

HB3637



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3637

by Rep. Mark Batinick

SYNOPSIS AS INTRODUCED:

35 ILCS 735/3-3
35 ILCS 735/3-9

from Ch. 120, par. 2603-3
from Ch. 120, par. 2603-9

Amends the Uniform Penalty and Interest Act. Provides that the penalty for failure to pay the tax shown due or required to be shown due on a return shall be 15% (instead of 20%) of any amount that is paid after the date the Department of Revenue has initiated an audit or investigation of the taxpayer. Provides that the penalty shall be abated if the taxpayer paid to the Department at least 95% of the final liability resulting from an audit or investigation prior to the initiation of the audit or investigation. Effective January 1, 2018.

LRB100 05625 HLH 15639 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Uniform Penalty and Interest Act is amended
5 by changing Sections 3-3 and 3-9 as follows:

6 (35 ILCS 735/3-3) (from Ch. 120, par. 2603-3)

7 Sec. 3-3. Penalty for failure to file or pay.

8 (a) This subsection (a) is applicable before January 1,
9 1996. A penalty of 5% of the tax required to be shown due on a
10 return shall be imposed for failure to file the tax return on
11 or before the due date prescribed for filing determined with
12 regard for any extension of time for filing (penalty for late
13 filing or nonfiling). If any unprocessable return is corrected
14 and filed within 21 days after notice by the Department, the
15 late filing or nonfiling penalty shall not apply. If a penalty
16 for late filing or nonfiling is imposed in addition to a
17 penalty for late payment, the total penalty due shall be the
18 sum of the late filing penalty and the applicable late payment
19 penalty. Beginning on the effective date of this amendatory Act
20 of 1995, in the case of any type of tax return required to be
21 filed more frequently than annually, when the failure to file
22 the tax return on or before the date prescribed for filing
23 (including any extensions) is shown to be nonfraudulent and has

1 not occurred in the 2 years immediately preceding the failure
2 to file on the prescribed due date, the penalty imposed by
3 Section 3-3(a) shall be abated.

4 (a-5) This subsection (a-5) is applicable to returns due on
5 and after January 1, 1996 and on or before December 31, 2000. A
6 penalty equal to 2% of the tax required to be shown due on a
7 return, up to a maximum amount of \$250, determined without
8 regard to any part of the tax that is paid on time or by any
9 credit that was properly allowable on the date the return was
10 required to be filed, shall be imposed for failure to file the
11 tax return on or before the due date prescribed for filing
12 determined with regard for any extension of time for filing.
13 However, if any return is not filed within 30 days after notice
14 of nonfiling mailed by the Department to the last known address
15 of the taxpayer contained in Department records, an additional
16 penalty amount shall be imposed equal to the greater of \$250 or
17 2% of the tax shown on the return. However, the additional
18 penalty amount may not exceed \$5,000 and is determined without
19 regard to any part of the tax that is paid on time or by any
20 credit that was properly allowable on the date the return was
21 required to be filed (penalty for late filing or nonfiling). If
22 any unprocessable return is corrected and filed within 30 days
23 after notice by the Department, the late filing or nonfiling
24 penalty shall not apply. If a penalty for late filing or
25 nonfiling is imposed in addition to a penalty for late payment,
26 the total penalty due shall be the sum of the late filing

1 penalty and the applicable late payment penalty. In the case of
2 any type of tax return required to be filed more frequently
3 than annually, when the failure to file the tax return on or
4 before the date prescribed for filing (including any
5 extensions) is shown to be nonfraudulent and has not occurred
6 in the 2 years immediately preceding the failure to file on the
7 prescribed due date, the penalty imposed by Section 3-3(a-5)
8 shall be abated.

