

TITLE 86: REVENUE

**PART 100
INCOME TAX**

SUBPART V: NOTICE AND DEMAND

Section 100.9100 Notice and Demand (IITA Section 902)

- a) In general
- 1) Notice required. Except as provided in subsection (b) below, the Director or his delegate shall issue written notice and demand for payment for any unpaid portion of taxes, penalties, and interest imposed by the Act as soon as practicable after an amount payable thereunder has been deemed assessed. The written notice (see IITA Section 1402) shall be given to the person or persons liable for the unpaid amount and shall state a time and place for payment. (Effective for taxable years ending after December 30, 1973, the written notice shall be sent by first class mail or left at the person's (or persons') usual place of business.)
 - 2) Tax shown as due on returns. IITA Section 601(a) requires that a taxpayer pay (without notice or demand) the amount of tax shown on a return which remains unpaid after taking into account certain amounts enumerated in IITA Section 601(b).
 - 3) Self-assessment; mathematical errors. IITA Section 903(a)(l) and (4) provides that the amount of tax shown due on a return or on an amended return increasing the tax shall be deemed assessed as of the date the return is filed but that, irrespective of other provisions, any amount paid as tax or in respect of tax paid under the Act other than amounts withheld or paid as estimated tax under Articles 7 or 8 shall be deemed assessed upon the date of receipt of payments. If as a result of a mathematical error the amount of tax shown on a return or on such amended return is understated, the Department is to notify the taxpayer that the portion of the correct amount of tax in excess of that shown on the return has been (deemed) assessed is due. Also, thereunder, the tax computed by the Department on a return properly filed without the tax computation is to be deemed assessed as of the date when payment is due.
 - 4) Notice of deficiency as prerequisite to assessment. Inasmuch as the tax deemed assessed in each of the above instances is based on the facts reported in the return or amended return filed by the taxpayer, any notice and demand issued to effect immediate collection of the tax remaining unpaid in connection therewith is not considered to be a notice of deficiency as that term is used in

IITA Section 903(a)(2). However, a notice of deficiency is a prerequisite for assessment if the taxpayer fails to file a tax return and under the authorization in IITA Section 904(b) the Department determines the amount of tax and penalties due according to its best judgment and information.

5) Interest

A) Prior to January 1, 1994, IITA Section 1003(a) and (e) provides that interest at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code) is to be paid on any amount of tax imposed by the Act not paid on or before the date prescribed for payment thereof except that, if paid within 10 days after the date of issuance of notice and demand therefor, interest is not to be imposed for the period after the notice and demand issuance date. Interest begins with the date of issuance of the notice and demand on any penalty not paid within the 10-day period. (See IITA Sections 601(a) and 1003.)

B) On and after January 1, 1994, IITA Section 1003(a) provides that interest shall be paid in the manner and at the rate prescribed in Section 3-2 of the UPIA for the period from such date to the date of payment of such amount. Section 3-2(c) of the UPIA provides that 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 on the amount so paid shall not be imposed for the period after the date of the notice and demand.

b) Judicial review

1) In general. If a notice of deficiency has been issued and deemed assessed under IITA Section 903(a)(2) and the person (or persons) liable for the tax has filed a timely protest under IITA Section 908, notice and demand respecting such assessment shall not be made until all proceedings in court for review of the assessment have terminated or the time for taking thereof has expired without such proceedings being instituted.

2) Protest of notice of deficiency. IITA Section 908 provides that after a notice of deficiency is issued the taxpayer may file a protest against it within 60 days (150 days if the taxpayer is outside the United States). The Department's action on the protest, if no hearing was requested, becomes final 30 days after the mailing of a notice of decision. If a hearing was requested, the Department's action becomes final 30 days after the mailing of a notice of decision unless a rehearing is requested within that 30-day period. If, within that 30-day period, the taxpayer requests a rehearing on the decision, the Department's action becomes final either upon its issuance (within 10 days after the rehearing request is received) of a denial of the request or, if such denial is not issued within that 10-day period, upon the Department's issuance (as soon as practicable) of a notice of final decision. (See Section 100.9200 and this Section 100.9100.)

3) Administrative Review of decisions. IITA Section 1201 states that the provisions of the Administrative Review Act and rules adopted pursuant thereto shall apply

to and govern all proceedings for the judicial review of the Department's final actions under IITA Sections 908(d) and 910(d). Section 4 of that Act states that every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date of service on the party affected of a copy of the decision sought to be reviewed.

c) Action for recovery of taxes

- 1) In general. The Department, at any time that levy proceedings may be timely commenced under IITA Section 1109, regardless of whether a notice of lien was filed under the provisions of Section 1103 may bring an action in any court of competent jurisdiction within or without this state to recover the amount of unpaid taxes, penalties, and interest due under the Act. For purposes of such action, certification by the Department of the correctness of the amount of any deficiency, its assessment, and of its procedural compliance with all provisions of the Act shall constitute prima facie evidence of such correctness, assessment, and procedural compliance.
- 2) Levy and sale authorized. If tax due under the Act remains unpaid for 10 days after issuance of a notice and demand for payment and no review proceedings have been commenced, then under IITA Section 1109, the Department may institute levy and sale proceedings against real and personal property of the taxpayer within 20 years after the filing (under IITA Section 1103) of a notice of lien.
- 3) Liens. Under IITA Sections 1102 and 1103, the Department may file a notice of regular lien or jeopardy assessment lien respecting the amount due of unpaid tax and penalty (plus interest due and unpaid at the time the notice of lien is filed) in the office of the Recorder of Deeds in the county in which the property (real or personal) subject to the lien is located. If title to land to be affected by the lien notice is registered under the May 1, 1897 Act concerning land titles mentioned in IITA Section 1103, the notice is to be filed in the office of the Registrar of Titles of the county in which the property subject to the lien is situated. (See also IITA Section 1109.)

(Source: Amended at 25 Ill. Reg. 4929, effective March 23, 2001)