



**Adopted in House Comm. on May 13, 2004**

09300SB0833ham001

LRB093 02886 MKM 50830 a

1 AMENDMENT TO SENATE BILL 833

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 833 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by  
5 changing Sections 502, 711, 712, 713, 804, and 911 and by  
6 adding Section 709.5 as follows:

7 (35 ILCS 5/502) (from Ch. 120, par. 5-502)

8 Sec. 502. Returns and notices.

9 (a) In general. A return with respect to the taxes imposed  
10 by this Act shall be made by every person for any taxable year:

11 (1) for which such person is liable for a tax imposed  
12 by this Act, or

13 (2) in the case of a resident or in the case of a  
14 corporation which is qualified to do business in this  
15 State, for which such person is required to make a federal  
16 income tax return, regardless of whether such person is  
17 liable for a tax imposed by this Act. However, this  
18 paragraph shall not require a resident to make a return if  
19 such person has an Illinois base income of the basic amount  
20 in Section 204(b) or less and is either claimed as a  
21 dependent on another person's tax return under the Internal  
22 Revenue Code of 1986, or is claimed as a dependent on  
23 another person's tax return under this Act.

24 Notwithstanding the provisions of paragraph (1), a

1 nonresident whose Illinois income tax liability under  
2 subsections (a), (b), (c), and (d) of Section 201 of this Act  
3 is paid in full after taking into account the credits allowed  
4 under subsection (f) of this Section or allowed under Section  
5 709.5 of this Act shall not be required to file a return under  
6 this subsection (a).

7 (b) Fiduciaries and receivers.

8 (1) Decedents. If an individual is deceased, any return  
9 or notice required of such individual under this Act shall  
10 be made by his executor, administrator, or other person  
11 charged with the property of such decedent.

12 (2) Individuals under a disability. If an individual is  
13 unable to make a return or notice required under this Act,  
14 the return or notice required of such individual shall be  
15 made by his duly authorized agent, guardian, fiduciary or  
16 other person charged with the care of the person or  
17 property of such individual.

18 (3) Estates and trusts. Returns or notices required of  
19 an estate or a trust shall be made by the fiduciary  
20 thereof.

21 (4) Receivers, trustees and assignees for  
22 corporations. In a case where a receiver, trustee in  
23 bankruptcy, or assignee, by order of a court of competent  
24 jurisdiction, by operation of law, or otherwise, has  
25 possession of or holds title to all or substantially all  
26 the property or business of a corporation, whether or not  
27 such property or business is being operated, such receiver,  
28 trustee, or assignee shall make the returns and notices  
29 required of such corporation in the same manner and form as  
30 corporations are required to make such returns and notices.

31 (c) Joint returns by husband and wife.

32 (1) Except as provided in paragraph (3), if a husband  
33 and wife file a joint federal income tax return for a  
34 taxable year they shall file a joint return under this Act

1 for such taxable year and their liabilities shall be joint  
2 and several, but if the federal income tax liability of  
3 either spouse is determined on a separate federal income  
4 tax return, they shall file separate returns under this  
5 Act.

6 (2) If neither spouse is required to file a federal  
7 income tax return and either or both are required to file a  
8 return under this Act, they may elect to file separate or  
9 joint returns and pursuant to such election their  
10 liabilities shall be separate or joint and several.

11 (3) If either husband or wife is a resident and the  
12 other is a nonresident, they shall file separate returns in  
13 this State on such forms as may be required by the  
14 Department in which event their tax liabilities shall be  
15 separate; but they may elect to determine their joint net  
16 income and file a joint return as if both were residents  
17 and in such case, their liabilities shall be joint and  
18 several.

19 (4) Innocent spouses.

20 (A) However, for tax liabilities arising and paid  
21 prior to August 13, 1999, an innocent spouse shall be  
22 relieved of liability for tax (including interest and  
23 penalties) for any taxable year for which a joint  
24 return has been made, upon submission of proof that the  
25 Internal Revenue Service has made a determination  
26 under Section 6013(e) of the Internal Revenue Code, for  
27 the same taxable year, which determination relieved  
28 the spouse from liability for federal income taxes. If  
29 there is no federal income tax liability at issue for  
30 the same taxable year, the Department shall rely on the  
31 provisions of Section 6013(e) to determine whether the  
32 person requesting innocent spouse abatement of tax,  
33 penalty, and interest is entitled to that relief.

