

UNIFORM PENALTY AND INTEREST ACT
AS AMENDED THROUGH PUBLIC ACT 99-335

Sec. 3-1. Short Title.

This Article may be cited as the Uniform Penalty and Interest Act. (Source: P.A. 87-205.)

Sec. 3-1A. Applicability.

In this Article, references to this "Act" mean this "Article" and references to "Department" mean the Department of Revenue. Unless otherwise specified in a tax Act, this Act applies to all taxes administered by the Department of Revenue, except for the Racing Privilege Tax Act, the provisions of the Property Tax Code except as expressly provided in Section 31-15 of the Property Tax Code, the Real Estate Transfer Tax Act, and the Coin Operated Amusement Device Tax.

Sec. 3-2. Interest.

(a) Interest paid by the Department to taxpayers and interest charged to taxpayers by the Department shall be paid at the annual rate determined by the Department. For periods prior to January 1, 2004, and after December 31, 2013, that rate shall be the underpayment rate established under Section 6621 of the Internal Revenue Code. For periods after December 31, 2003, and prior to January 1, 2014, that rate shall be:

(1) for the one-year period beginning with the date of underpayment or overpayment, the short-term federal rate established under Section 6621 of the Internal Revenue Code.

(2) for any period beginning the day after the one-year period described in paragraph (1) of this subsection (a), the underpayment rate established under Section 6621 of the Internal Revenue Code.

(b) The interest rate shall be adjusted on a semiannual basis, on January and July 1, based upon the underpayment rate or short-term federal rate going into effect on that January or July under Section 6621 of the Internal Revenue Code.

(c) This subsection (c) is applicable to returns due on and before December 31, 2000. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax and penalty due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of such notice and demand, interest under this Section on the amount so

paid shall not be imposed for the period after the date of the notice and demand.

(c-5) This subsection (c-5) is applicable to returns due on and after January 1, 2001. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the notice and demand, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(d) No interest shall be paid upon any overpayment of tax if the overpayment is refunded or a credit approved within 90 days after the last date prescribed for filing the original return, or within 90 days of the receipt of the processable return, or within 90 days after the date of overpayment, whichever date is latest, as determined without regard to processing time by the Comptroller or without regard to the date on which the credit is applied to the taxpayer's account. In order for an original return to be processable for purposes of this Section, it must be in the form prescribed or approved by the Department, signed by the person authorized by law, and contain all information, schedules, and support documents necessary to determine the tax due and to make allocations of tax as prescribed by law. For the purposes of computing interest, a return shall be deemed to be processable unless the Department notifies the taxpayer that the return is not processable within 90 days after the receipt of the return; however, interest shall not accumulate for the period following this date of notice. Interest on amounts refunded or credited pursuant to the filing of an amended return or claim for refund shall be determined from the due date of the original return or the date of overpayment, whichever is later, to the date of payment by the Department without regard to processing time by the Comptroller or the date of credit by the Department or without regard to the date on which the credit is applied to the taxpayer's account. If a claim for refund relates to an overpayment attributable to a net loss carryback as provided by Section 207 of the Illinois Income Tax Act, the date of overpayment shall be the last day of the taxable year in which the loss was incurred.

(e) Interest on erroneous refunds. Any portion of the tax imposed by an Act to which this Act is applicable or any interest or penalty which has been erroneously refunded and which is recoverable

by the Department shall bear interest from the date of payment of the refund. However, no interest will be charged if the erroneous refund is for an amount less than \$500 and is due to a mistake of the Department. (Source: P.A. 91-803, eff. 1-1-01.)

(f) If a taxpayer has a tax liability for the taxable period ending after June 30, 1983 and prior to July 1, 2002 that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the interest charged by the Department under this Section shall be imposed at a rate that is 200% of the rate that would otherwise be imposed under this Section.

(g) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the interest charged by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(h) No interest shall be paid to a taxpayer on any refund allowed under the Tax Delinquency Amnesty Act.

Sec. 3-3. Penalty for failure to file or pay.

