

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Numbers: 100.7300 Emergency Action: Amendment
- 4) Statutory Authority: 35 ILCS 5/704A
- 5) Effective Date of Amendment: December 23, 2014
- 6) If the emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire at the end of the 150-day period.
- 7) Date Filed with the Index Department:
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: An increase in income tax return filings that claim excessive refunds based on withholding shown on altered or fictitious Forms W-2 can be countered by earlier receipt of Form W-2 information from employers, allowing the Department to verify withholding claimed by taxpayers as the returns are processed.
- 10) A Complete Description of the Subjects and Issues Involved: This emergency amendment provides for an earlier due date than is provided in the current rule for electronic filing of Form W-2 information in order to allow the Department to verify withholding and other information reported on returns systemically as the returns are received and processed. The amended rule will apply to Form W-2 information for calendar 2014, and require filing by February 15, 2015, rather than March 31, 2015, as required under the existing rule.
- 11) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Number</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
100.2197	Amendment	38 Ill. Reg. 19128 September 26, 2014
100.2470	Amendment	38 Ill. Reg. 21295, November 14, 2014
100.3450	New Section	38 Ill. Reg. 21758, November 21, 2014

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- 12) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 13) Information and questions regarding this amendment shall be directed to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62796

(217) 524-3951

The full text of the emergency amendment begins on the next page:

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TITLE 86: REVENUE
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PART 100
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100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone and River Edge Redevelopment Zone (IITA Section 201 (g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
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100.2193	Student-Assistance Contributions Credit (IITA 218)
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100.2197	Foreign Tax Credit (IITA Section 601(b)(3))
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- 100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
- 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
- 100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
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- 100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))
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AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by

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Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a

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maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013; amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527; amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg. 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014; amended at 38 Ill. Reg. 23158, effective November 21, 2014; amended by emergency amendment at 39 Ill. Reg. _____, effective _____, for a maximum of 150 days.

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SUBPART V: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section 100.7300 Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)

EMERGENCY

- a) Quarterly returns. Except as otherwise provided in Section 100.7310 or 100.7350, every employer required to deduct and withhold tax on compensation paid in Illinois shall make a return for the first calendar quarter in which the tax is deducted and withheld and for each subsequent calendar quarter (whether or not compensation is paid in that quarter) until a final return is filed. (See IITA Sections 704(c) and 704A(b).) Each return required under this subsection must be made *in the form and manner required by the Department* [35 ILCS 5/704(b) and 704A(b)].
 - 1) For calendar years after 2009, payroll providers who withhold Illinois income tax for employers during the year and who are required to file federal withholding returns on magnetic media under 26 CFR 301.6011-2 shall file returns due under this subsection (a) with the Department using the same magnetic media used for their federal filing.
 - 2) All other returns required under this subsection (a) may be filed with the Department at the address provided on the Form IL-941, Illinois Quarterly Withholding Income Tax Return, or its instructions.
- b) Filing and retention of copies of combined W-2.
 - 1) For calendar years prior to 2008.
 - A) Every employer required under this Section or Section 100.7310 or 100.7350 to make a return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall retain a copy of each wage and tax statement on the combined W-2 required under Section 100.7200 to be furnished by the employer with respect to compensation paid during the calendar year. For calendar years prior to 2008, every employer shall maintain copies of the combined W-2 forms for three years from the due date of the IL-W-3 for that period. For each calendar year after 2007, every employer shall maintain copies of the combined W-2 forms until January 31 of the fourth year following that calendar year. If the Department makes a

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written request for copies of the combined W-2 forms, the copies shall be forwarded to the Department within 30 days after the written request.

- B) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see Section 100.7200(d) above), a copy shall be retained for a period of four years from the date fixed for filing the employer's return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in the year for which the return is made as a final return. A statement explaining the corrections shall also be retained and, if the Department requests, a copy of the corrected W-2 shall be submitted within 30 days after the written request.
 - C) Each year, the Department will contact a sample of Illinois employers and require those employers to provide copies of their employee W-2s. Employers chosen by the Department will be required to file W-2s in the same manner they are required to file W-2s federally.
 - i) Employers with more than 250 employees in the State of Illinois will be required to provide the W-2s on magnetic tape, diskette, or cartridge meeting the specifications required by the Social Security Administration (see 26 CFR 301.6011-2).
 - ii) All other employers may provide the W-2s on magnetic media or paper.
 - D) An extension of time for providing statements requested by the Department shall be granted upon a showing of good cause.
- 2) The following persons, if they are required to file copies of the W-2s on magnetic media under 26 CFR 301.6011-2, shall file copies of the W-2s with the Department using the same magnetic media used for their federal filing ~~no later than March 31 of the year following the year of the withholding, unless a later due date is prescribed under federal law for filing the copies of the W-2, in which case filing of copies with the Department shall be due on the same date (see IITA Sections 704(f) and 704A(f)):~~

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- A) for calendar years after 2007, payroll providers who withhold Illinois income tax for employers during the year; and
- B) for calendar years after 2008, all employers.