34 (B) For tax liabilities arising on and after August

1           13, 1999 or which arose prior to that date, but remain  
2           unpaid as of that date, if an individual who filed a  
3           joint return for any taxable year has made an election  
4           under this paragraph, the individual's liability for  
5           any tax shown on the joint return shall not exceed the  
6           individual's separate return amount and the  
7           individual's liability for any deficiency assessed for  
8           that taxable year shall not exceed the portion of the  
9           deficiency properly allocable to the individual. For  
10          purposes of this paragraph:

11                 (i) An election properly made pursuant to  
12                 Section 6015 of the Internal Revenue Code shall  
13                 constitute an election under this paragraph,  
14                 provided that the election shall not be effective  
15                 until the individual has notified the Department  
16                 of the election in the form and manner prescribed  
17                 by the Department.

18                 (ii) If no election has been made under Section  
19                 6015, the individual may make an election under  
20                 this paragraph in the form and manner prescribed by  
21                 the Department, provided that no election may be  
22                 made if the Department finds that assets were  
23                 transferred between individuals filing a joint  
24                 return as part of a scheme by such individuals to  
25                 avoid payment of Illinois income tax and the  
26                 election shall not eliminate the individual's  
27                 liability for any portion of a deficiency  
28                 attributable to an error on the return of which the  
29                 individual had actual knowledge as of the date of  
30                 filing.

31                 (iii) In determining the separate return  
32                 amount or portion of any deficiency attributable  
33                 to an individual, the Department shall follow the  
34                 provisions in subsections (c) and (d) of Section

1           6015 of the Internal Revenue Code.

2           (iv) In determining the validity of an  
3 individual's election under subparagraph (ii) and  
4 in determining an electing individual's separate  
5 return amount or portion of any deficiency under  
6 subparagraph (iii), any determination made by the  
7 Secretary of the Treasury, by the United States Tax  
8 Court on petition for review of a determination by  
9 the Secretary of the Treasury, or on appeal from  
10 the United States Tax Court under Section 6015 of  
11 the Internal Revenue Code regarding criteria for  
12 eligibility or under subsection (d) of Section  
13 6015 of the Internal Revenue Code regarding the  
14 allocation of any item of income, deduction,  
15 payment, or credit between an individual making  
16 the federal election and that individual's spouse  
17 shall be conclusively presumed to be correct. With  
18 respect to any item that is not the subject of a  
19 determination by the Secretary of the Treasury or  
20 the federal courts, in any proceeding involving  
21 this subsection, the individual making the  
22 election shall have the burden of proof with  
23 respect to any item except that the Department  
24 shall have the burden of proof with respect to  
25 items in subdivision (ii).

26           (v) Any election made by an individual under  
27 this subsection shall apply to all years for which  
28 that individual and the spouse named in the  
29 election have filed a joint return.

30           (vi) After receiving a notice that the federal  
31 election has been made or after receiving an  
32 election under subdivision (ii), the Department  
33 shall take no collection action against the  
34 electing individual for any liability arising from

1 a joint return covered by the election until the  
2 Department has notified the electing individual in  
3 writing that the election is invalid or of the  
4 portion of the liability the Department has  
5 allocated to the electing individual. Within 60  
6 days (150 days if the individual is outside the  
7 United States) after the issuance of such  
8 notification, the individual may file a written  
9 protest of the denial of the election or of the  
10 Department's determination of the liability  
11 allocated to him or her and shall be granted a  
12 hearing within the Department under the provisions  
13 of Section 908. If a protest is filed, the  
14 Department shall take no collection action against  
15 the electing individual until the decision  
16 regarding the protest has become final under  
17 subsection (d) of Section 908 or, if  
18 administrative review of the Department's decision  
19 is requested under Section 1201, until the  
20 decision of the court becomes final.

