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**LEGAL ASPECTS OF DOING BUSINESS
IN IOWA**

Revised August, 1971

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WHAT ABOUT IOWA

Iowa is a state of two million eight hundred and twenty-five thousand people but has a gross agricultural and industrial product of more than fourteen and a half billion dollars and virtually untapped potential in human and material resources.

Iowa welcomed over two hundred and nine million dollars in new industrial investment during 1970 and has experienced seven successive years of such record breaking growth. The state ranks third in the nation in agricultural exports. Total export activities exceeded nine hundred million dollars in 1969 and is probably over one billion dollars currently.

One hundred and fifty-two of Fortune's "Top 500 U.S. Industries" now operate 486 manufacturing plants in Iowa. In the last five years over one billion dollars in new industrial investment preferred Iowa's productive business climate -- nearly twice the new investment of the previous period.

The latest Census of Manufactures shows that value added for each Iowa production worker is over twenty-one thousand dollars, ranking first among the fourteen central midwestern states. Value added by Iowa production workers is 13.8% or \$2,555.70 greater than the national average.

Even though Iowans already have the highest literacy rate in the nation, the attendance of Area and Vocational Schools is over 100,000 yearly.

Iowa offers a strong and growing market for consumer goods and services. Ranking second highest nationally in per capita retail sales, Iowans spent an average of one thousand eight hundred and thirteen dollars last year. Iowa's central location offers ready marketing access to over fifty-six million midwestern consumers.

Generally speaking, Iowa has exceptionally productive manpower, top transportation facilities, and a healthy business environment. If you're interested in more than generalities, contact the Development Division, Iowa Development Commission. Of course, all inquiries and replies are STRICTLY CONFIDENTIAL.

A LOOK AT
THE IOWA DEVELOPMENT COMMISSION

The Iowa Development Commission (IDC) is the economic development arm for the State of Iowa. It is composed of 11 members and the commission staff.

IDC is divided into five divisions, each staffed with professionals. Diversified talents are brought together from the areas of industrial development, tourism, public relations, agriculture and research to increase Iowa's economic growth.

The Development Division works with industrial prospects on a national basis and assists community industrial development groups and local development corporations in carrying out their programs. Staff members have immediate knowledge of industrial site and building availability, labor situations and other vital industrial data.

Iowa population and employment trends, agricultural, industrial economic conditions and similar information is gathered and supplied by the Commission's Research Division. Studies on economic and technological developments are also carried out and published by the Division.

The Tourism Division provides information on activities and points of interest within the state, prepares promotional materials, and handles extensive mailings of travel and recreational information.

The Agriculture Division assists in the marketing of Iowa agricultural products in the United States and abroad. The Division works with commodity groups, farm organizations, government agencies, buyers and many other groups to promote and coordinate effective marketing programs.

The Public Relations Division works with news media, prepares promotional materials and carries on a national advertising program to tell the story of Iowa. It also works with other divisions in the areas of communication and public relations.

CORPORATIONS

In 1959 Iowa adopted a modification of the Model Business Corporation Act sponsored by the American Bar Association. Iowa follows the model act in its entirety with the exception of a few deviations that preserve desirable features of previous Iowa law and practices.

Application to Existing Corporations

The Iowa act does not apply to certain special types of corporations and entities permitted under Iowa statutes, such as cooperatives, non-profit corporations, insurance companies, credit unions, and building and loan and savings and loan associations. Domestic corporations formed after July 4, 1959, have the option of organizing under the new act or under the old Iowa law. However, all foreign corporations that apply for authority to do business within the state after July 4, 1959, are subject to the provisions of the new act. After July 4, 1961, all foreign corporations not otherwise excluded from the act became subject to it. Domestic corporations will not be subject to the act unless they elect to become so.

Foreign Corporations

A foreign corporation that has qualified to transact business in this state enjoys the same but no greater rights and privileges as domestic corporations. The Iowa act contains the provisions of the model code concerning the foreign corporation's name, registered office and agent and failure to maintain such office or agent, and the procedures for a corporation to withdraw from the state and to have its certificate of authority revoked. Any foreign corporation that transacts business in this state without a certificate of authority is prohibited

from maintaining any action, suit, or proceedings in any court in this state.

Information regarding application requirements for authority to transact business in Iowa may be obtained from the Iowa Secretary of State.

Domestic Corporations

The act closely follows the model act on the formation, operation, and dissolution of domestic corporations. In so doing, the Iowa act greatly clarifies and codifies Iowa practice in the field of corporate law.

Filing Fees and Miscellaneous Charges

The act sets the following fees:

- (a) For filing articles of incorporation, amendments, articles of merger or consolidation, or an application by a foreign corporation for authority to transact business in this state, for registration of a trade name by a foreign corporation, and for annual renewal of registered name -- \$20.
- (b) For filing an amendment to articles of incorporation of a foreign corporation -- \$10.
- (c) For filing an application to reserve a corporate name, a notice of transfer of a reserved corporate name, a statement of the establishment of a series of shares, a statement of cancellation of shares, a statement of reduction of stated capital, annual fee for foreign corporation's registration of trade name, or an application for withdrawal of a foreign corporation -- \$5.
- (d) For registering a registered name -- \$2 a month between the date of filing and December 31 of the calendar year in which

an application for a registered name is filed.

- (e) For filing a statement of change of address of registered office or change of registered agent, statement of intent to dissolve, a statement of revocation of voluntary dissolution, articles of dissolution, or filing any other statement or report except an annual report -- \$1.

Annual License Fees

An annual license fee must be paid at the time the annual report is filed. The fee is imposed on both domestic and foreign corporations based on the stated capital of the corporation. A foreign corporation may elect to report the fair and reasonable value of its property employed and used in Iowa as of January 1 of each year; its license fee will be based on this value. The graduated annual license fees are set forth in the following schedule:

		STATED CAPITAL		FEE	
		Not over	\$ 20,000	\$	5
Over	\$ 20,000	but not over	40,000		10
Over	40,000	but not over	60,000		15
Over	60,000	but not over	80,000		20
Over	80,000	but not over	100,000		25
Over	100,000	but not over	150,000		30
Over	150,000	but not over	200,000		35
Over	200,000	but not over	250,000		40
Over	250,000	but not over	300,000		45
Over	300,000	but not over	350,000		50
Over	350,000	but not over	400,000		55
Over	400,000	but not over	500,000		60
Over	500,000	but not over	600,000		70
Over	600,000	but not over	700,000		80
Over	700,000	but not over	800,000		90
Over	800,000	but not over	900,000		100
Over	900,000	but not over	1,000,000		110
Over	1,000,000	but not over	2,500,000		175
Over	2,500,000	but not over	5,000,000		250
Over	5,000,000	but not over	10,000,000		350
Over	10,000,000	but not over	50,000,000		800
Over	50,000,000	but not over	100,000,000		1,200
Over	100,000,000	but not over	200,000,000		1,600
Over	200,000,000	but not over	300,000,000		2,000
Over	300,000,000	but not over	500,000,000		2,500
Over	500,000,000				3,000

Domestic corporations with no stated capital and foreign corporations with no stated capital and/or no property in Iowa shall pay an annual license fee of five dollars.

References:

Iowa Code 1971, Chapter 496A.

Clarence Cosson, "Iowa Business Corporation Act," 45 Iowa Law Review 12 (1959).

IOWA SECURITIES LAW -- BLUE SKY LAW

The responsibility for administering the Iowa Securities Law is vested in the Securities Department, which is headed by a Superintendent of Securities who is responsible to the Commissioner of Insurance. The law gives the Commissioner of Insurance broad powers over the issuance and sale of securities in the state.

The basic plan of the statute is to place responsibility for proper conduct in issuing, selling, and dealing in securities on the persons who seek the capital. The act requires disclosure of all pertinent information concerning the security to the Commissioner of Insurance; he determines whether the security qualifies for registration.

The Iowa Securities Law applies to all securities sold or offered to the public in the state except exempt securities and securities sold in exempt transactions. Among exempt securities are securities of regulated utilities, nonprofit corporations organized for religious, educational, fraternal, or reformatory purposes, securities bought and sold on any stock exchange that has been approved by the head of the Securities Department, securities of banks and insurance companies, commercial paper, securities evidencing indebtedness due under conditional sales contracts, securities issued by the Dominion of Canada or any province thereof, securities of certain cooperative associations, and securities of Economic Development Corporations. Exempt transactions include judicial and fiduciaries' sales, pledgees' and mortgagees' sales to

liquidate pledged securities, isolated transactions for the owner's account, stock dividends, employee stock purchase plans, security transfers or exchanges in connection with reorganizations, mergers, or consolidations, and issuance of another security pursuant to conversion rights.

