

AN ACT concerning revenue.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Uniform Penalty and Interest Act is amended by changing Section 3-3 as follows:

(35 ILCS 735/3-3) (from Ch. 120, par. 2603-3)

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 and before January 1, 2024.

(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 subsection (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.

(b-25) This subsection (b-25) is applicable to returns due on or after January 1, 2024.

(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 (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 initiates an audit or investigation of the taxpayer, and 20% of any amount that is paid after the date the Department initiates 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 provides 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):

(A) 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;

(B) 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); and

(C) any liability resulting from a federal change required to be reported under subsection (b) of Section 506 of the Illinois Income Tax Act that is reported and paid no later than the due date for filing the federal change amended return shall be deemed to have been paid on or before the due date prescribed for payment.

(3) The penalty imposed under this subsection (b-25) 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 subsection (b-25) 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. 98-425, eff. 8-16-13; 99-335, eff. 8-10-15.)