21 (d) Partnerships. Every partnership having any base income  
22 allocable to this State in accordance with section 305(c) shall  
23 retain information concerning all items of income, gain, loss  
24 and deduction; the names and addresses of all of the partners,  
25 or names and addresses of members of a limited liability  
26 company, or other persons who would be entitled to share in the  
27 base income of the partnership if distributed; the amount of  
28 the distributive share of each; and such other pertinent  
29 information as the Department may by forms or regulations  
30 prescribe. The partnership shall make that information  
31 available to the Department when requested by the Department.

32 (e) For taxable years ending on or after December 31, 1985,  
33 and before December 31, 1993, taxpayers that are corporations  
34 (other than Subchapter S corporations) having the same taxable

1 year and that are members of the same unitary business group  
2 may elect to be treated as one taxpayer for purposes of any  
3 original return, amended return which includes the same  
4 taxpayers of the unitary group which joined in the election to  
5 file the original return, extension, claim for refund,  
6 assessment, collection and payment and determination of the  
7 group's tax liability under this Act. This subsection (e) does  
8 not permit the election to be made for some, but not all, of  
9 the purposes enumerated above. For taxable years ending on or  
10 after December 31, 1987, corporate members (other than  
11 Subchapter S corporations) of the same unitary business group  
12 making this subsection (e) election are not required to have  
13 the same taxable year.

14 For taxable years ending on or after December 31, 1993,  
15 taxpayers that are corporations (other than Subchapter S  
16 corporations) and that are members of the same unitary business  
17 group shall be treated as one taxpayer for purposes of any  
18 original return, amended return which includes the same  
19 taxpayers of the unitary group which joined in filing the  
20 original return, extension, claim for refund, assessment,  
21 collection and payment and determination of the group's tax  
22 liability under this Act.

23 (f) The Department may promulgate regulations to permit  
24 nonresident individual partners of the same partnership,  
25 nonresident Subchapter S corporation shareholders of the same  
26 Subchapter S corporation, and nonresident individuals  
27 transacting an insurance business in Illinois under a Lloyds  
28 plan of operation, and nonresident individual members of the  
29 same limited liability company that is treated as a partnership  
30 under Section 1501 (a)(16) of this Act, to file composite  
31 individual income tax returns reflecting the composite income  
32 of such individuals allocable to Illinois and to make composite  
33 individual income tax payments. The Department may by  
34 regulation also permit such composite returns to include the

1 income tax owed by Illinois residents attributable to their  
2 income from partnerships, Subchapter S corporations, insurance  
3 businesses organized under a Lloyds plan of operation, or  
4 limited liability companies that are treated as partnership  
5 under Section 1501(a)(16) of this Act, in which case such  
6 Illinois residents will be permitted to claim credits on their  
7 individual returns for their shares of the composite tax  
8 payments. This paragraph of subsection (f) applies to taxable  
9 years ending on or after December 31, 1987.

10 For taxable years ending on or after December 31, 1999, the  
11 Department may, by regulation, also permit any persons  
12 transacting an insurance business organized under a Lloyds plan  
13 of operation to file composite returns reflecting the income of  
14 such persons allocable to Illinois and the tax rates applicable  
15 to such persons under Section 201 and to make composite tax  
16 payments and shall, by regulation, also provide that the income  
17 and apportionment factors attributable to the transaction of an  
18 insurance business organized under a Lloyds plan of operation  
19 by any person joining in the filing of a composite return  
20 shall, for purposes of allocating and apportioning income under  
21 Article 3 of this Act and computing net income under Section  
22 202 of this Act, be excluded from any other income and  
23 apportionment factors of that person or of any unitary business  
24 group, as defined in subdivision (a)(27) of Section 1501, to  
25 which that person may belong.