Pre-incorporation sales of securities or subscriptions are also exempt if no commission is received from the sale and if the number of subscribers does not exceed twenty-five.

Another exempt transaction is the sale of securities by the issuer of those securities, to not more than twenty people, within any consecutive twelve-month period, provided no commission is given for the sale, and the sale is reported to the Commissioner of Insurance.

Securities that are not exempt or that are not sold in exempt transactions must be registered by qualification or notification. The basis for registration of a security is that its sale would not be unfair, unjust or inequitable to the purchaser thereof, or would not work or tend to work a fraud upon the purchaser, or that the enterprise or business of the issuer is not based on unsound principles.

The Insurance Commissioner may limit the price at which registered securities are sold, and, in the case of sales by or on behalf of an issuer, the Commissioner may allow a commission not to exceed twenty percent of the sale price, which must include all sales expenses. A filing fee of one-tenth of one percent of the aggregate offering price of the securities to be registered and sold in Iowa must be paid to the Commissioner of Insurance. The minimum fee is \$25 and the maximum, \$1,000. False or fraudulent statements, or concealment of material facts, knowingly made in an advertisement or prospectus for the purpose of inducing persons to buy securities, constitute a felony punishable by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not more than five years, or both.

Securities dealers and salesmen are required to register annually with the Commissioner of Insurance. "Good repute" and "competence" are the standards set for acceptance of a registration. The Commission may also establish minimum financial requirements to be met and maintained by dealers. First time applicants are required to take an examination; registration is for one year with renewal privileges; the annual registration fee for a dealer is \$50 and for a salesman \$5. Dealers are required to file a \$5,000 bond.

Sale of Stock on Installment Plan

A corporation may sell stock on an installment plan if the Commissioner of Insurance authorizes it to do so. An unauthorized sale on an installment plan is a misdemeanor punishable by a county jail term of one year or a fine of not less than \$100 nor more than \$1,000, or both. A corporation that is authorized to make such sales must post a bond and pay an annual fee. The Insurance Commissioner determines whether the authorization shall be renewed each year.

References:

Iowa Code, 1971, Chapters 501, 502.

Sterling Alexander and Vernon Grant, Jr., "The Administration of Iowa Securities Law," 28 Iowa Code Annotated 685.

"Blue Sky Legislation," 23 Iowa Law Review 102 (1937).

1971 Uniform Partnership Act

The general purpose of this act is to make the law uniform among states that choose to enact it, rather than each state applying different law to business partnerships. A partnership is defined as an association of two or more persons jointly owning a business for profit. Each partner is an agent of that business, owning the assets and liable for obligations incurred. Additional information about this new Iowa law is provided by

the following references.

Iowa Code 1971, Chapters 545,547.
Acts of the 64th General Assembly S.F. 460-1971

T. M. Hutchison, "Enforceability of Iowa Creditors' Judgment Against Partnership and Partners' Assets," 44 Iowa Law

A. N. Polasky, "Planning for the Disposition of a Substantial Interest in a Closely Held Business, Part II - The Partnership Interest," 45 Iowa Law Review 46 (1959).

Edward R. Hayes - "Iowa Corporations and Partnerships: 1942-1952," 38 Iowa Law Review 462 (1953).

"The Farm Operation Agreement - Partnership or Lease," 6 Drake Law Review 37 (1956).

LABOR LEGISLATION

Iowa, like most of the states, has a series of statutory provisions relating to employer-employee relationships. However, if a business is one "affecting interstate commerce" or "producing goods for commerce," some state laws are superseded by federal law. The discussions in this section do not include laws of a technical nature that apply only to businesses of a specialized character, nor do they include federal law or attempt to explain the areas in which federal law supersedes state law.

General Laws

Employer-Employee Relationship

Iowa is a "right to work" law state. Under this type of statute an employer may not refuse employment or dismiss a person if the only ground of refusal is that:

1. the applicant is a member of a union, or
 2. the applicant is not a member of a union, or
 3. the applicant refuses to join a union in the future, or
 4. the applicant intends to resign from a union in the future,
- or

5. the employer has contracted or agreed with another person, firm, association, corporation, or labor organization to exclude persons from employment on the grounds listed above, or
6. the applicant is a member of the National Guard.

It is also a violation of the law if, as a condition of or prerequisite to employment, any person is required to pay dues or fees, make contributions, or pay fines or assessments to any labor union, association, or organization.

Any person, organization, or corporation that violates or aids in violating this law is guilty of a misdemeanor. In addition, the Iowa statute provides that any violation may be restrained by injunction.

Fair Employment Practices

Iowa has a "Civil Rights Act" similar to the Fair Employment Practices Commission (FEPC) laws of other states providing for a Commission charged with the enforcement of the Act. Upon the finding of a violation of the Act, the Commission may order the violator to cease and desist such violation and, in addition, among other things, order the hiring, reinstatement, or upgrading of employees with or without back pay. Any order issued by the Commission may be appealed de novo to the District Court. The court may receive additional testimony and make, affirm, modify or reverse the order of the Commission.

Every person in Iowa is entitled to the opportunity for employment on equal terms with every other person. If an applicant for employment is qualified to perform the services or work required, it is unlawful for any person or employer to discriminate in employment because of race, religion, color, national origin, or ancestry.

It is also unlawful for any labor union or organization or an

officer of a labor union or organization to discriminate against any person as to membership because of race, religion, color, national origin, or ancestry.

Any person, employer, labor union or organization, or officer of a labor union or organization convicted of a violation of the Fair Employment Practices Act is subject to a fine of not more than \$100 or imprisonment in the county jail for not to exceed thirty days.

Blacklisting

It is unlawful for any person, agent, company, or corporation, after having discharged an employee from his or its service, to prevent or attempt to prevent, by word or writing of any kind, the discharged employee from obtaining employment with any other employer except by furnishing in writing upon request a truthful statement as to the reason for the discharge.

Prohibited Types of Strikes

It is unlawful for any labor union or its officers, representatives, or members to enter into or carry out by strikes or violence, or threats of either, any contract, agreement, arrangement, combination, or conspiracy for the purpose of forcing or requiring:

1. any person, firm, or corporation to cease using, selling, handling, transporting, or dealing in the goods or products of any other person, firm, or corporation, or
2. any person, firm, or corporation to cease selling, transporting, or delivering goods or products to any other person, firm, or corporation, or
3. any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association, or organization, or

4. an employer to break an existing collective bargaining agreement that the employer may have with any labor union, association, or organization.

The statute also prohibits any labor union or its officers, representatives, or members from causing a stoppage or slow down of work because of a dispute between unions regarding jurisdiction over, or the right to do, the work or a part of the work of the employer.

Iowa law also prohibits the employment of "professional strike-breakers."

Violations of the above provisions are misdemeanors. Injunctions may be issued to restrain violation.

Hours and Wages

There are no state minimum wage laws in Iowa.

Deductions from wages for labor organization dues, charges, fees, contributions, fines, and assessments must not be made unless the employee presents to the employer a written assignment; the assignment may be revoked by the employee at any time by giving thirty days' written notice to the employer.

A wage assignment, except those by an employee to a labor organization, is not enforceable against the employer unless the employer has agreed to it in writing.

There are no general laws regulating hours of work in Iowa, except the child labor laws.

The Iowa law does limit the working hours of railroad employees and persons who operate motor vehicles. Employees who operate commercial motor vehicles on Iowa highways must be given at least eight hours off duty if they drive twelve hours out of each twenty-four hours. If they drive twelve consecutive hours out of any twenty-four period, they must be relieved from duty for ten consecutive hours.

Chapter 92 Child Labor

Scope of Act

The Iowa child labor law prohibits employment of a child under the age of 16 in either street occupations or migratory labor except when issued a work permit by the Iowa Labor Commission. Children under 16 are not permitted to work during regular school hours except:

1. those legally out of school where written proof is submitted to the Labor Commission.
2. persons who are working in a supervised school work program or are required to work as part of their school training.
3. fourteen and fifteen year old migrant laborers during the summer school session.