(a) This subsection (a) is applicable before January 1, 1996. A penalty of 5% of the tax required to be shown due on a return shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing (penalty for late filing or nonfiling). If any unprocessable return is corrected and filed within 21 days after notice by the Department, the late filing or nonfiling penalty shall not apply. If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty. Beginning on the effective date of this amendatory Act of 1995, in the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed due date, the penalty imposed by Section 3-3(a) shall be abated.

(a-5) This subsection (a-5) is applicable to returns due on and after January 1, 1996 and on or before December 31, 2000. A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing. However, if any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return. However, the additional penalty amount may not exceed \$5,000 and is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed (penalty for late filing or nonfiling). If any unprocessable return is corrected and filed within 30 days after notice by the Department, the late filing or nonfiling penalty shall not apply. If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty. In the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed due date, the penalty imposed by Section 3-3(a-5) shall be abated.

(a-10) This subsection (a-10) is applicable to returns due on and after January 1, 2001. A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, reduced by any tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing. However, if any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return. However, the additional penalty amount may not exceed \$5,000 and is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the

return was required to be filed (penalty for late filing or nonfiling). If any unprocessable return is corrected and filed within 30 days after notice by the Department, the late filing or nonfiling penalty shall not apply. If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty. In the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed due date, the penalty imposed by this subsection (a-10) shall be abated. This subsection (a-10) does not apply to transaction reporting returns required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act that would not, when properly prepared and filed, result in the imposition of a tax; however, those returns are subject to the penalty set forth in subsection (a-15).

(a-15) A penalty of \$100 shall be imposed for failure to file a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act on or before the date a return is required to be filed; provided, however, that this penalty shall be imposed only if the return when properly prepared and filed would not result in the imposition of a tax. If such a transaction reporting return would result in the imposition of a tax when properly prepared and filed, then that return is subject to the provisions of subsection (a-10).

(b) This subsection is applicable before January 1, 1998. A penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:

(1) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

(2) the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all

proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this paragraph (2) shall be imposed at the expiration of the period provided for the filing of a protest.

(b-5) This subsection is applicable to returns due on and after January 1, 1998 and on or before December 31, 2000. A penalty of 20% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:

(1) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

(2) the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this paragraph (2) shall be imposed at the expiration of the period provided for the filing of a protest.

(b-10) This subsection (b-10) is applicable to returns due on and after January 1, 2001 and on or before December 31, 2003. A penalty shall be imposed for failure to pay:

(1) the tax shown due on a return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability). The amount of penalty imposed under this subsection (b-10)(1) shall be 2% of any amount that is paid no later than 30 days after the due date, 5% of any amount that is paid later than 30 days after the due date and not later than 90 days after the

due date, 10% of any amount that is paid later than 90 days after the due date and not later than 180 days after the due date, and 15% of any amount that is paid later than 180 days after the due date. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the notice and demand, then the penalty for late payment or nonpayment of admitted liability under this subsection (b-10)(1) on the amount so paid shall not accrue for the period after the date of the notice and demand.

(2) the full amount of any tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. The amount of penalty imposed under this subsection (b-10)(2) shall be 20% of any amount that is not paid within the 30-day period. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this subsection (b-10)(2) shall be imposed at the expiration of the period provided for the filing of a protest.

(b-15) This subsection (b-15) is applicable to returns due on and after January 1, 2004 and on or before December 31, 2004. A penalty shall be imposed for failure to pay the tax shown due or required to be shown due on a return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability). The amount of penalty imposed under this subsection (b-15)(1) shall be 2% of any amount that is paid no later than 30 days after the due date, 10% of any amount that is paid later than 30 days after the due date and not later than 90 days after the due date, 15% of any amount that is paid later than 90 days after the due date and not later than 180 days after the due date, and 20% of any amount that is paid later than 180 days after the due date. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of this notice and demand, then the penalty for late payment or nonpayment of admitted liability under this

subsection (b-15)(1) on the amount so paid shall not accrue for the period after the date of the notice and demand.