9 (a-10) This subsection (a-10) is applicable to returns due
10 on and after January 1, 2001. A penalty equal to 2% of the tax
11 required to be shown due on a return, up to a maximum amount of
12 \$250, reduced by any tax that is paid on time or by any credit
13 that was properly allowable on the date the return was required
14 to be filed, shall be imposed for failure to file the tax
15 return on or before the due date prescribed for filing
16 determined with regard for any extension of time for filing.
17 However, if any return is not filed within 30 days after notice
18 of nonfiling mailed by the Department to the last known address
19 of the taxpayer contained in Department records, an additional
20 penalty amount shall be imposed equal to the greater of \$250 or
21 2% of the tax shown on the return. However, the additional
22 penalty amount may not exceed \$5,000 and is determined without
23 regard to any part of the tax that is paid on time or by any
24 credit that was properly allowable on the date the return was
25 required to be filed (penalty for late filing or nonfiling). If
26 any unprocessable return is corrected and filed within 30 days

1 after notice by the Department, the late filing or nonfiling
2 penalty shall not apply. If a penalty for late filing or
3 nonfiling is imposed in addition to a penalty for late payment,
4 the total penalty due shall be the sum of the late filing
5 penalty and the applicable late payment penalty. In the case of
6 any type of tax return required to be filed more frequently
7 than annually, when the failure to file the tax return on or
8 before the date prescribed for filing (including any
9 extensions) is shown to be nonfraudulent and has not occurred
10 in the 2 years immediately preceding the failure to file on the
11 prescribed due date, the penalty imposed by this subsection
12 (a-10) shall be abated. This subsection (a-10) does not apply
13 to transaction reporting returns required by Section 3 of the
14 Retailers' Occupation Tax Act and Section 9 of the Use Tax Act
15 that would not, when properly prepared and filed, result in the
16 imposition of a tax; however, those returns are subject to the
17 penalty set forth in subsection (a-15).

18 (a-15) A penalty of \$100 shall be imposed for failure to
19 file a transaction reporting return required by Section 3 of
20 the Retailers' Occupation Tax Act and Section 9 of the Use Tax
21 Act on or before the date a return is required to be filed;
22 provided, however, that this penalty shall be imposed only if
23 the return when properly prepared and filed would not result in
24 the imposition of a tax. If such a transaction reporting return
25 would result in the imposition of a tax when properly prepared
26 and filed, then that return is subject to the provisions of

1 subsection (a-10).

2 (b) This subsection is applicable before January 1, 1998. A
3 penalty of 15% of the tax shown on the return or the tax
4 required to be shown due on the return shall be imposed for
5 failure to pay:

6 (1) the tax shown due on the return on or before the
7 due date prescribed for payment of that tax, an amount of
8 underpayment of estimated tax, or an amount that is
9 reported in an amended return other than an amended return
10 timely filed as required by subsection (b) of Section 506
11 of the Illinois Income Tax Act (penalty for late payment or
12 nonpayment of admitted liability); or

13 (2) the full amount of any tax required to be shown due
14 on a return and which is not shown (penalty for late
15 payment or nonpayment of additional liability), within 30
16 days after a notice of arithmetic error, notice and demand,
17 or a final assessment is issued by the Department. In the
18 case of a final assessment arising following a protest and
19 hearing, the 30-day period shall not begin until all
20 proceedings in court for review of the final assessment
21 have terminated or the period for obtaining a review has
22 expired without proceedings for a review having been
23 instituted. In the case of a notice of tax liability that
24 becomes a final assessment without a protest and hearing,
25 the penalty provided in this paragraph (2) shall be imposed
26 at the expiration of the period provided for the filing of

1 a protest.