The law prohibits any child under 16 years of age from working more than 8 hours in a single day or 40 hours during a week. During school, work shall not exceed four hours during any day or twenty-eight hours during one week.

Fourteen and fifteen year olds are not permitted to work in the following occupational areas: manufacturing, mining, processing other than food or gasoline service, public messenger services, power driven machinery, transportation or warehousing except in the office, communications, utilities, construction or any other area considered hazardous by the Committee on Child Labor.

Persons under 18 are restricted from working in such occupations as the manufacture or storage of explosives, motor vehicle driver or helper, operation of logging or woodworking machinery, occupations involving radioactive substances, operation of power-driven apparatus, mining, meat packing, the manufacture of brick, tile and related

products, foundry work, dry cleaning machinery or operations involving exposure to dangerous dyes or chemicals, and others deemed hazardous to life and limb.

Exceptions The child labor law does not prohibit part time or volunteer work for non-profit organizations, working around the home when not related to a business, trade, or profession of an employer, or part time work in agriculture not included in the migratory labor law, and working in any business operated by the child's parents.

Administration

Violations of the child labor law are punishable by a fine not to exceed \$100 and every day of violation shall constitute a separate offense. The Iowa Labor Commissioner is charged with enforcement of this statute.

Arbitration of Labor Disputes

Although Iowa has two arbitration statutes still in force, they are used only rarely.

The general arbitration statute has not been changed substantially since its enactment in 1851. Its scope is restricted to "all controversies which might be the subject of civil action." Many types of disputes thus are excluded from the act's application.

A labor arbitration act was enacted in 1913, but the tremendous expansion of federal jurisdiction over labor matters in recent years and the limitations included in the Iowa act have restricted its application also.

The overwhelming majority of labor arbitration in Iowa today is achieved through common-law contracts between the parties. Contracts to arbitrate and submission agreements are binding contracts; a defaulting party may be held liable for ascertainable damages for breach of

such contracts. After an award is made it is usually enforceable in court. There has been relatively little litigation following arbitration of labor disputes in recent years. Apparently the factors that led the parties to arbitrate in the first place continue to oblige them to abide by the arbitration awards.

Health and Safety Laws

The Iowa "Health and Safety Appliance Law" applies to manufacturing and mercantile establishments including factories, workshops, and mills. It is designed to safeguard employees' health and to prevent industrial injuries. Every manufacturing or mercantile establishment in which five or more people are employed is required to provide toilet facilities for employees' use. Such facilities must be kept clean; there must be at least one for every twenty employees. Men's and women's facilities must be separate. Adequate washing facilities and drinking water must be supplied by the employer. If a change of clothing is required, separate dressing rooms and lockers for male and female employees must be furnished. Where practicable, each female employee is to have a seat at or beside her counter or workbench.

The Iowa law requires that steam boilers be equipped with steam and water gauges and safety valves. As far as practicable, industrial machinery must be equipped with loose pulleys and belt shifters or other safe means for throwing belts on and off pulleys. Protective guards or housing must be installed around all gears, cogs, belting, shafting, tumbling rods, universal or knuckle joints, set screws, saws, planes, and other machinery that is located or used in such manner as to subject employees to possible injury. When any guard or safety appliance is removed from a machine it must be replaced as soon as possible. All

factories in which emery wheels or similar devices are used for tumbling or polishing castings must have sufficient blowers and pipes to protect employees from the dust. However, grinding machines that use water at the point of grinding contact and small emery wheels that are used temporarily for tool grinding do not have to have blowers and pipes. Shops that employ only one man in such work may be exempt, at the Labor Commissioner's discretion, from the provisions requiring blowers and pipes. If the processes performed in a factory result in giving off deleterious gases, the building must be equipped with adequate pipes or flues to provide easy escape for such fumes.

The Labor Commissioner and the mayors and police chiefs of municipalities are charged with enforcing the health and safety appliance laws. Upon discovery of any violation, the Commissioner must give written notice to the employer and allow him between seven and thirty days, depending on the nature of the defect constituting the violation, in which to remedy the defect. The time limit may be extended by the Commissioner if good cause is shown. Anyone violating the provisions of this statute is guilty of a misdemeanor; the maximum penalty is a \$100 fine, except the maximum penalty for the violation of a steam boiler regulation is a \$500 fine.

Any accident involving an employee while working for his employer that results in death or the loss of two or more days' work must be recorded by the employer and a report of the accident forwarded to the Labor Commissioner within forty-eight hours after the accident. No statement contained in the report is admissible in any action arising out of the accident.

Further, the law provides that an employee is deemed not to have assumed the risk if he continues work knowing of a defect if the employer

also had knowledge of the defect and it was the employer's duty to furnish safe machinery and a safe place in which to work, unless the employee has the regular duty to repair such defects. Nor is the employee deemed to have waived negligence unless the danger is so evident that a reasonably prudent person would not have continued to work.

The 1965 Legislature created an eight member Employment Safety Commission to make safety regulations for all Iowa business. The Commission is made up of four persons representing employers and four representing employees, all appointed by the Governor. Each member of the Commission shall have had substantial experience in the area of employment safety before his appointment.

The Commission has adopted Rules which concern: floor and wall openings, railings, toe boards, demolition, electrical installations in hazardous locations and excavations.

Rules concern head, eye, and respiratory protection. Rules under consideration concern safety rules for power actuated tools. A copy of these rules may be obtained by writing The Iowa Employment Safety Commission, E. 7th & Court, Des Moines, Iowa 50319.

Boiler Inspections

The Boiler Inspection law provides for a state inspection and regulation of boilers, tanks, jacket kettles, generators and other appurtenances used to generate or transmit steam for power or to use steam for heating or steaming. Boilers used in an industrial establishment carrying less than 15 pounds of pressure do not have to be inspected. Inspection fees are provided on a graduated scale. The owner or user must display certificates issued to show the inspector's approval. The certificate limits the allowed pressure in the appurtenance. Ten days written notice of intention to install such appurtenances must be given

to the Commissioner of Labor. Inspection under this chapter can be waived by the Commissioner of Labor upon proof of inspection by a representative of a reputable insurance company and coverage by insurance.

References:

Iowa Code 1971, Chapters 88, 88A, 89, 90, 92, 536, 539.

Thomas W. Stewart, Iowa Labor Laws (Revised edition by Clarence M. Updegraff), Bureau of Labor and Management, State University of Iowa, Iowa City, 1959.

WORKMEN'S COMPENSATION

Iowa's Workmen's Compensation Law is a compulsory statute and represents the only available remedy against an employer by the employee, his estate, dependents, or next of kin. No action for damages is available.

In order for an industrial injury to come within the coverage of the Act and be compensable it is necessary that: (1) the injured person be an officer or an employee of the person charged with compensation liability, (2) the specific injury be compensable under the Act, (3) the injury arise out of and in the course of employment, (4) the injury was not the result of the employee's willful intent or intoxication, and (5) notice of the injury be given within 90 days.

Payments

The maximum liability of the employer for an employee's injury is as follows:

1. the total amount allowed for medical, surgical, hospital services and supplies, services of special nurses, one set of prosthetic devices, and ambulance

charges is not limited. However, if the aggregate of the charges exceeds \$7,500, special application must be made to the Industrial Commissioner.

2. costs of examination and reimbursement for loss of pay during such examination.
3. crutches, artificial members, and appliances; however, the employer is not liable for more than one permanent prosthetic device.
4. in a case of temporary disability, compensation payments are payable up to 300 weeks; payments are based on two-thirds of the employee's average weekly earnings; and the maximum weekly payments are dependent on the number of children the employee has. An employee who has four or more children is limited to \$56 per week; payments are graduated down to \$40 per week for an employee who has no children.
5. in a case of permanent partial disability, compensation payments are made for a "healing period" according to the same schedule as for temporary disability plus weekly payments based on two-thirds of the employee's weekly earnings up to 500 weeks with a maximum of \$23,750.
6. in a case of permanent total disability, weekly payments are to be based on two-thirds of the employee's weekly earnings for a period not to exceed 500 weeks. Maximum weekly benefits shall not exceed 46% of the State's average weekly wage paid employees, determined by the Iowa Employment Security Commission.

If an accident results in an employee's death and there is coverage,

the employer is liable for the reasonable expenses of burial up to \$1000 and, if there are surviving dependents, for compensation payments up to 300 weeks. The maximum weekly benefit rule in #6 applies.