26 For taxable years ending on or after December 31, 2004,  
27 every nonresident shall be allowed a credit against his or her  
28 liability under subsections (a) and (b) of Section 201 for any  
29 amount of tax reported on a composite return and paid on his or  
30 her behalf under this subsection (f). Residents (other than  
31 persons transacting an insurance business organized under a  
32 Lloyds plan of operation) may claim a credit for taxes reported  
33 on a composite return and paid on their behalf under this  
34 subsection (f) only as permitted by the Department by rule.



1       (f-5) For taxable years ending on or after December 31,  
2 2004, the Department may promulgate rules to provide that, when  
3 a partnership or Subchapter S corporation has made an error in  
4 determining the amount of any item of income, deduction,  
5 addition, subtraction, or credit required to be reported on its  
6 return that affects the liability imposed under this Act on a  
7 partner or shareholder, the partnership or Subchapter S  
8 corporation may report the changes in liabilities of its  
9 partners or shareholders and claim a refund of the resulting  
10 overpayments, or pay the resulting underpayments, on behalf of  
11 its partners and shareholders.

12       (g) The Department may adopt rules to authorize the  
13 electronic filing of any return required to be filed under this  
14 Section.

15       (Source: P.A. 91-541, eff. 8-13-99; 91-913, eff. 1-1-01;  
16 92-846, eff. 8-23-02.)".

17       (35 ILCS 5/709.5 new)

18       Sec. 709.5. Withholding by partnerships, Subchapter S  
19 corporations, and trusts.

20       (a) In general. For each taxable year ending on or after  
21 December 31, 2004, every partnership (other than a publicly  
22 traded partnership under Section 7704 of the Internal Revenue  
23 Code), Subchapter S corporation, and trust must withhold from  
24 each nonresident partner, shareholder, or beneficiary (other  
25 than a partner, shareholder, or beneficiary included on a  
26 composite return filed by the partnership or Subchapter S  
27 corporation for the taxable year under subsection (f) of  
28 Section 502 of this Act) an amount equal to the distributable  
29 share of the business income of the partnership, Subchapter S  
30 corporation, or trust apportionable to Illinois of that  
31 partner, shareholder, or beneficiary under Sections 702 and 704  
32 and Subchapter S of the Internal Revenue Code, whether or not  
33 distributed, multiplied by the applicable rates of tax for that

1 partner or shareholder under subsections (a) through (d) of  
2 Section 201 of this Act.

3 (b) Credit for taxes withheld. Any amount withheld under  
4 subsection (a) of this Section and paid to the Department shall  
5 be treated as a payment of the estimated tax liability or of  
6 the liability for withholding under this Section of the  
7 partner, shareholder, or beneficiary to whom the income is  
8 distributable for the taxable year in which that person  
9 incurred a liability under this Act with respect to that  
10 income.

11 (35 ILCS 5/711) (from Ch. 120, par. 7-711)

12 Sec. 711. Payor's Return and Payment of Tax Withheld. (a)  
13 In general. Every payor required to deduct and withhold tax  
14 under Section 710 ~~(and until January 1, 1989, Sections 708 and~~  
15 ~~709)~~ shall be subject to the same reporting requirements  
16 regarding taxes withheld and the same monthly and quarter  
17 monthly (weekly) payment requirements as an employer subject to  
18 the provisions of Section 701. For purposes of monthly and  
19 quarter monthly (weekly) payments, the total tax withheld under  
20 Sections 701, ~~708, 709~~ and 710 shall be considered in the  
21 aggregate.

22 (a-5) Every partnership, Subchapter S corporation, or  
23 trust required to withhold tax under Section 709.5 shall report  
24 the amounts withheld and the partners, shareholders, or  
25 beneficiaries from whom the amounts were withheld, and pay over  
26 the amount withheld, no later than the due date (without regard  
27 to extensions) of the tax return of the partnership, Subchapter  
28 S corporation, or trust for the taxable year.

