**Section 130.901 Civil Penalties**

a) Filing an Incorrect Return

*If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed, the Department shall (or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may) issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty in an amount determined in accordance with Section 3-3 of the Uniform Penalty and Interest Act* (UPIA)*. Provided, that if the incorrectness of any return or returns as determined by the Department is due to negligence or fraud, said penalty shall be* *in an amount determined in accordance with Section 3-5 or Section 3-6 of the* UPIA. [35 ILCS 120/4]

b) Failure to File Return When Required, but Payment Prior to Notice of Tax Liability

*In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under* this Section*, files a return and pays the tax,* the person *shall also pay a penalty in an amount determined in accordance with Section 3-3 of the* UPIA*.* [35 ILCS 120/5]

c) Filing Return at Required Time but Failure to Pay Tax

*In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by* the Act *but fails to pay the tax, or any part thereof, when due, a penalty in an amount determined in accordance with Section 3-3 of the* UPIA *shall be added thereto.* [35 ILCS 120/5]

d) Filing Late Return Without Payment of Entire Tax

*In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under* this Section*, files a return but fails to pay the entire tax, a penalty in an amount determined in accordance with Section 3-3 of the* UPIA *shall be added thereto.* [35 ILCS 120/5]

e) Failure to File Return When Required, and Failure to Pay Prior to Notice by Department

*In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from* the person *according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. The Department shall issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof.* [35 ILCS 120/5]

f) Notice of Tax Liability

Upon issuance of a notice of tax liability (NTL), a *taxpayer or the taxpayer's legal representative may, within 60 days after such notice, file a protest to such notice of tax liability with the Department and request a hearing*. The Department shall provide notice of the time and place of the hearing to the taxpayer or the taxpayer's legal representative and shall hold a hearing in accordance with the Act. After the hearing, the Department shall issue a final assessment of the amount due to the taxpayer or the taxpayer's legal representative. *If a protest to a notice of tax liability and a request for hearing is not filed within 60 days after* issuance of a NTL, *such* NTL *shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment.* [35 ILCS 120/5]

g) Effect of a Taxpayer's Bankruptcy Filing Upon a Notice of Tax Liability

If prior to the issuance of the NTL, a taxpayer has filed a petition in U.S. Bankruptcy Court and the automatic stay is still in effect, or if a taxpayer files such a petition within 60 days after the issuance of a NTL, the automatic stay prevents any pre-petition liability included in the NTL from becoming final even though not protested within 60 days after the issuance of the NTL. If any pre‑petition tax included in the NTL is not paid to the Department through the bankruptcy proceeding, adjudicated by the bankruptcy court, or discharged by the bankruptcy court, the taxpayer has 60 days after termination of the automatic stay to protest the pre-petition liability and request an administrative hearing pursuant to 86 Ill. Adm. Code 200.

h) Over-Collection of Tax or Collection of Tax on Nontaxable Receipts

*If a seller collects an amount (however designated) that purports to reimburse the seller for* *retailers' occupation tax* *liability measured by receipts that are not subject to retailers' occupation tax, or if a seller, in collecting an amount (however designated) that purports to reimburse the seller for* *retailers' occupation tax* *liability measured by receipts that are subject to tax under* the Act, *collects more from the purchaser than the seller's* *retailers' occupation tax* *liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This* subsection (h) *does not apply to an amount collected by the seller as reimbursement for the seller's* *retailers' occupation tax* *liability on receipts that are subject to tax under* the Act *as long as the collection is made in compliance with the tax collection brackets prescribed by the Department* at 86 Ill. Adm. Code 150.Table A. [35 ILCS 120/2-40]

EXAMPLE: A lessor of tangible personal property who paid Use Tax up front upon acquisition of the rental property collects an amount described in the rental statements as a "tax" from lessees. Because the lease contract payment amounts do not generate a tax, the amounts collected as a "tax" are a collection of tax on nontaxable receipts and the lessee has a legal right to claim a refund of that amount. If the amount is not refunded, the taxpayer must pay the amount to the Department. (See John Nottoli, Inc. v. Department of Revenue, 272 Ill. App. 3d 822 (4th Dist. 1995)).

i) Filing Late Return Due to "Reasonable Cause"

1) *The penalties imposed under* Sections 3-3, 3-4, and 3-5 of the Uniform Penalty and Interest Act *shall not apply if the taxpayer shows that the* taxpayer's *failure to file a return or pay tax at the required time was due to reasonable cause.* [35 ILCS 735/3-8]

2) The Department will decide whether to abate a penalty by considering the extent to which the taxpayer made a good faith effort to determine the proper tax liability and pay the proper liability in a timely fashion. In making this determination the Department will use the standards set out in the Reasonable Cause Section (86 Ill. Adm. Code 700.400) of the Uniform Penalty and Interest Act regulations.

j) Failure to Maintain Books and Records and Failure to Produce Books and Records for Examination

Section 7 of the Act imposes *a penalty of $1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of $3,000 for each subsequent failure to keep books and records or produce books and records for examination.* [35 ILCS 120/7] (See Section 86 Ill. Adm. Code 130.801(i)).

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)