The minimum payment for temporary disability, permanent partial disability, permanent total disability, or death benefits is \$18 per week, or the actual amount of average weekly earnings if less than \$18.

Future payments may be commuted to a present worth lump sum payment after approval by the Industrial Commissioner and district court or joint waiver of district court approval.

Credit for Benefits Paid Under Group Plans

If a disabled employee receives any benefits, including medical, surgical, or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under the Workmen's Compensation or Occupational Disease Compensation laws, then the amounts paid to the employee from the group plan are credited to or against any compensation payments made or to be made. This provision does not apply to payments made under any group plan which would have been payable even though there was an injury under the Workmen's Compensation law or an occupational disease under the Occupational Disease Compensation law.

Employers subject to the provisions of the act must insure their liability with an approved insurer unless the Insurance Commissioner allows self insurance. To obtain self insurance the employer must demonstrate to the Commissioner his solvency and financial ability to pay the benefits allowed by statute or deposit satisfactory security with the Commissioner. The employee cannot be required to pay premiums for such insurance.

Special provisions in the Iowa statute cover liability for the "second injury" and "occupational disease." The "second injury" provisions are limited in scope to protecting the employer from paying full permanent disability compensation in certain cases in which there has been a specifically enumerated previous injury followed by a permanent disabling second injury. Employers or insurers may have to pay \$100 to a State "second injury" fund for every death compensable under the Workmen's Compensation law. Certain "occupational diseases" are listed in the statute; the employer may be liable for diseases not included in the list if they result from injurious exposure.

The Workmen's Compensation Act is administered by the Industrial Commissioner. He has general supervisory powers and all voluntary compensation agreements must be approved by him. If a compensation agreement cannot be reached by the parties, the initial hearing is held before a deputy commissioner. There is a right of appeal from the deputy's decision to the Commissioner; further appeals may be taken to the courts.

References:

Iowa Code 1971, Chapter 85

Harry W. Dahl and others, "Iowa Workmen's Compensation Law," 17 Drake Law Review (May 1967).

"Iowa Workmen's Compensation Law," 16 Drake Law Review (1967).

"Workmen's Compensation Benefits in Iowa," 45 Iowa Law Review 867 (1960).

"Iowa Workmen's Compensation Procedure," 45 Iowa Law Review 787 (1960).

Maurice H. Merrill, "Fifteen More Years of Workmen's Compensation in Iowa," 32 Iowa Law Review 1 (1946).

Maurice H. Merrill, "Commentary of the Iowa Workmen's Compensation Act," 17 Iowa Law Review 186, 343 (1932).

"The Iowa Law of Workmen's Compensation," Monograph Series No. 8 (Iowa City: Center for Labor and Management, College of Business Administration, The University of Iowa, July 1967).

Willard L. Boyd and others, "The Iowa Law of Workmen's Compensation" (Iowa City: Bureau of Labor and Management, The University of Iowa, 1960).

For material concerning specific problems under the act, see the Cumulative Index to the Iowa Law Review.

For additional information concerning the application and administration of the act or for a copy of the statute, write to the Industrial Commissioner, State House, Des Moines, Iowa 50319.

UNEMPLOYMENT INSURANCE

The Iowa Employment Security Law applies to any employing unit that paid in wages during one calendar quarter \$1,500 or more, or employed at least one individual for some portion of a day in each of twenty different weeks within a calendar year regardless of whether such weeks are consecutive. It also applies to the purchaser of an enterprise or business which at the time of such purchase is liable under the Iowa law. Further, when one or more employing units are owned or controlled by the same interests and when counted together have an aggregate of one or more workers for some portion of a day in each of twenty different weeks in a calendar year, each unit becomes liable under the Iowa law. Any enterprise or business is liable under the Iowa law regardless of the number of workers, if it is liable under the Federal Unemployment Tax Act. In addition, an employer may voluntarily elect to become subject to the law.

The unemployment compensation program is a co-ordinated state and federal plan. The state tax or contribution, at a base of 2.7 percent of the taxable wages¹ paid by an employer, is allowed as a credit against the 3.2 percent federal tax. The Iowa law employs a system of experience rating by which individual employers' contribution rates are

1) Employers pay Iowa unemployment tax only on the first \$4,200 of wages paid to each employee during the calendar year.

varied from the standard rate (2.7 percent) on the basis of their unemployment risk experience. While the basic rate under state law is 2.7 percent, the beginning rate, for newly subject employers who do not acquire prior experience, may start at a rate of 1.5 percent until qualifying for a computed rate. An employer is eligible for a computed (generally reduced) tax rate for the calendar year following October 1, if there have been twelve consecutive calendar quarters immediately preceding October 1 throughout which his account has been chargeable with benefit payments. Commencing January 1, 1972, and each calendar year thereafter, a contributing employer who has not been subject to Iowa law for a sufficient period of time to meet the twelve consecutive quarter requirement shall qualify for the computed rate of contribution if there have been no less than eight consecutive calendar quarters immediately preceding the computation date throughout which his account has been chargeable with benefit payments. When an employer becomes liable through successorship to the business of a liable employer the predecessor's experience is considered in determining eligibility for a computed rate.

For purposes of establishing the tax rate, Iowa employs the reserve-ratio formula, which is essentially cost accounting. The law establishes five different tables of tax rates based on the ratio that the difference between the employer's total contributions and total benefits paid to his employees bears to his average annual taxable payroll. The ratio thus established determines the employer's tax rate. The Commission determines the table to be used each year based on a benefit cost formula. Under the highest table the tax rate is reduced when the ratio reaches the levels of two and two-tenths and continues to drop until the ratio reaches seven and five-tenths percent. The tax is eliminated if the ratio reaches the seven and five-tenths percent level. Under the lowest

table the tax rate is reduced when the ratio reaches one and continues to drop until the ratio reaches six and five-tenths percent. Under this table the tax is eliminated if the ratio reaches the six and five-tenths percent level. The maximum rate for employers with a negative ratio (where an employer's benefit payments to his employees exceed his contributions to the fund) is 4.0 percent. In no event shall an employer's contribution rate be more than 2.7 percent of the first \$10,000 of taxable wages for insured work paid during any calendar quarter. The law allows voluntary contributions for the purpose of increasing the ratio and obtaining a lower rate or for holding a rate at the previous year's level.

The law provides for payment of weekly benefits to workers who are unemployed and who meet certain prescribed eligibility requirements. The worker must have been employed for a period including the first four of the last five completed calendar quarters preceeding the date on which he files a valid claim for benefits. This is the base period used in computing payments. The amount credited to a worker's account in wage credits is equal to one-third of his quarterly earnings. The weekly benefit amount is one-twentieth of his total wages in the calendar quarter in his base period in which his earnings were highest. The maximum benefit payment is currently based upon one-half of the average weekly insured wage paid in the state as determined annually by the Employment Security Commission. But commencing the first full week of July 1973 and each year thereafter the maximum benefit payment will be based on fifty-five percent of the average weekly insured wage paid in the state. The maximum total amount of benefits payable to any eligible individual during any benefit year may not exceed the total of the wage credits accrued to his account whichever is least. However, in the event extended benefits are triggered as a result of high unemployment,

nationally or statewide, the worker's weekly benefits may be extended for a period not to exceed one-half of the regular benefits to which he is entitled. In order to be eligible the worker must be unemployed, able to work, available for work, and be earnestly and actively seeking work. Availability is determined on a week-to-week basis and each claimant must keep the local area claims office currently advised of his availability.

Each employer during the claimant's base period is notified of the claim and is instructed to inform the Commission of any cause of separation from work by the claimant that the employer believes might make the claimant ineligible for benefits. Possible bases for disqualification include:

1. voluntary quitting not attributable to the employer.
This does not include leaving employment in good faith to accept better employment, which the employee did accept and remained at continuously for not less than six weeks. Wages earned with the employer that he has left shall, for the purpose of computing and charging benefits, be deemed wages earned from the employer with whom the individual accepted better employment, and benefits shall be charged to the employer with whom he accepted better employment.
2. discharge for misconduct, which causes the forfeiture of not less than four nor more than nine weeks' benefits.
3. failure to accept suitable work.
4. participation in labor disputes.

The law permits an employer to contest a claim in order to protect his tax rate determining ratio. A Commission deputy will issue a determination; this is appealable to a hearing officer. This decision

is appealable to the Commission and its ruling may be appealed to the district court.