29 (b) Information statement. Every payor required to deduct  
30 and withhold tax under Section 710 ~~(and until January 1, 1989,~~  
31 ~~Sections 708 and 709)~~ shall furnish in duplicate to each party  
32 entitled to the credit for such withholding under subsection  
33 (b) of Section 709.5 ~~(e) of Section 708, subsection (e) of~~

1 ~~Section 709~~, and subsection (b) of Section 710, respectively,  
2 on or before January 31 of the succeeding calendar year for  
3 amounts withheld under Section 710 or the due date (without  
4 regard to extensions) of the return of the partnership,  
5 Subchapter S corporation, or trust for the taxable year for  
6 amounts withheld under Section 709.5 for the taxable year, a  
7 written statement in such form as the Department may by  
8 regulation prescribe showing the amount of the payments, the  
9 amount deducted and withheld as tax, and such other information  
10 as the Department may prescribe. A copy of such statement shall  
11 be filed by the party entitled to the credit for the  
12 withholding under subsection (b) of Section 709.5 ~~(e) of~~  
13 ~~Section 708, subsection (c) of Section 709,~~ or subsection (b)  
14 of Section 710 with his return for the taxable year to which it  
15 relates.

16 (Source: P.A. 85-299; 85-982.)

17 (35 ILCS 5/712) (from Ch. 120, par. 7-712)

18 Sec. 712. Payor's Liability For Withheld Taxes. Every payor  
19 who deducts and withholds or is required to deduct and withhold  
20 tax under Sections 709.5 or Section 710 ~~(and until January 1,~~  
21 ~~1989, Sections 708 and 709)~~ is liable for such tax. For  
22 purposes of assessment and collection, any amount withheld or  
23 required to be withheld and paid over to the Department, and  
24 any penalties and interest with respect thereto, shall be  
25 considered the tax of the payor. Any amount of tax actually  
26 deducted and withheld under Sections 709.5 or Section 710 ~~(and~~  
27 ~~until January 1, 1989, Sections 708 and 709)~~ shall be held to  
28 be a special fund in trust for the Department. No payee shall  
29 have any right of action against his payor in respect of any  
30 money deducted and withheld and paid over to the Department in  
31 compliance or in intended compliance with Sections and 709.5 or  
32 ~~Section~~ 710 (and until January 1, 1989, Sections 708 and 709).

33 (Source: P.A. 85-299; 85-982.)

1 (35 ILCS 5/713) (from Ch. 120, par. 7-713)

2 Sec. 713. Payor's Failure To Withhold. If a payor fails to  
3 deduct and withhold any amount of tax as required under  
4 Sections and 709.5 or Section 710 ~~(and until January 1, 1989,~~  
5 ~~Sections 708 and 709)~~ and thereafter the tax on account of  
6 which such amount was required to be deducted and withheld is  
7 paid, such amount of tax shall not be collected from the payor,  
8 but the payor shall not be relieved from liability for  
9 penalties or interest otherwise applicable in respect of such  
10 failure to deduct and withhold. For purposes of this Section,  
11 the tax on account of which an amount is required to be  
12 deducted and withheld is the tax of the individual or  
13 individuals who are entitled to a credit under subsection (b)  
14 of Section 709.5 ~~(c) of Section 708, subsection (c) of Section~~  
15 ~~709,~~ or subsection (b) of Section 710 for the withheld tax.

16 (Source: P.A. 85-299; 85-982.)

17 (35 ILCS 5/804) (from Ch. 120, par. 8-804)

18 Sec. 804. Failure to Pay Estimated Tax.

19 (a) In general. In case of any underpayment of estimated  
20 tax by a taxpayer, except as provided in subsection (d) or (e),  
21 the taxpayer shall be liable to a penalty in an amount  
22 determined at the rate prescribed by Section 3-3 of the Uniform  
23 Penalty and Interest Act upon the amount of the underpayment  
24 (determined under subsection (b)) for each required  
25 installment.

26 (b) Amount of underpayment. For purposes of subsection (a),  
27 the amount of the underpayment shall be the excess of:

28 (1) the amount of the installment which would be  
29 required to be paid under subsection (c), over

30 (2) the amount, if any, of the installment paid on or  
31 before the last date prescribed for payment.

32 (c) Amount of Required Installments.

1 (1) Amount.

2 (A) In General. Except as provided in paragraph  
3 (2), the amount of any required installment shall be  
4 25% of the required annual payment.