2 (b-5) This subsection is applicable to returns due on and
3 after January 1, 1998 and on or before December 31, 2000. A
4 penalty of 20% of the tax shown on the return or the tax
5 required to be shown due on the return shall be imposed for
6 failure to pay:

7 (1) the tax shown due on the return on or before the
8 due date prescribed for payment of that tax, an amount of
9 underpayment of estimated tax, or an amount that is
10 reported in an amended return other than an amended return
11 timely filed as required by subsection (b) of Section 506
12 of the Illinois Income Tax Act (penalty for late payment or
13 nonpayment of admitted liability); or

14 (2) the full amount of any tax required to be shown due
15 on a return and which is not shown (penalty for late
16 payment or nonpayment of additional liability), within 30
17 days after a notice of arithmetic error, notice and demand,
18 or a final assessment is issued by the Department. In the
19 case of a final assessment arising following a protest and
20 hearing, the 30-day period shall not begin until all
21 proceedings in court for review of the final assessment
22 have terminated or the period for obtaining a review has
23 expired without proceedings for a review having been
24 instituted. In the case of a notice of tax liability that
25 becomes a final assessment without a protest and hearing,
26 the penalty provided in this paragraph (2) shall be imposed

1 at the expiration of the period provided for the filing of
2 a protest.

3 (b-10) This subsection (b-10) is applicable to returns due
4 on and after January 1, 2001 and on or before December 31,
5 2003. A penalty shall be imposed for failure to pay:

6 (1) the tax shown due on a return on or before the due
7 date prescribed for payment of that tax, an amount of
8 underpayment of estimated tax, or an amount that is
9 reported in an amended return other than an amended return
10 timely filed as required by subsection (b) of Section 506
11 of the Illinois Income Tax Act (penalty for late payment or
12 nonpayment of admitted liability). The amount of penalty
13 imposed under this subsection (b-10) (1) shall be 2% of any
14 amount that is paid no later than 30 days after the due
15 date, 5% of any amount that is paid later than 30 days
16 after the due date and not later than 90 days after the due
17 date, 10% of any amount that is paid later than 90 days
18 after the due date and not later than 180 days after the
19 due date, and 15% of any amount that is paid later than 180
20 days after the due date. If notice and demand is made for
21 the payment of any amount of tax due and if the amount due
22 is paid within 30 days after the date of the notice and
23 demand, then the penalty for late payment or nonpayment of
24 admitted liability under this subsection (b-10) (1) on the
25 amount so paid shall not accrue for the period after the
26 date of the notice and demand.

1 (2) the full amount of any tax required to be shown due
2 on a return and that is not shown (penalty for late payment
3 or nonpayment of additional liability), within 30 days
4 after a notice of arithmetic error, notice and demand, or a
5 final assessment is issued by the Department. In the case
6 of a final assessment arising following a protest and
7 hearing, the 30-day period shall not begin until all
8 proceedings in court for review of the final assessment
9 have terminated or the period for obtaining a review has
10 expired without proceedings for a review having been
11 instituted. The amount of penalty imposed under this
12 subsection (b-10) (2) shall be 20% of any amount that is not
13 paid within the 30-day period. In the case of a notice of
14 tax liability that becomes a final assessment without a
15 protest and hearing, the penalty provided in this
16 subsection (b-10) (2) shall be imposed at the expiration of
17 the period provided for the filing of a protest.

18 (b-15) This subsection (b-15) is applicable to returns due
19 on and after January 1, 2004 and on or before December 31,
20 2004. A penalty shall be imposed for failure to pay the tax
21 shown due or required to be shown due on a return on or before
22 the due date prescribed for payment of that tax, an amount of
23 underpayment of estimated tax, or an amount that is reported in
24 an amended return other than an amended return timely filed as
25 required by subsection (b) of Section 506 of the Illinois
26 Income Tax Act (penalty for late payment or nonpayment of

1 admitted liability). The amount of penalty imposed under this
2 subsection (b-15)(1) shall be 2% of any amount that is paid no
3 later than 30 days after the due date, 10% of any amount that
4 is paid later than 30 days after the due date and not later
5 than 90 days after the due date, 15% of any amount that is paid
6 later than 90 days after the due date and not later than 180
7 days after the due date, and 20% of any amount that is paid
8 later than 180 days after the due date. If notice and demand is
9 made for the payment of any amount of tax due and if the amount
10 due is paid within 30 days after the date of this notice and
11 demand, then the penalty for late payment or nonpayment of
12 admitted liability under this subsection (b-15)(1) on the
13 amount so paid shall not accrue for the period after the date
14 of the notice and demand.