The Iowa Unemployment Insurance provisions are embodied in Chapter 96 of the Iowa Code. The legislation is administered by the Iowa Employment Security Commission, which consists of three full-time members appointed by the Governor subject to Senate approval. One of the members represents labor, one represents employers, and the third represents the public.

References:

Iowa Code 1971, Chapter 96 (as amended by the 64th General Assembly. See House File 704, 1971).

Fred Slavick, Voluntary Quit Disqualification in Unemployment Insurance--The Iowa Experience (Bureau of Labor and Management, State University of Iowa, Iowa City, 1958).

"Administration of Benefits Under the Iowa Employment Security Law," 35 Iowa Law Review 79 (1949).

"Employers Subject to the Iowa Employment Security Law," 4 Drake Law Review 28 (1954).

Edward D. Wickersham, Supplemental Unemployment Benefits (Bureau of Labor and Management, State University of Iowa, Iowa City, 1956).

State of Iowa Employers Handbook.

State of Iowa Workers Handbook.

State of Iowa Employment Security Law.

For additional information, write the Iowa Employment Security Commission, 1000 E. Grand, Des Moines, Iowa.

TAXATION

Corporate Income Tax

The Iowa corporate income tax is imposed on every corporation organized under the laws of this state and on every foreign corporation that does business in Iowa. Any association or organization that reports

as a corporation for federal income tax purposes is considered a corporation for Iowa corporation income tax purposes, unless exempt by Iowa law. Banks, some financial institutions, and insurance companies are exempted from filing the tax returns. Partnerships do not pay an Iowa income tax but do file a return for information purposes only.

The tax based on a Single Factor Formula is imposed on the net income received during the income year, after adjustment by subtracting fifty percent (50%) of the federal income taxes. The rates of tax are progressively graduated and are six percent (6%) on the first twenty-five thousand dollars, or any part thereof; eight percent (8%) on the excess over twenty-five thousand dollars, but less than one hundred thousand dollars, and ten percent (10%) on the excess over one hundred thousand dollars. If the trade or business is carried on entirely within the state, the tax is imposed on the entire net income. If the business activity is carried on partly outside the state, the tax is imposed only on the portion of net income reasonably attributable to the trade or business carried on within the state. The statutory formula for determining the portion of income from sales or manufacturing that is taxable income shall bear the same ratio to the total income as the gross sales (carried on) within the state bear to the total gross sales. Gross sales (carried on) within the state are regarded as the gross sales from goods delivered within the state, excluding deliveries for transportation out of state. If the corporation believes that this method of determining taxable income is inapplicable and inequitable, it can file an objection with the Iowa Department of Revenue and submit an alternative method for computing its taxable income. The Iowa Department of Revenue has authority to confirm alternative method(s) provided such alternative method(s) do not work to allocate or apportion more taxable income to Iowa than would be assigned to Iowa under the method previously described.

In computing net income the starting point is the federal taxable

income. To this must be added: (1) interest and dividends from foreign securities and from securities of state and other political subdivisions that are exempt from federal income tax; and (2) the Iowa income tax deducted in computing the federal taxable income. From this must be subtracted: (1) fifty percent (50%) of the federal income tax paid or accrued during the year and allocable to Iowa; and (2) interest and dividends received from federal securities. The Iowa provisions relating to capital gains and losses, and to gains and losses from exchanges of property deviate but slightly from federal income tax law. A corporation that has taken the net operating loss deduction for federal income tax purposes is allowed a net operating loss deduction (as applicable) for state income tax purposes; if the corporation is subject to allocation provisions, the total federal income tax (50% of which is an adjustment deduction in determining Iowa taxable income) must be limited to the amount of federal tax based on income allocated to Iowa; similarly, the net operating loss that is allocable to Iowa is determined by the ratio of income allocated (to Iowa) to total allocable income.

The Iowa income tax is due on or before the last day of the fourth month after the expiration of the tax year. Among the penalties applicable for nonpayment are forfeiture of the articles of incorporation of a domestic corporation, or the permit to do business in Iowa of a foreign corporation.

There is a personal income tax withholding law in effect in Iowa. Corporations are withholding agents under this law.

References:

Iowa Code 1971, Chapter 422 (as amended by Laws 64th General Assembly, 1971, House File 654, Division II).

1966 Iowa Departmental Rules 687-694.

I. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73.

Personal Income Tax

Every Iowa resident or nonresident deriving income in Iowa is required to file a state income tax return if required to file a federal income tax return, or if net income received is \$1,000 or more during the tax year. Every individual whose federal "Adjusted Gross Income", after Iowa adjustments, is \$3,000 or less is exempt from paying Iowa Personal Income Tax, although the filing requirements above still apply. Iowa residents are allowed credit for taxed income derived out of state.

Married couples, each having incomes in their own right, may file individual or joint (combined) returns and itemized deductions may be pro-rated between them.

Income from Social Security, railroad retirement, Iowa Public Employees Retirement System, police and fireman's pensions are exempt from Iowa tax. Members of the armed forces, who were on active duty for at least six months of the year may exclude income received during active duty. "Combat zone" pay is excluded to the same extent as for federal tax purposes. Interest and dividends from Iowa sources are not taxable for nonresidents unless they are part of income received as a share of Iowa business income. Dividend exclusions that qualified for federal income tax purposes, as well as capital gains and losses, and net operating losses, may also be claimed on the Iowa income tax return.

Iowa Taxable Income is computed from the "Adjusted Gross Income" figure reported on the federal income tax return. Other federal items are applied to determine the correct "Iowa taxable income" figure. Federal refunds from the previous year and self employment taxes are added. Federal prepayments, credits, excess payments made in previous years and deductions are subtracted. The option of taking either a standard 5% deduction, not to exceed \$250, or itemized deductions as claimed on

the federal return may be taken. The Iowa Personal Income tax due may then be computed from the table below.

Tax Computation

over	but not	over		of excess over
\$ 0-----	\$1000 --		3/4 of 1% -----	\$ 0
1000-----	2000 --	\$ 7.50	plus 1.5% -----	1000
2000-----	3000 --	22.50	plus 3.0% -----	2000
3000-----	4000 --	52.50	plus 4.0% -----	3000
4000-----	7000 --	92.50	plus 5.0% -----	4000
7000-----	9000 --	242.50	plus 6.0% -----	7000
9000-----	--	362.50	plus 7.0% -----	9000

Every person expecting to have \$50 or more in tax, attributable to income from other than wages and salaries, must file a declaration of estimated tax. The declaration must be filed with the Iowa Department of Revenue by the last day of the 4th month in either the calendar year or the taxpayer's fiscal year. The first installment of estimated taxes is due at this time and equal installments shall be paid before June 30, September 30, and January 30. If filed on a fiscal year basis, payments are due on the last day of the 4th, 6th, and 9th months in the fiscal year and the last day of the first month preceding the fiscal year end.

Sales Tax

The sales tax applies to the sale of tangible personal property, consisting of goods, wares, or merchandise sold at retail in the state to consumers, or users, as well as to the gross receipts from the rendering, furnishing, or performing of particular services as enumerated in the law. "Services" is defined as all acts or services rendered, furnished, or performed, other than for an employer, for a valuable consideration by any person engaged in any business or occupation specifically enumerated. Advertising and new construction is exempt from the

service tax. The sales tax rate on both goods and services is three percent (3%) of the gross receipts from such sales. Sales tax is also imposed on the rental of all rooms, apartments, or sleeping quarters in hotels, motels, rooming houses, etc. The tax does not apply if the quarters are rented by the same person for more than thirty-one (31) consecutive days. Sales of gas, electricity, heat, water and communication services are also taxed at the three percent (3%) rate.

All Iowa retailers of tangible personal property or of the enumerated services must obtain a retail sales tax permit. A permit must be obtained for each separate business location at which retail sales are made. However, a retailer who has a sales tax permit for a particular business location which allows him to make retail sales of goods need not obtain a separate permit if he also furnishes taxable services. The fee for each permit is one dollar, there is no renewal required.

The tax is not imposed on the article sold or the service rendered, rather it is an excise tax on the gross receipts from such sales. The retailers must add the tax to the price of the goods sold or services rendered, and collect the tax from the consumer as a part of the total charge for the goods or the services. However, it is the retailer who is ultimately liable to the state for remittance of the tax.