(b-20) This subsection (b-20) is applicable to returns due on and after January 1, 2005.

(1) A penalty shall be imposed for failure to pay, prior to the due date for payment, any amount of tax the payment of which is required to be made prior to the filing of a return or without a return (penalty for late payment or nonpayment of estimated or accelerated tax). The amount of penalty imposed under this paragraph (1) shall be 2% of any amount that is paid no later than 30 days after the due date and 10% of any amount that is paid later than 30 days after the due date.

(2) A penalty shall be imposed for failure to pay the tax shown due or required to be shown due on a return on or before the due date prescribed for payment of that tax or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of tax). The amount of penalty imposed under this paragraph (2) shall be 2% of any amount that is paid no later than 30 days after the due date, 10% of any amount that is paid later than 30 days after the due date and prior to the date the Department has initiated an audit or investigation of the taxpayer, and 20% of any amount that is paid after the date the Department has initiated an audit or investigation of the taxpayer; provided that the penalty shall be reduced to 15% if the entire amount due is paid not later than 30 days after the Department has provided the taxpayer with an amended return (following completion of an occupation, use, or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit); provided further that the reduction to 15% shall be rescinded if the taxpayer makes any claim for refund or credit of the tax, penalties, or interest determined to be due upon audit, except in the case of a claim filed pursuant to subsection (b) of Section 506 of the Illinois Income Tax Act or to claim a carryover of a loss or credit, the availability of which was not determined in the audit. For purposes of this paragraph (2), any overpayment reported on an original return that has been allowed as a refund or credit to the taxpayer shall be deemed to have not been paid on or before the due date for payment and any amount paid under protest pursuant to the provisions of the State Officers and Employees Money Disposition Act shall be deemed to have been paid after the Department has initiated an audit and more than 30 days after the Department has provided

the taxpayer with an amended return (following completion of an occupation, use, or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit).

(3) The penalty imposed under this subsection (b-20) shall be deemed assessed at the time the tax upon which the penalty is computed is assessed, except that, if the reduction of the penalty imposed under paragraph (2) of this section (b-20) to 15% is rescinded because a claim for refund or credit has been filed, the increase in penalty shall be deemed assessed at the time the claim for refund or credit is filed.

(c) For purposes of the late payment penalties, the basis of the penalty shall be the tax shown or required to be shown on a return, whichever is applicable, reduced by any part of the tax which is paid on time and by any credit which was properly allowable on the date the return was required to be filed.

(d) A penalty shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return.

(e) This subsection (e) is applicable to returns due before January 1, 2001. If both a subsection (b)(1) or (b-5)(1) penalty and a subsection (b)(2) or (b-5)(2) penalty are assessed against the same return, the subsection (b)(2) or (b-5)(2) penalty shall be assessed against only the additional tax found to be due.

(e-5) This subsection (e-5) is applicable to returns due on and after January 1, 2001. If both a subsection (b-10)(1) penalty and a subsection (b-10)(2) penalty are assessed against the same return, the subsection (b-10)(2) penalty shall be assessed against only the additional tax found to be due.

(f) If the taxpayer has failed to file the return, the Department shall determine the correct tax according to its best judgment and information, which amount shall be prima facie evidence of the correctness of the tax due.

(g) The time within which to file a return or pay an amount of tax due without imposition of a penalty does not extend the time within which to file a protest to a notice of tax liability or a notice of deficiency.

(h) No return shall be determined to be unprocessable because of the omission of any information requested on the return pursuant to Section 2505-575 of the Department of Revenue Law (20 ILCS 2505/2505-575).

(i) If a taxpayer has a tax liability for the taxable period ending after June 30, 1983 and prior to July 1, 2002 that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(j) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 90-491, eff. 1-1-98; 90-548, eff. 12-4-97; 91-239, eff. 1-1-00; 91-803, eff. 1-1-01.)

Sec. 3-4. Penalty for failure to file correct information returns.

(a) Failure to file correct information returns - imposition of penalty.