For calendar years prior to 2014, the copies of W-2s shall be filed no later than March 31 of the year following the year of the withholding, unless a later due date is prescribed under federal law for filing the copies of the W-2s, in which case filing of copies with the Department shall be due on the same date. For calendar years after 2013, the copies of W-2s shall be filed no later than February 15 of the year following the year of the withholding, provided that, if the IRS has granted an extension of time to file a federal information return that would otherwise be due from the employer on that date because of natural disaster under IRC Section 7508A, an employer taxpayer who files copies of its W-2s on or before the extended due date of the federal information return is deemed to have reasonable cause for the late filing. (See IITA Sections 704(f) and 704A(f).)

- 3) For calendar years after 2007, with respect to copies of W-2s other than those required to be filed on magnetic media under subsection (b)(2):
 - A) Every employer required under this Section or Section 100.7310 or 100.7350 to make a return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall retain a copy of each wage and tax statement on the combined W-2 required under Section 100.7200 to be furnished by the employer with respect to compensation paid during the calendar year. Every employer shall maintain copies of the combined W-2 forms until January 31 of the fourth year following that calendar year. If the Department makes a written request for copies of the combined W-2 forms, the copies shall be forwarded to the Department within 30 days after the written request.
 - B) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see Section 100.7200(d)), a copy shall be retained for a period of four years from the date fixed for filing the employer's return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in the year for which the return is made as a final

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return. A statement explaining the corrections shall also be retained and, if the Department requests, a copy of the corrected W-2 shall be submitted within 30 days after the written request.

- C) Each year, the Department will contact a sample of Illinois employers and require those employers to provide copies of their employee W-2s.
 - D) An extension of time for providing statements requested by the Department shall be granted upon a showing of good cause.
- c) Payments of amounts withheld prior to January 1, 2008. Except as otherwise provided in Section 100.7310 or 100.7350, with respect to amounts withheld or required to be withheld prior to January 1, 2008:
- 1) Quarter-monthly tax payments. Every employer required to file a quarterly return under subsection (a) shall also file a quarter-monthly tax payment form if the amount of tax deducted and withheld during any quarter-monthly period plus the amount previously withheld and not remitted to the Department exceeds \$1,000. An employer need not file a quarter-monthly form if no quarter-monthly payment is due. Certain taxpayers with tax liabilities exceeding statutory thresholds are required to pay their tax liabilities by electronic funds transfer. 86 Ill. Adm. Code 750 sets forth the rules of the Department concerning payment of taxes by electronic funds transfer, as well as the statutory payment thresholds.
 - 2) Monthly tax payments. Every employer required to file a quarterly return under subsection (a) shall also file a monthly tax payment form if the amount of tax deducted and withheld during any calendar month plus the amount previously withheld and not remitted to this Department exceeds \$500 including amounts previously withheld and not remitted to the Department, but does not exceed \$1,000. An employer need not file a monthly form if no monthly payment is due. No monthly form is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form need be filed for that month.
- d) Payments of amounts withheld on or after January 1, 2008. Except as provided in Section 100.7310 or 100.7350, with respect to amounts withheld or required to be withheld on or after January 1, 2008:

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- 1) Semi-weekly tax payments.
 - A) An employer who withheld or was required to withhold more than \$12,000 during the look-back period for a calendar year must make semi-weekly payments for the entire calendar year.
 - B) An employer who withholds or is required to withhold more than \$12,000 in any quarter of a calendar year is required to make semi-weekly payments of amounts withheld or required to be withheld during each remaining quarter of that calendar year and for the subsequent calendar year. (See IITA Section 704A(c)(1).)
- 2) Monthly tax payments. An employer who is not required to make semi-weekly payments shall make monthly payments of taxes withheld or required to be withheld. (See IITA Section 704A(c)(3).)

(Source: Amended by emergency amendment at 39 Ill. Reg._____, effective_____ for a maximum of 150 days)