15 (b-20) This subsection (b-20) is applicable to returns due
16 on and after January 1, 2005.

17 (1) A penalty shall be imposed for failure to pay,
18 prior to the due date for payment, any amount of tax the
19 payment of which is required to be made prior to the filing
20 of a return or without a return (penalty for late payment
21 or nonpayment of estimated or accelerated tax). The amount
22 of penalty imposed under this paragraph (1) shall be 2% of
23 any amount that is paid no later than 30 days after the due
24 date and 10% of any amount that is paid later than 30 days
25 after the due date.

26 (2) A penalty shall be imposed for failure to pay the

1 tax shown due or required to be shown due on a return on or
2 before the due date prescribed for payment of that tax or
3 an amount that is reported in an amended return other than
4 an amended return timely filed as required by subsection
5 (b) of Section 506 of the Illinois Income Tax Act (penalty
6 for late payment or nonpayment of tax). The amount of
7 penalty imposed under this paragraph (2) shall be 2% of any
8 amount that is paid no later than 30 days after the due
9 date, 10% of any amount that is paid later than 30 days
10 after the due date and prior to the date the Department has
11 initiated an audit or investigation of the taxpayer, and
12 15% ~~20%~~ of any amount that is paid after the date the
13 Department has initiated an audit or investigation of the
14 taxpayer; provided that the penalty under this paragraph
15 (2) shall be abated ~~reduced to 15%~~ if, prior to the
16 initiation of the audit or investigation, the taxpayer paid
17 to the Department at least 95% of the total tax liability
18 for the filing period, which includes any additional
19 liability resulting from the audit or investigation. The
20 changes made by this amendatory Act of the 100th General
21 Assembly do not apply for the purposes of determining the
22 amount of penalty assessed under this subsection prior to
23 the effective date of this amendatory Act of the 100th
24 General Assembly. ~~the entire amount due is paid not later~~
25 ~~than 30 days after the Department has provided the taxpayer~~
26 ~~with an amended return (following completion of an~~

1 ~~occupation, use, or excise tax audit) or a form for waiver~~
2 ~~of restrictions on assessment (following completion of an~~
3 ~~income tax audit); provided further that the reduction to~~
4 ~~15% shall be rescinded if the taxpayer makes any claim for~~
5 ~~refund or credit of the tax, penalties, or interest~~
6 ~~determined to be due upon audit, except in the case of a~~
7 ~~claim filed pursuant to subsection (b) of Section 506 of~~
8 ~~the Illinois Income Tax Act or to claim a carryover of a~~
9 ~~loss or credit, the availability of which was not~~
10 ~~determined in the audit.~~ For purposes of this paragraph
11 (2), any overpayment reported on an original return that
12 has been allowed as a refund or credit to the taxpayer
13 shall be deemed to have not been paid on or before the due
14 date for payment and any amount paid under protest pursuant
15 to the provisions of the State Officers and Employees Money
16 Disposition Act shall be deemed to have been paid after the
17 Department has initiated an audit, ~~and more than 30 days~~
18 ~~after the Department has provided the taxpayer with an~~
19 ~~amended return (following completion of an occupation,~~
20 ~~use, or excise tax audit) or a form for waiver of~~
21 ~~restrictions on assessment (following completion of an~~
22 ~~income tax audit).~~

23 (3) The penalty imposed under this subsection (b-20)
24 shall be deemed assessed at the time the tax upon which the
25 penalty is computed is assessed, ~~except that, if the~~
26 ~~reduction of the penalty imposed under paragraph (2) of~~

1 ~~this subsection (b-20) to 15% is rescinded because a claim~~
2 ~~for refund or credit has been filed, the increase in~~
3 ~~penalty shall be deemed assessed at the time the claim for~~
4 ~~refund or credit is filed.~~

5 (c) For purposes of the late payment penalties, the basis
6 of the penalty shall be the tax shown or required to be shown
7 on a return, whichever is applicable, reduced by any part of
8 the tax which is paid on time and by any credit which was
9 properly allowable on the date the return was required to be
10 filed.