The retailer must keep records of the gross proceeds of his sales and must preserve these records for five years. He must file a quarterly return due the last day of the month following the close of the quarter. Every retailer who collects more than fifty dollars in retail sales tax in any one month must deposit his sales tax receipts before the twentieth day of the month next succeeding the month of collection, except no deposit will be required for the third month of the calendar quarter. The total quarterly amount, less monthly deposits, is due on the last day of the month next succeeding the month of collection. In the absence of

cooperation, the Department of Revenue may estimate sales and determine taxes due after notice and hearing.

The tax does not apply to sales in interstate commerce. If tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state, the tax does not apply. When the contract to sell at retail takes place within the state and the seller delivers the goods from a point outside of Iowa directly to the buyer in Iowa, the sale is deemed to be an intrastate sale subject to the tax. In order for services to be taxable, they must have been rendered, furnished, or performed in this state, or their product or result used in this state. (See use tax portion of this book.)

The sales tax applies to the sale of goods (and certain services) at retail in Iowa. A sale is not considered to be at retail and is thus not taxable when: (1) tangible personal property is sold for the purpose of resale; (2) tangible personal property is sold "for processing"; or (3) electricity or steam is sold for processing tangible personal property which is ultimately to be sold at retail.

Tangible personal property is sold for the purpose of resale when it is sold to retailers, wholesalers, jobbers, or any other person who is not the ultimate user of the property and who holds the property for the purpose of selling it to another.

Tangible personal property is sold "for processing" only if (1) such property is to be integrated by means of fabrication, compounding, manufacturing or germination into other tangible personal property to be sold ultimately at retail; (2) such property is to be consumed as fuel in creating heat, power, or steam to produce tangible personal property for sale, or for generating electric current either for sale or to produce tangible personal property for sale; (3) such property is to be consumed in the operation of implements of husbandry (i.e., motor vehicle

fuel used in farm tractors or used in operating farm equipment drawn or propelled by farm tractors engaged in agricultural production); of (4) such property is a chemical directly used and consumed, dissipated, or depleted in producing personal property ultimately to be sold at retail although it is in no way a part of such personal property.

The sales tax only applies to the enumerated services when they are rendered, furnished, or performed for the ultimate user thereof. User means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

References:

Iowa Code 1971, Chapter 422 (as amended by Laws 64th General Assembly, House File 570, Senate File 574.

1966 Iowa Departmental Rules 694-750.

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73.

Commerce Clearing House, State Tax Reporter - Iowa.

Use Tax

The use tax is complementary to the sales tax. With respect to tangible personal property, it is a tax imposed on the purchaser for the privilege of using such property in Iowa that was not bought in Iowa and on which Iowa sales tax was not due. The use tax on services is applicable when services are rendered, furnished, or performed in Iowa or when the product or result of such service is used in Iowa. The "user" of services is exempt from the use tax if sales tax has been paid on the service equal to the Iowa use tax rate.

Tangible personal property held for resale or used in or for processing is exempt from the use tax in the same manner and extent as provided for in the sales tax law.

If sales or use tax equal to the rate of the Iowa tax has been

paid on an article or service in another state by the person using it in Iowa, no further tax is due. If the rate of tax paid by a person to another state on a given article is less than the rate of the Iowa tax, the rate of Iowa tax due is the difference between the rate of tax paid to the other state and the rate of tax due under Iowa law.

Any person who purchases tangible personal property, or services which are set forth in the statute, from out-of-state sources for use in Iowa subject to the use tax, is liable for the tax and must file a Consumer's Use Tax Return, claiming credit according to the rate of tax paid such other state, if any, but such credit cannot be claimed on the basis of a rate of tax higher than the Iowa rate of tax. Such return is required unless the seller is registered with the Department of Revenue and is authorized to collect the use tax for this state.

Every interstate seller who maintains a place of business in Iowa and makes sales of tangible personal property or taxable services for use in this state must register with the Department of Revenue. A retailer maintains a place of business within Iowa if he maintains within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state according to law.

Use tax returns must be filed quarterly; the tax is due within one month after the close of the quarter.

References:

Iowa Code 1971, Chapter 423 (as amended by Laws 64th General Assembly, 1971, House File 570, Senate File 574.

1966 Iowa Departmental Rules 750-765.

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73.

Property Tax

The Constitution of Iowa provides that the property of all corporations for pecuniary profit shall be subject to taxation, the same as the property of individuals. Corporations are subject to a tax on all real and personal property that is not specifically exempted.

Ownership on the first day of January is the basis for determining what property is taxable. Personal property is assessed every year; real estate is valued every four years. In the years in which real estate is not assessed, the assessor lists and assesses any real property that was not included in the previous assessment and any buildings erected since the previous assessment.

The valuation and assessment of property for purposes of taxation and determining the rate of assessment, shall be assessed at twenty-seven percent (27%) of such actual value, and such value so assessed shall be taken and considered as the taxable value of such property upon which the levy shall be made. The actual value is to be construed as the fair and reasonable "market value." This means the fair and reasonable exchange, in the year in which the property is listed and valued, between a willing buyer and a willing seller, each being familiar with all the facts relating to the particular property and not acting under compulsion. In the event "market value" cannot be established in this manner, then the assessor may consider its productive and earning capacity, if any, and other industrial conditions, and other factors provided by statute.

A corporation may ask the county or city board of review to review the assessment made by the county or city assessor. The board's decision may be appealed to the district court within twenty days after the board's adjournment. In such a challenge, the burden of proof is on the corporation.

A corporation is considered to be a merchant if it holds or has in

its control personal property that was purchased for resale. The assessment is based on the average value of the goods during the year preceding the time of assessment. A corporation is considered to be a manufacturer if it holds personal property for the purpose of adding to its value by processing before selling it. Such personal property, whether in a finished or unfinished state, is assessed at its average value during the year preceding the year of assessment.

Personal property deemed to be in transit is now exempt from the personal property tax. This includes property in interstate commerce, and in certain private warehouses. Machinery used in manufacturing operations is regarded as real estate for tax purposes.

An Iowa corporation engaged in manufacturing is no longer required to list its moneys and credits. Chapter 1204, Acts of The 63rd General Assembly repeals the tax on moneys and credits.

Certain corporations, such as firms that have extensive business connections outside the state, are assessed by the Department of Revenue rather than the local assessors. The Department uses formulas designed to produce a fair approximation of taxable property attributable to Iowa and refers the data to local authorities for collection.

Public utility plants are assessed by the Department of Revenue. A corporation is entitled to appeal the Department's decision to the district court of the county in which it has its principal place of business.

The assessment activities of the Department of Revenue are subject both to the procedural safeguards of hearing at the corporation's option before the Department and de novo review in the district court, with further appeal to the State Supreme Court.

References:

Iowa Code 1971, Chapters 407, 420, 427, 428, 434, 435, 441, and 443.

1966 Iowa Departmental Rules 665-694.

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73.

Open Port Warehousing

Private warehouses may be built in Iowa by any private person, partnership, joint venture, corporation, fiduciary, trust, or estate, for the purpose of storing personal property, goods, wares, and merchandise for any length of time while in transit to a final destination outside of Iowa. The personal property in transit in the warehouses is exempt from taxation, and while it is in the warehouses, the merchandise may be bound, divided, severed, broken in bulk, labeled or relabeled.

Exempt status must be so designated on the books of the warehouse and these books must be open at all times for inspection by authorized personnel.

Claims for tax exemptions must be filed with the assessor on or before February 1 of each personal property assessment year. All claims must be accompanied by a certification of the warehouse operator as to the status on the warehouse books of the property involved.

References:

Iowa Code 1971, Chapter 427.1.

Commerce Clearing House, State Tax Reporter - Iowa.

Chain Store Tax

The statutory definition of a chain store that is subject to this tax is a store operated in conjunction with one or more additional stores in which the profit from the operation goes to the same owner. Certain stores are exempt from the tax. Only one of the stores need be in Iowa. The tax is an occupation tax and is not in lieu of any other tax.

The rate of tax is based on the number of stores operated in the state. The tax scale is as follows:

NUMBER OF STORES

AMOUNT OF TAX PER STORE

2 - 10	\$ 5.00
11 - 20	15.00
21 - 30	35.00
31 - 40	65.00
41 - 50	105.00
51 and over	155.00

References:

Iowa Code 1971, Chapter 424.

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73.

Commerce Clearing House, State Tax Reporter - Iowa.

