and the owners' inaction, have attempted to assess the cost to the owner. An Attorney General ruling is that if the assessment is without statutory authority the lien claimed is void, the assessment is non-collectible, and the matter must be removed from the tax rolls.[145] One city which removed trees from the parking argued that under Code § 368.32 it could confer upon the owner of abutting property the responsibility for maintenance of trees and shrubbery on the parking and so could assess for the removal cost, but the supreme court held that Code § 368.3 permits assessment of costs of removal of diseased trees only when located on the property of the owner, and therefore that section requires exclusion of the removal costs from those which could be assessed under § 368.32.[146]

The city of Ames paved a street adjacent to property of the state used by the State Highway Commission, and sought to assess the state for its portion of the cost. An initial ruling was that payment should be made from the primary road fund; but a later opinion held the state's general fund should be used. Apparently which fund is proper turns on which of two alternate Code chapters for street improvements had been used by the city.[147]

When land in a drainage or levee district is subject to assessment for

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141 Iowa Const. art. VII § 8.

142 1971 Op. Iowa Att'y Gen. No. 71-4-5, construing the constitutional provision cited in note 141, and Ch. 176 [1971] Iowa Acts 383.

143 Ch. 239 [1971] Iowa Acts 491, amending Iowa Code §§ 490.1, .2, .5, .6 (1971). The former definition included transmission of gas, gasoline, oils or motor fuels or inflammable liquids.

144 1971 Op. Iowa Att'y Gen. No. 71-3-7.

145 1971 Op. Iowa Att'y Gen. No. 71-7-14.

146 Shriver v. City of Jefferson, 190 N.W.2d 838 (Iowa 1971).

147 1971 Op. Iowa Att'y Gen. No. 71-1-2, modified in 1971 Op. Iowa Att'y Gen. No. 71-1-5. The second opinion indicates that the first opinion assumed the city had proceeded under Iowa Code ch. 391 (1971), but that information received after the opinion indicated ch. 391A was used and that § 391A.21 required the payment to be provided for by the state executive council from the general fund.

benefits, the minimum assessment is $2.[148] The maximum interest rate in improvement certificates issued by such districts was increased from 5% to 7%.[149]

IX. Cigarettes; Liquor

The Iowa Liquor Control Commission was replaced by the Iowa Beer and Liquor Control Department, with a larger governing council. Licenses and permit fees for manufacture, sale and distribution of liquor and beer were increased, as were the tax for sale for on-premises consumption and the beer tax.[150] The cigarette tax was also increased 1 1/2 mill per cigarette.[151]

One who brings wine into Iowa to blend and bottle for sale to the department and to non-Iowa customers must obtain a manufacturer's license.[152]

X. Other Taxes, Licenses, Fees

Many fees were increased, among them hunting and fishing licenses,[153] chiropractic licenses,[154] county recorders' fees,[155] insurance agent licenses and certificates of authority,[156] and fees for filing mechanics' liens.[157] The fee for inspection of commercial feed, formerly 10¢ per ton, may now be any amount up to 10¢ per ton as determined annually by the Secretary of Agriculture.[158]

Manufacture, sale, transport, storage, possession and commercial use of explosive materials are now subjected to regulation, and an annual license must be obtained.[159]

Chapter 419 of the Code permits a city to support an industrial project, financed through the sale of revenue bonds. The proceeds may be used to construct new facilities or to purchase existing ones. According to an Attorney General opinion, if the purchase method is used the seller is free to use what is paid him for any legal purpose (and apparently he could then construct and operate facilities in another state financed by the Iowa project statute).[160]

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148 Ch. 223 §§ 1-5 [1971] Iowa Acts 443, amending Iowa Code §§ 455.57, .59, .136, .146, .147 (1971).
149 Ch. 223 §§1, 6 [1971] Iowa Acts 443, amending Iowa Code §§ 455.57, .79 (1971).
150 Ch. 131, 132 [1971] Iowa Acts 244, 287.
151 Ch. 116 [1971] Iowa Acts 230.
152 1971 Op. Iowa Att'y Gen. No. 71-4-14.
153 Ch. 124 [1971] Iowa Acts 239.
154 Ch. 136 [1971] Iowa Acts 290.
155 Ch. 197 [1971] Iowa Acts 409.
156 Ch. 245 [1971] Iowa Acts 496.
157 Ch. 263 [1971] Iowa Acts 530.
158 Ch. 147 [1971] Iowa Acts 304.
159 Ch. 117 [1971] Iowa Acts 231.
160 1970 Op. Iowa Att'y Gen. No. 70-12-6.