(1) In general. Unless otherwise provided in a tax Act, in the case of a failure described in paragraph (2) of this subsection (a) by any person with respect to an information return, that person shall pay a penalty of \$5 for each return or statement with respect to which the failure occurs, but the total amount imposed on that person for all such failures during any calendar year shall not exceed \$25,000.

(2) Failures subject to penalty. The following failures are subject to the penalty imposed in paragraph (1) of this subsection (a):

(A) any failure to file an information return with the Department on or before the required filing date, or

(B) any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

(b) Reduction where correction in specified period.

(1) Correction within 60 days. If any failure described in subsection (a) (2) is corrected within 60 days after the required filing date:

(A) the penalty imposed by subsection (a) shall be reduced by 50%; and

(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed 50% of the maximum prescribed in subsection (a) (1).

(c) Information return defined. An information return is any tax return required by a tax Act to be filed with the Department that does not, by law, require the payment of a tax liability.

(d) If a taxpayer has a tax liability for the taxable period ending after June 30, 1983 and prior to July 1, 2002 that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(e) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 87-205.)

Sec. 3-4.5. Collection penalty.

(a) If any liability (including any liability for penalties or interest imposed under this Act) owed by a taxpayer with respect to any return due on or after July 1, 2003, is not paid in full prior to the date specified in subsection (b) of this Section, a collection penalty shall be imposed on the taxpayer. The penalty shall be deemed assessed as of the date specified in subsection (b) of this Section and shall be considered additional State tax of the taxpayer imposed under the law under which the tax being collected was imposed.

(b) The penalty under subsection (a) of this Section shall be imposed if full payment is not received prior to the 31st day after a notice and demand, a notice of additional tax due or a request for payment of a final liability is issued by the Department.

(c) The penalty imposed under this Section shall be:

(1) \$30 in any case in which the amount of the liability shown on the notice and demand, notice of additional tax due, or other request for payment that remains unpaid as of the date specified in subsection (b) of this Section is less than \$1,000; or

(2) \$100 in any case in which the amount of the liability shown on the notice and demand, notice of additional tax due, or other request for payment that remains unpaid as of the date specified in subsection (b) of this Section is \$1,000 or more.

Sec. 3-5. Penalty for negligence.

(a) If any return or amended return is prepared negligently, but without intent to defraud, and filed, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 20% of any resulting deficiency.

(b) Negligence includes any failure to make a reasonable attempt to comply with the provisions of any tax Act and includes careless, reckless, or intentional disregard of the law or regulations.

(c) No penalty shall be imposed under this Section if it is shown that failure to comply with the tax Act is due to reasonable cause. A taxpayer is not negligent if the taxpayer shows substantial authority to support the return as filed.

(d) If a taxpayer has a tax liability for the taxable period ending after June 30, 1983 and prior to July 1, 2002 that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department shall be imposed in an amount that is 200% of the amount that would otherwise be imposed in accordance with this Section.

(e) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 87-205; 87-1189.)

Sec. 3-6. Penalty for fraud.

(a) If any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.

(b) If any claim is filed with intent to defraud, a penalty shall be imposed in an amount equal to 50% of the amount fraudulently claimed for credit or refund.

(c) If a taxpayer has a tax liability for the taxable period ending after June 30, 1983 and prior to July 1, 2002 that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(d) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 87-205.)

Sec. 3-7. Personal Liability Penalty.

(a) Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who wilfully fails to file the return or make the payment to the Department or wilfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section. Proof of that determination by the Department shall be made at

any hearing before it or in any legal proceeding by reproduced copy or computer printout of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue. If reproduced copies of the Department's records are offered as proof of that determination, the Director must certify that those copies are true and exact copies of records on file with the Department. If computer print-outs of the Department's records are offered as proof of such determination, the Director must certify that those computer print-outs are true and exact representations of records properly entered into standard electronic computing equipment, in the regular course of the Department's business, at or reasonably near the time of the occurrence of the facts recorded, from trustworthy and reliable information. That certified reproduced copy or certified computer print-out shall without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax or penalty due.