11 (d) A penalty shall be applied to the tax required to be
12 shown even if that amount is less than the tax shown on the
13 return.

14 (e) This subsection (e) is applicable to returns due before
15 January 1, 2001. If both a subsection (b)(1) or (b-5)(1)
16 penalty and a subsection (b)(2) or (b-5)(2) penalty are
17 assessed against the same return, the subsection (b)(2) or
18 (b-5)(2) penalty shall be assessed against only the additional
19 tax found to be due.

20 (e-5) This subsection (e-5) is applicable to returns due on
21 and after January 1, 2001. If both a subsection (b-10)(1)
22 penalty and a subsection (b-10)(2) penalty are assessed against
23 the same return, the subsection (b-10)(2) penalty shall be
24 assessed against only the additional tax found to be due.

25 (f) If the taxpayer has failed to file the return, the
26 Department shall determine the correct tax according to its

1 best judgment and information, which amount shall be prima
2 facie evidence of the correctness of the tax due.

3 (g) The time within which to file a return or pay an amount
4 of tax due without imposition of a penalty does not extend the
5 time within which to file a protest to a notice of tax
6 liability or a notice of deficiency.

7 (h) No return shall be determined to be unprocessable
8 because of the omission of any information requested on the
9 return pursuant to Section 2505-575 of the Department of
10 Revenue Law (20 ILCS 2505/2505-575).

11 (i) If a taxpayer has a tax liability for the taxable
12 period ending after June 30, 1983 and prior to July 1, 2002
13 that is eligible for amnesty under the Tax Delinquency Amnesty
14 Act and the taxpayer fails to satisfy the tax liability during
15 the amnesty period provided for in that Act for that taxable
16 period, then the penalty imposed by the Department under this
17 Section shall be imposed in an amount that is 200% of the
18 amount that would otherwise be imposed under this Section.

19 (j) If a taxpayer has a tax liability for the taxable
20 period ending after June 30, 2002 and prior to July 1, 2009
21 that is eligible for amnesty under the Tax Delinquency Amnesty
22 Act, except for any tax liability reported pursuant to Section
23 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that
24 is not final, and the taxpayer fails to satisfy the tax
25 liability during the amnesty period provided for in that Act
26 for that taxable period, then the penalty imposed by the

1 Department under this Section shall be imposed in an amount
2 that is 200% of the amount that would otherwise be imposed
3 under this Section.

4 (Source: P.A. 98-425, eff. 8-16-13; 99-335, eff. 8-10-15.)

5 (35 ILCS 735/3-9) (from Ch. 120, par. 2603-9)

6 Sec. 3-9. Application of provisions.

7 (a) The provisions of this Act shall apply to the rates of
8 interest for periods on and after the effective date of this
9 Act. Interest for periods prior to the effective date of this
10 Act shall be computed at the rates in effect prior to that
11 date.

12 (b) Except as otherwise provided in subsection (b-20) of
13 Section 3-3, penalties ~~Penalties~~ shall be imposed at the rate
14 and in the manner in effect at the time the tax liability
15 became due.

16 (c) Interest shall not be paid on claims filed after the
17 effective date of this Act except such interest which is paid
18 in accordance with this Act.

19 (d) Payments received from a taxpayer shall be applied
20 against the outstanding liability of the taxpayer, or to an
21 agreed portion of the outstanding liability, in the following
22 order: the principal amount of the tax, then penalty, and then
23 interest.

24 (Source: P.A. 87-205.)

25 Section 99. Effective date. This Act takes effect January

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1 1, 2018.