SECURITY TRANSACTIONS

Real Estate

Real Property Mortgage

Nature. Iowa mortgage law follows the lien theory; that is, the debtor holds title and right of possession to the property and the creditor holds a lien on the property.

Foreclosure. Mortgage foreclosure follows equitable proceedings in the district court. A mortgage that gives the mortgage holder the right to sell the property in case of default without resort to the court is not valid in Iowa. Under the established procedure, the court renders a judgment for the amount due and orders the property to be sold according to statutory requirements. If the property sells for less than the amount due on the judgment, the debtor is still liable for the remainder. If there is a surplus from the sale and all other liens have been paid, the debtor is entitled to the surplus.

If the debtor defaults on his obligations under the mortgage he may attempt to deed his equity of redemption to the mortgage holder to avoid foreclosure. This may be effective, but usually any method of cutting off the debtor's rights other than by statutory foreclosure is carefully scrutinized by the courts.

A contract of sale containing a forfeiture provision may be used as a security device. In this situation the seller retains legal title, while the buyer normally has possession. Any forfeiture of such a contract must be done according to statutory procedure, despite provisions in the contract to the contrary. In some instances the Iowa court has treated the purchaser's rights the same as those of a mortgagor, and has required statutory foreclosure proceedings in order to cut off the rights of the purchaser under such a contract.

Redemption. After the foreclosure sale the mortgagor has one year in which to redeem the property. He can do this by paying the amount for which the property sold at the foreclosure sale plus all costs and interest. After redemption, the property is free and clear from any unpaid portion of the judgment under which it was sold, although a personal deficiency may still be outstanding against the mortgagor. The mortgagor has the exclusive right to redeem the property during the first six months and the last three months during the year following the foreclosure sale. Creditors have the right to redeem during the period from six to nine months after the foreclosure sale and may redeem from each other during this period. If the mortgaged property consists of less than ten acres, the parties may agree that the statutory right of redemption be reduced to six months, provided the mortgagee waives any rights to a deficiency judgment after the foreclosure proceedings.

The debtor (mortgagor) has the right to possession of the property during the year following the foreclosure sale. He may transfer his right to redeem, but that right may not be seized on execution.

If the mortgagor should allow the property to waste during his year of possession following the foreclosure sale, the purchaser at the sale may request the court to appoint a receiver to take charge of the property, or an injunction may be issued to require the mortgagor to

stop any intentional depletion of the property. If the property is damaged the mortgagor is liable and damage may be recovered by the purchaser or the ultimate owner.

The purchaser at the foreclosure sale receives a sheriff's certificate. If at the end of the one year redemption period no action has been taken by the mortgagor or any creditor to redeem the property, the purchaser is entitled to a sheriff's deed to the property and his interest becomes absolute.

Other Real Property Security Devices

Deed of Trust. In Iowa a deed of trust is treated the same as a mortgage, and any foreclosure or sale must be executed in the same manner as for a mortgage.

Deed absolute. A deed that purports to convey the property absolutely, but that actually is intended by the parties to have the same effect as a mortgage, is treated as a mortgage by the courts when it is established by competent evidence that the deed was given as a security device.

Equitable mortgage. When money is loaned or credit is extended in reliance on an oral promise that certain property will secure the transaction, the court may decree an "equitable" mortgage on the property. This will be treated in the same manner as if an actual mortgage had been executed on the property.

Mortgages covering future advancements. This is the "open-end mortgage" and allows the lender to make loans periodically on the same security without calling for an additional mortgage as each loan is made. This type of mortgage is legal in Iowa and is used frequently. When properly recorded such a mortgage, including loans made after execution and recording of later mortgages, is prior to any later mortgage providing the original lender has no actual notice of the subsequent mortgages.

Real Property Recording Act

Nature. Iowa's recording act is "the state of the record at the time of transaction" type. The statute states:

"No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice unless filed in the office of the recorder of the county in which the same lies" (emphasis supplied)

Purchase-money mortgage. Purchase-money mortgages, like other mortgages and liens, take priority in order of their execution, subject to modifications of the recording act. They have priority, however, over any judgment lien against the purchaser, any mortgage executed by the purchaser before he took title to the property, and over dower and other rights attaching to his interest on his acquisition of title.

Vendor's lien. If a part of the purchase price remains unpaid, the seller has an implied lien on the property. If the lien is expressly reserved in the deed of conveyance, it is treated in the same manner as a purchase-money mortgage.

Estoppel by deed. If a person who has no title to a piece of property transfers it with warranty and later acquires title to the property, the title belongs to the party to whom he transferred it.

Defense to a Mortgage

Statute of frauds. The Iowa statute of frauds applies to all contracts "for the creation or transfer of any interest in lands...." Therefore, a legal mortgage must be in writing. An assignment of such a mortgage may be done orally, however, since this is considered a transfer of real property.

Part performance may remove oral contracts for the transfer of land from application of the statute of frauds in Iowa.

Invalidity of the mortgage debt. When a mortgage is given to secure a debt, the debt usually is evidenced by a note and the two go together. Thus the invalidity of the debt is a bar to the foreclosure of the mortgage.

Statute of limitations. The Iowa court has stated that a mortgage cannot be enforced if the debt is barred by the statute of limitations. The statute of limitations on written contracts, which would include promissory notes, is ten years. A special statute of limitations bars actions to foreclose "ancient" mortgages after twenty years. The court has held that the purpose of this special statute is to settle property rights and avoid stale claims, and not to extend the period for foreclosing mortgages.

Personal Property

Uniform Commercial Code

The Uniform Commercial Code became effective July 4, 1966.

Other Chattel Security Devices

Pawns. In Iowa, the regulation and control of pawns and pawnbrokers is a function of local municipal government.

Criminal Provision

If a debtor who has given a security interest in collateral willfully and with intent to defraud disposes of the property without the written consent of the holder of the instrument, he is guilty of larceny. Failure to produce the property covered by the instrument is prima facie evidence that the debtor has disposed of the property illegally.

References:

Iowa Code 1971, Chapters 554, 557, 558, 614, 615, 622, 626, 628, 654, 655, 656, 710.

"Equitable Mortgages in Iowa," 44 Iowa Law Review 716 (1959).

"Guide to Procedure Under Article Nine of the U.C.C. -- Secured Transactions" available from Secretary of State.

NATURAL RESOURCES

In most sections of Iowa, shortage of water has not been an obstacle to the location of new industries or to the expansion of existing ones. Furthermore, there is considerable evidence that additional supplies for industrial expansion can be developed from both surface and underground sources.

Water Use

The Iowa Natural Resources Council has jurisdiction over public and private waters in the state and the land adjacent to these waters. The law requires industrial users to obtain a permit from the Council if (1) the corporation has its own water supply inside the city limits of a municipality and its projected water use would exceed by more than three percent the highest daily beneficial use prior to May 16, 1967; or (2) if the corporation diverts, stores, or withdraws more than 5,000 gallons per day from any source of supply other than a municipal water system.

A permit must be obtained to divert water or any material from the surface directly into any underground watercourse or basin.

To obtain a permit the user must apply in writing to the Council. The permit fee is \$15. The application must state the designated beneficial use for which the permit is sought, the specific limits as to quantity, time and place, and the rate of diversion, storage, or withdrawal of waters. A hearing is held in the county in which the permit is sought and the Water Commissioner rules on the application. Any person aggrieved by the ruling may appeal to the Council and then to the

district court.

A permit may be granted for any period of time not exceeding ten years. The right of the corporation to the use of water terminates when it ceases for three consecutive years to use it for the specific beneficial purposes authorized in the permit, and the permittee has been notified thereof by the Water Commissioner. The corporation may sell, transfer, or assign its permit by conveying, leasing or otherwise transferring the ownership of the land described in the permit. However, the permit does not constitute ownership or absolute rights of use of such waters, since the waters remain subject to the principal of beneficial use and the orders of the Council.

A permit will not be granted if the proposed use will impair the effect of pollution control laws or the navigability of a navigable watercourse.

Water Pollution

Pollution of the water of any river, stream, or pond in Iowa is punishable as a misdemeanor and abatable as a nuisance. Pollution of the water of a stream is also an interference with private riparian rights and may be actionable in damages or the basis for injunctive relief to abate the private nuisance. Pollution is also subject to regulation by the Iowa Water Pollution Control Commission through the State Department of Health. A permit is required for the discharge of sewage, industrial waste, or other wastes or for the installation or operation of disposal systems. Surface water quality standards have been adopted and approved.