(b) The Department shall issue a notice of penalty liability for the amount claimed by the Department pursuant to this Section. Procedures for protest and review of a notice of penalty liability issued pursuant to this Section and assessment of the penalty due hereunder shall be the same as those prescribed for protest and review of a notice of tax liability or a notice of deficiency, as the case may be, and the assessment of tax liability under the Act imposing that liability.

(b-5) Any person filing an action under the Administrative Review Law to review a final assessment or revised final assessment (except a final assessment or revised final assessment relating to any trust tax imposed in accordance with the Illinois Income Tax Act) issued by the Department under this Section shall, within 20 days after filing the complaint, file a bond with good and sufficient surety or sureties residing in this State or licensed to do business in this State, or instead of bond, obtain an order from the court imposing a lien upon the plaintiff's property as hereinafter provided. If the person filing the complaint fails to comply with this bonding requirement within 20 days after filing the complaint, the Department shall file a motion to dismiss and the court shall dismiss the action unless the person filing the action complies with the bonding requirements set out with this provision within 30 days after the filing of the Department's motion to dismiss.

Upon dismissal of a complaint for failure to comply with this subsection, the court shall enter

judgment against the taxpayer and in favor of the Department in the amount of the final assessment or revised final assessment, together with any interest that has accrued since the Department issued the final assessment or revised final assessment, and for costs. The judgment is enforceable as other judgments for the payment of money.

The amount of the bond shall be fixed and approved by the court, but shall not be less than the amount of the tax and penalty claimed to be due by the Department in its final assessment or revised final assessment to the person filing the bond, plus the amount of interest due from that person to the Department at the time when the Department issued its final assessment or revised final assessment to that person. The bond must be executed in favor of the Department and conditioned on the taxpayer's payment within 30 days after termination of the proceedings for judicial review of the amount of tax, penalty, and interest found by the court to be due in those proceedings. The bond, when filed and approved, is, from that time until 2 years after termination of the proceedings for judicial review in which the bond is filed, a lien against the real estate situated in the county in which the bond is filed of the person filing the bond and of the surety or sureties on the bond, until the condition of the bond is complied with or until the bond is canceled as provided in this subsection. The lien does not apply, however, to the real property of a corporate surety duly licensed to do business in this State. If the person filing the bond fails to keep its condition, the bond is forfeited, and the Department may institute an action upon the bond in its own name for the entire amount of the bond and costs. An action upon the bond is in addition to any other remedy provided by law. If the person filing the bond complies with its condition or if, in the proceedings for judicial review in which the bond is filed, the court determines that no tax, penalty, or interest is due, the bond shall be canceled by the issuer of the bond.

If the court finds in a particular case that the plaintiff cannot furnish a satisfactory surety or sureties for the kind of bond required in this subsection, the court may relieve the plaintiff of the obligation of filing a bond if, upon the timely application of the plaintiff for a lien in place of a bond and accompanying proof, the court is satisfied that a lien would secure the assessment as well as would a bond. Upon that finding, the court shall enter an order subjecting the plaintiff's real and personal property (including subsequently acquired property) situated in the county in which the order is entered to a lien in favor of the Department. The lien shall be for the amount of the tax and penalty claimed to be

due by the Department in its final assessment or revised final assessment, plus the amount of interest due from that person to the Department at the time when the Department issued its final assessment or revised final assessment to that person. The lien shall continue until the court determines in the proceedings for judicial review that no tax, penalty, or interest is due, or until the plaintiff pays to the Department the tax, penalty, and interest secured by the lien. In its discretion, the court may impose a lien regardless of the ratio of the taxpayer's assets to the final assessment or revised final assessment plus the amount of the interest and penalty. This subsection does not give the Department a preference over the rights of a bona fide purchaser, mortgagee, judgment creditor, or other lien holder arising before the entry of the order creating the lien in favor of the Department. "Bona fide", as used in this subsection, does not include a mortgage of real or personal property or other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer who executed the chattel or real property mortgage or the document evidencing the credit transaction. The lien is inferior to the lien of general taxes, special assessments, and special taxes levied by a political subdivision of this State. The lien is not effective against a purchaser with respect to an item in a retailer's stock in trade purchased from the retailer in the usual course of the retailer's business. The lien may not be enforced against the household effects, wearing apparel, books, or tools or implements of a trade or profession kept for use by any person. The lien is not effective against real property unless and until a certified copy or memorandum of such order is recorded in the Office of the Recorder of Deeds for the county or counties in which the property is located. The lien is not effective against real property whose title is registered under the provisions of the Registered Titles (Torrens) Act until the provisions of Section 85 of that Act are complied with.

