

**Illinois Department of Revenue
Regulations**

Title 86 Part 210 Section 210.126	Voluntary Disclosure
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TITLE 86: REVENUE

**PART 210
BOARD OF APPEALS**

Section 210.126 Voluntary Disclosure

- a) Statutory authority. Section 39c-4 of the Civil Administrative Code of Illinois, as added by P.A. 87-1246, sets forth limitation periods for the assessment of taxes by the Illinois Department of Revenue (Department). In the case of a failure to file a return required by law that is voluntarily disclosed to the Department, in accordance with this Section, the tax may be assessed no more than 4 years after the original due date of each return required to have been filed (Section 39c-4 of the Civil Administrative Code of Illinois, Ill. Rev. Stat. 1991, ch. 127, par. 39c-4, as added by P.A. 87-1246) [20 ILCS 2505/39c-4].

- b) Taxpayers must voluntarily come forward and disclose. In order for the statute of limitations to be limited to no more than four years under Illinois law, a taxpayer must voluntarily come forward and disclose its liability to the Board of Appeals. A taxpayer has voluntarily come forward and disclosed its liability to the Board when it has done the following:
 - 1) Taxpayer must file an application for voluntary disclosure. Taxpayer must file an application for voluntary disclosure (Application) in a form prescribed by the Board, prior to the date the Department of Revenue has initiated an audit or investigation of the taxpayer. The Application is not accepted by the Board until it has been approved and signed by a Board member. A Board member may not sign the Application until the Department has notified the Board that the Department had not initiated an audit or investigation of taxpayer, as those terms are defined in subsection (c)(1) below, prior to the filing date of taxpayer's Application with the Board. The filing date of taxpayer's Application with the Board is the date the Application is received by the Board. Once a Board member has signed the Application, the Board will furnish taxpayer with a copy of the executed Application.

 - 2) Taxpayer must file returns and pay liability. Once taxpayer has received a copy of the executed Application, taxpayer must file Illinois tax returns for the tax being disclosed for the last four years with the Board and pay all tax, penalty and interest (except for those amounts for which taxpayer is petitioning the Board seeking relief) within thirty days from the Board of Appeals member's Signature Date (Signature Date). The Board of Appeals member's Signature Date is the date the Board member signs the Application. Taxpayer's determination of its tax liability, including the methodology used by taxpayer, must be documented and in a manner reviewable by the Department. A taxpayer who maintains that it

was not required to file returns and pay tax for the entire four years shall file returns and pay tax for the period that it maintains it was required to do so under Illinois law. In addition, taxpayer will provide in its petition to the Board its reasons why it maintains it does not owe tax for the entire voluntary disclosure period (immediately preceding four years). The Board will determine the number of years (up to the four year maximum) taxpayer is subject to Illinois tax under voluntary disclosure. The Board will notify taxpayer of its decision. Taxpayer will file returns and pay tax for the number of years (up to four years maximum) the Board has determined taxpayer is subject to tax under voluntary disclosure. Taxpayer will file any additional returns and pay any additional liability owed within 60 days from the date of notification to the taxpayer. The date of notification is the date shown on the notification sent to the taxpayer by the Board.

- 3) Taxpayer may file petition with tax returns. Taxpayers who, in addition to seeking the four year statute of limitations, are requesting additional relief from the Board, must file a petition within 30 days from the Signature Date in the manner prescribed by Section 210.101. Taxpayers shall file their petition with the Board concurrently with their tax returns for the voluntary disclosure period to the address designated by the Board.
- c) Disqualification from voluntary disclosure. A taxpayer does not qualify for voluntary disclosure if:
- 1) The Department has initiated an audit or investigation. It is established that the Department had, prior to the date taxpayer filed its Application with the Board, initiated an audit or investigation of the taxpayer.
 - A) Initiated an audit. The Department has initiated an audit of the taxpayer if, at a minimum:
 - i) The Audit Bureau of the Department has contacted the taxpayer by telephone to schedule an appointment to audit taxpayer for the particular Illinois tax type being disclosed, or
 - ii) The Audit Bureau of the Department has contacted the taxpayer in writing regarding a possible tax liability or a notice of intent to audit for the particular Illinois tax type being disclosed; or
 - B) Initiated an investigation. The Investigations and Prosecutions Bureau of the Department has initiated an investigation of a taxpayer if, at a minimum, the Department has opened a criminal investigation file on the taxpayer.
 - C) Partnerships. Once the Department has initiated an audit or investigation of a partnership or a general partner of the partnership, the Department is deemed to have initiated an audit or investigation of the partnership and all partners of that partnership with respect to the liability from such partnership for purposes of qualifying for voluntary disclosure.

- 2) Taxpayer does not file returns. Taxpayer does not file tax returns within thirty days from the Signature Date.
 - 3) Taxpayer does not pay tax liability. Taxpayer does not pay all tax, penalty and interest (except for those amounts for which taxpayer is seeking relief from the Board) within thirty days from the Signature Date.
 - 4) Taxpayer does not comply with Board Order. Taxpayer does not comply with the Board's Order regarding taxpayer's petition seeking relief.
 - 5) Taxpayer does not begin prospective compliance. Taxpayer must begin prospective compliance with Illinois tax law as a part of voluntary disclosure. Taxpayer has begun prospective compliance when taxpayer has made a good faith effort to comply with Illinois tax law. This would include prospectively filing all returns that are due, paying the tax liability owed, registering with the Department and begin remitting all taxes collected.
 - 6) Taxpayer has not remitted all taxes collected for the Illinois tax type being disclosed as part of voluntary disclosure. Taxpayer must remit all taxes (and interest) previously collected for all periods by taxpayer for the Illinois tax type being disclosed as part of taxpayer's voluntary disclosure with the Department. This includes periods beyond the four-year limitation for which the taxes were collected but not remitted. Failure to remit all taxes (and interest) previously collected for the Illinois tax type being disclosed will disqualify taxpayer from the relief provided under voluntary disclosure.
- d) Extensions. Taxpayer may request in writing, before the expiration of the 30-day period, an automatic 60-day extension in order to file its petition or tax returns or make payment. Taxpayer may request in writing, before the expiration of any extension, a further extension in order to file its petition or tax returns or make payment. The Board, in its discretion, may grant an additional extension where taxpayer's facts warrant a further extension of time in order to comply with the Board's filing requirements.
- e) The Department retains the right to audit taxpayer and verify accurate reporting. Taxpayer has made a good faith effort to accurately report its tax liability under voluntary disclosure when taxpayer has made a reasonable and honest effort to calculate and report its correct tax liability due and does not intentionally or purposefully misrepresent its tax liability to the Department. The Department shall retain the right to audit taxpayer for all open years of the voluntary disclosure period and assess all tax, penalty and interest that is owed by taxpayer. Taxpayer will not qualify for the relief provided under voluntary disclosure when the Department finds that taxpayer understated its final tax liability to the Board by 10% or more and taxpayer cannot demonstrate to the Department that a good faith effort was made to accurately report its liability for the voluntary disclosure period.

(Source: Added at 17 Ill. Reg. 8860, effective June 2, 1993)