Projects on Floodways or Flood Plains

No structure, dam, obstruction, deposit or excavation may be

erected, used, or maintained on the floodways or flood plains of Iowa streams unless prior approval has been obtained from the Natural Resources Council. An application and engineering plans for such projects must be submitted to the Council for review with regard to its effect on (1) the efficiency or capacity of the floodway, or (2) the control, development, protection, allocation, or utilization of the water resources of the state, or (3) the state comprehensive plan for water resources, or an approved local water resources plan. The Council has considerable discretion in reviewing such projects and is directed by statute to determine and provide methods of constructing and equipping dams that will conserve and protect public and private riparian rights, and to determine the characteristics of floods which reasonably may be expected to occur.

Air Pollution Control

The 1967 Legislature created an Iowa Air Pollution Control Commission within the State Department of Health. The State Health Commissioner and eight other citizens appointed by the Governor serve as members of the commission. They are authorized to establish and enforce regulations for the abatement, control and prevention of air pollution.

Oil and Gas

A permit must be obtained from the Natural Resources Council (acting through the Office of the State Geologist) before commencing operations for the drilling or deepening of a well for oil or gas, including wells drilled for the underground storage of gas or oil. A fifty dollar fee is required for each well in addition to reasonable bond conditioned upon compliance with the statute (Code Chapter 84) and the rules and regulations of the Council.

Surface Mining

A license must be obtained from the Department of Mines and Minerals for the surface mining of coal, gypsum, clay, stone, sand, gravel or other ores or mineral solids, and for underground or open-cut mines for coal or gypsum. A fee of fifty dollars must accompany the initial application with annual renewal fee of ten dollars. Each surface mining site must be registered with the department and bond or security furnished in an amount sufficient to appropriately conserve and rehabilitate affected lands.

References:

Iowa Code 1971, Chapters 82, 83, 83A, 84, 135, 136B, 455A, 455B, 469, 657 and 732.

John F. Timmons, John C. O'Byrne, and Richard K. Frevert, Iowa's Water Resources (Iowa State College Press, Ames, 1956).

Ted L. Willrich and N. William Hines, Water Pollution Control and Abatement, (Iowa State University Press, Ames, Iowa, 1967).

N. William Hines, A Decade of Experience Under the Iowa Water Permit System (Agricultural Law Center, College of Law, The University of Iowa, Iowa City, Iowa 1966).

INDUSTRIAL DEVELOPMENT

Municipal Support of Industrial Projects

Chapter 419, Code of Iowa, 1971, provides for municipal assistance in the development of industrial projects in the event that local capital is not available. Each municipality shall have the power to acquire land and to acquire, construct and equip a facility for the manufacturing, processing or assembling of any agricultural or manufactured product. There is no limitation on the number of projects. Facilities must be located within the State and within a radius of eight miles of the municipality.

The municipality has the power to lease these facilities to others at not less than the average competitive commercial rental rate in the locale. The city or town may not act as owner or operator but must act as lessor only.

The entire cost of each project must be paid from the proceeds of the issuance and sale of revenue bonds. These bonds are authorized by the municipality in accordance with general state laws, following a public hearing on their issuance. The bonds are payable solely and only from the proceeds of a lease and may be further secured by a mortgage and trust indenture. Payments on the lease must include an additional sum equal to the amount of taxes which each political subdivision would receive if the property were privately owned. The municipality must pay this sum from the proceeds of the lease to the political subdivisions.

Reference:

Iowa Code 1971, Chapters 384 and 419.

Iowa Business Development Credit Corporation

The IBDC is designed to stimulate economic development within the state by making loans to new or established Iowa firms. It is a joint effort by banks, insurance companies, savings and loans and other financial institutions to provide a place where firms can borrow at satisfactory rates although collateral or financial backing is less than conventional lenders can accept. Additionally, counseling is available in the associated financial, marketing and managerial areas.

A loan applicant must be of good character, have capable management, be in sound financial condition, have adequate facilities, indicate a reasonably promising market and show ability to repay from the resulting new revenues. Loan proceeds may be used to purchase land, purchase

or construct buildings, machinery and equipment, inventory or for working capital. A portion may be used to retire debt.

Non-profit enterprises, lending or financial institutions, and those firms able to acquire funds at reasonable rates from other sources are ineligible for loans. Non-qualifying ventures include refinancing indebtedness, except under unusual circumstances, property speculation, purchasing an existing business, financing real property for sale or investment and financing either lease or long term sales arrangements.

Loans up to \$300,000 are available; however, most loans average \$100,000 to \$150,000. Of the twenty-three existing State Development Credit Corporations, the Iowa agency ranked first in number of loans approved during 1970, with thirty-two totaling \$3,912,000.

For additional information contact Iowa Business Development Credit Corporation, 263 Jewett Building, Des Moines, Iowa 50309.

Reference:

Iowa Code 1971, Chapter 496B.

Public Docks

Any city or town bordering upon a navigable waterway may create a department of public docks, under the direction of a dock board. The department can prepare or have prepared a comprehensive general plan for the improvement of the municipality's harbor and waterfront, making provision for the needs of commerce and shipping, and for the use of riverfront property or other property whether abutting the riverfront or not and whether located in the municipality or not. The plan includes providing for industrial and manufacturing purposes. It also may provide for the construction of docks, basins, piers, wharves, warehouses, tunnels, belt railways, cranes, machinery, dock apparatus, etc.

The dock board may purchase or acquire by condemnation or other

lawful means such personal property and abutting or non-abutting lands (inside or outside the municipality) as may be necessary for use in the provision, development, full utilization, and in the construction of any publicly owned harbor, waterfront, dock, etc., as provided for in the plan adopted by the board.

Dock boards have exclusive charge and control of the wharf property belonging to the municipality. They also have exclusive charge and control of the building, rebuilding, altering, repairing, operating, and leasing of such property. Leases may be made for industrial and manufacturing purposes.

The municipal council has the power to levy a property tax, not exceeding one-half mill, for these purposes. In cities that have a population of less than 30,000, an additional tax of up to one-half mill may be levied. If the dock board deems it necessary or advisable to issue bonds in support of these activities, they may petition the council to issue either dock bonds or revenue bonds.

Reference:

Iowa Code 1971, Chapter 384.

Public Utilities Regulation

In 1963 Iowa enacted its first statute governing the regulation of public utilities by the state. Before this, regulation was left to individual communities.

The 1963 act provides that the Iowa State Commerce Commission will regulate the rates and services of public utilities. "Public utilities" are defined as any person, partnership, business association, or corporation owning or operating facilities for furnishing communication services or electricity to the public, for compensation, or for furnishing gas or water to the public, for compensation, via piped distribution systems.

Certain telephone companies, municipally-owned utilities other than water, unincorporated villages owning distribution systems, and cooperative associations are not subject to rate regulation, while municipally-owned water works are entirely exempt from regulation.

Except for the duties and jurisdiction conferred upon the State Commerce Commission by the 1963 act, all rights of municipal corporations to franchise and regulate use of streets, alleys, and other public property, and all rights acquired by franchise or agreement are preserved.

Every public utility is required to furnish reasonably adequate services at reasonable rates and charges in accordance with tariffs filed with the Commerce Commission.

The Iowa State Commerce Commission also has the responsibility of general supervision of all railroads in the state, gas transmission pipelines, electric transmission, and the economic and operating regulation of motor carriers. Motor carriers, passenger carriers, contract carriers and liquid carriers must obtain operating authority from the Commission and comply with its rules regarding safety, rates and annual reports. The Commission also receives for filing the operating authority of all interstate carriers operating in Iowa.

References:

Code of Iowa, 1971, Chapter 490A.

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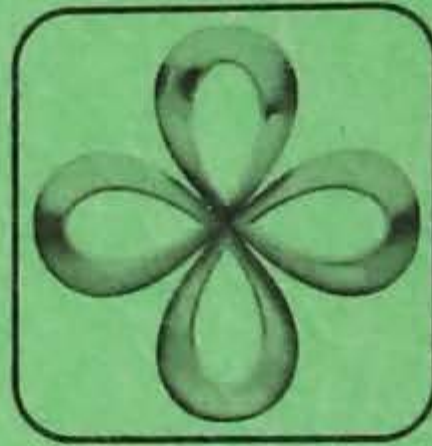
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