Service upon the Director of Revenue or the Assistant Director of Revenue of summons issued in an action to review a final administrative decision of the Department is service upon the Department. The Department shall certify the record of its proceedings if the taxpayer pays to it 75¢ per page of testimony taken before the Department and 25¢ per page of all other matters contained in the record, except that these charges may be waived when the Department is satisfied that the aggrieved party is a poor person who cannot afford to pay the charges. If payment for the record is not made by the taxpayer within 30 days after notice from the Department or the Attorney General of the cost, the court in which the proceeding

is pending, on motion of the Department, shall dismiss the complaint and (when the administrative decision as to which the action for judicial review was filed is a final assessment or revised final assessment) shall enter judgment against the taxpayer and in favor of the Department for the amount of tax and penalty shown by the Department's final assessment or revised final assessment to be due, plus interest as provided for in this Act from the date when the liability upon which the interest accrued became delinquent until the entry of the judgment in the action for judicial review under the Administrative Review Law, and also for costs.

(c) The personal liability imposed by this Section shall survive the dissolution of a partnership, limited liability company, or corporation. No notice of penalty liability shall be issued after the expiration of 3 years after the date all proceedings in court for the review of any final or revised final assessments issued against a taxpayer which constitute the basis of such penalty liability have terminated or the time for the taking thereof has expired without such proceedings being instituted or after the expiration of 3 years after the date a return is filed with the Department by a taxpayer in cases where the return constitutes the basis of such liability. Interest shall continue to accrue on that portion of the penalty imposed by this Section which represents the tax unpaid by the taxpayer at the same rate and in the same amount as interest accrues on the tax unpaid by the taxpayer.

(d) In addition to any other remedy provided for by the laws of this State, and provided that no hearing or proceeding for review is pending, any Section of a tax Act which provides a means for collection of taxes shall in the same manner and to the same extent provide a means for the collection of the penalty imposed by this Section. The procedures for the filing of an action for collection of the penalty imposed by this Section shall be the same as those prescribed by a tax Act for the filing of an action for collection of the tax assessed under that Act. The time limitation period on the Department's right to bring suit to recover the amount of such tax, or portion thereof, or penalty or interest from such person, or if deceased or incompetent to file a claim thereof against his estate, shall not run during: (1) any period of time in which the order of any Court has the effect of enjoining or restraining the Department from bringing such suit or claim against such person, or (2) any period of time in which the order of the Court has the effect of enjoining or restraining the Department from bringing suit or initiating other proper proceedings for the collection of such amounts from the taxpayer, or (3) any period

of time the person departs from and remains out of the State; but the foregoing provisions concerning absence from the State shall not apply to any case in which, at the time when a tax or penalty becomes due under this Act, the person allegedly liable therefor is not a resident of this State.

(e) For the purposes of this Section, "officer or employee of any taxpayer" includes a partner of a partnership, a manager or member of a limited liability corporation, and a member of a registered limited liability partnership.

(f) A trust tax is any tax for which an amount is collected or withheld by a taxpayer from another person, and any tax for which an amount is required to be collected or withheld by a taxpayer from another person, regardless of whether it is in fact collected or withheld.

(g) The personal liability imposed by this Section is in addition to liability incurred by a partner of a partnership or limited liability partnership resulting from the issuance of a notice of tax liability issued to the partnership or limited liability partnership.

(h) In addition to any other basis for imposition of liability under this Act including under subsection (a) of this Section, any person who collects, withholds, or receives a tax, or any amount represented to be a tax, from another person holds the amount so collected or withheld in special trust for the benefit of the Department and is liable to the Department for the amount so withheld or collected plus accrued interest and penalty on that amount. For purposes of this subsection, "person" shall have the same definition as provided in Section 1 of the Retailers' Occupation Tax Act. (Source: P.A. 90-458, eff. 8-17-97; 91-203, eff. 7-20-99.)

Sec. 3-7.5. Bad check penalty.

(a) In addition to any other penalty provided in this Act, a penalty of \$25 shall be imposed on any person who issues a check or other draft to the Department that is not honored upon presentment. The penalty imposed under this Section shall be deemed assessed at the time of presentment of the check or other draft and shall be treated for all purposes, including collection and allocation, as part of the tax or other liability for which the check or other draft represented payment.

(b) If a taxpayer has a tax liability for the taxable period ending after June 30, 1983 and prior to July 1, 2002 that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period

provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(c) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 91-803, eff. 1-1-01.)

Sec. 3-8. No penalties if reasonable cause exists.

The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability. (Source: P.A. 91-803, eff. 1-1-01.)

Sec. 3-9. Application of provisions.

(a) The provisions of this Act shall apply to the rates of interest for periods on and after the effective date of this Act. Interest for periods prior to the effective date of this Act shall be computed at the rates in effect prior to that date.

(b) Penalties shall be imposed at the rate and in the manner in effect at the time the tax liability became due.

(c) Interest shall not be paid on claims filed after the effective date of this Act except such interest which is paid in accordance with this Act.

(d) Payments received from a taxpayer shall be applied against the outstanding liability of the taxpayer, or to an agreed portion of the outstanding liability, in the following order: the principal amount of the tax, then penalty, and then interest. (Source: P.A. 87-205.)

Sec. 3-10. Limitations.

(a) In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed at any time.

(b) In the case of a failure to file a return required by law, the tax may be assessed at any time. If the taxpayer shows that there was reasonable cause for failure to file a return, the period shall be limited to not more than 6 years after the original due date of each return required to have been filed.

(c) In the case of a failure to file a return required by law that is voluntarily disclosed to the Department, in accordance with regulations promulgated by the Department for receiving the voluntary disclosure, the tax may be assessed no more than 4 years after the original due date of each return required to have been filed.

(d) The limitations on assessment shall not apply where the Department has, within the 6-year period of limitation, notified a person that a return is required by law from that person. These limitations shall be tolled for any time period in which the order of any court has the effect of enjoining or restraining the Department from that assessment. (Source: P.A. 87-1189.)

Sec. 3-11. Department and Taxpayer Study.

(a) Beginning 3 years after the effective date of this amendatory Act of 1995, the Illinois Department of Revenue shall conduct a study of the effectiveness of Section 3-3 of this Act as a means of ensuring timely filing of returns and payment of tax. This study shall include an examination of the effect of the imposition of the Section 3-3(a) late filing or non-filing penalty on the filing of returns required by Section 704 of the Illinois Income Tax Act. The study shall also include an examination of the level of compliance with estimated income tax payment requirements of Section 803 of the Illinois Income Tax Act, prior to and subsequent to the incorporation of the late payment penalty of Section 3-3(b) of this Act into Section 804 of the Illinois Income Tax Act.

(b) The Department shall seek the advice and participation of interested taxpayers in this study. The Department shall report the results of the study to the Illinois General Assembly no later than 4 years after the effective date of this amendatory Act of 1995. The study shall contain the Department's conclusions and recommendations, along with the conclusions and recommendations of participating taxpayers should those conclusions and

recommendations differ from those of the Department. (Source: P.A. 89-379, eff. 8-18-95.)

Sec. 3-12. Appeal options.

The Department of Revenue shall include a statement of the appeal options available to the taxpayer, either by law or by departmental rule, for each penalty for late payment, penalty for failure to file a tax return on or before the due date for filing, and penalty for failure to file correct information returns. (Source: P.A. 89-597, eff. 1-1-97.)