5 (B) Required Annual Payment. For purposes of  
6 subparagraph (A), the term "required annual payment"  
7 means the lesser of

8 (i) 90% of the tax shown on the return for the  
9 taxable year, or if no return is filed, 90% of the  
10 tax for such year, or

11 (ii) 100% of the tax shown on the return of the  
12 taxpayer for the preceding taxable year if a return  
13 showing a liability for tax was filed by the  
14 taxpayer for the preceding taxable year and such  
15 preceding year was a taxable year of 12 months.

16 (2) Lower Required Installment where Annualized Income  
17 Installment is Less Than Amount Determined Under Paragraph  
18 (1).

19 (A) In General. In the case of any required  
20 installment if a taxpayer establishes that the  
21 annualized income installment is less than the amount  
22 determined under paragraph (1),

23 (i) the amount of such required installment  
24 shall be the annualized income installment, and

25 (ii) any reduction in a required installment  
26 resulting from the application of this  
27 subparagraph shall be recaptured by increasing the  
28 amount of the next required installment determined  
29 under paragraph (1) by the amount of such  
30 reduction, and by increasing subsequent required  
31 installments to the extent that the reduction has  
32 not previously been recaptured under this clause.

33 (B) Determination of Annualized Income  
34 Installment. In the case of any required installment,

1 the annualized income installment is the excess, if  
2 any, of

3 (i) an amount equal to the applicable  
4 percentage of the tax for the taxable year computed  
5 by placing on an annualized basis the net income  
6 for months in the taxable year ending before the  
7 due date for the installment, over

8 (ii) the aggregate amount of any prior  
9 required installments for the taxable year.

10 (C) Applicable Percentage.

11 In the case of the following The applicable  
12 required installments: percentage is:

|             |       |
|-------------|-------|
| 13 1st..... | 22.5% |
| 14 2nd..... | 45%   |
| 15 3rd..... | 67.5% |
| 16 4th..... | 90%   |

17 (D) Annualized Net Income; Individuals. For  
18 individuals, net income shall be placed on an  
19 annualized basis by:

20 (i) multiplying by 12, or in the case of a  
21 taxable year of less than 12 months, by the number  
22 of months in the taxable year, the net income  
23 computed without regard to the standard exemption  
24 for the months in the taxable year ending before  
25 the month in which the installment is required to  
26 be paid;

27 (ii) dividing the resulting amount by the  
28 number of months in the taxable year ending before  
29 the month in which such installment date falls; and

30 (iii) deducting from such amount the standard  
31 exemption allowable for the taxable year, such  
32 standard exemption being determined as of the last  
33 date prescribed for payment of the installment.

34 (E) Annualized Net Income; Corporations. For

1 corporations, net income shall be placed on an  
2 annualized basis by multiplying by 12 the taxable  
3 income

4 (i) for the first 3 months of the taxable year,  
5 in the case of the installment required to be paid  
6 in the 4th month,

7 (ii) for the first 3 months or for the first 5  
8 months of the taxable year, in the case of the  
9 installment required to be paid in the 6th month,

10 (iii) for the first 6 months or for the first 8  
11 months of the taxable year, in the case of the  
12 installment required to be paid in the 9th month,  
13 and

14 (iv) for the first 9 months or for the first 11  
15 months of the taxable year, in the case of the  
16 installment required to be paid in the 12th month  
17 of the taxable year,

18 then dividing the resulting amount by the number of  
19 months in the taxable year (3, 5, 6, 8, 9, or 11 as the  
20 case may be).

21 (d) Exceptions. Notwithstanding the provisions of the  
22 preceding subsections, the penalty imposed by subsection (a)  
23 shall not be imposed if the taxpayer was not required to file  
24 an Illinois income tax return for the preceding taxable year,  
25 or, for individuals, if the taxpayer had no tax liability for  
26 the preceding taxable year and such year was a taxable year of  
27 12 months. The penalty imposed by subsection (a) shall also not  
28 be imposed on any underpayments of estimated tax due before the  
29 effective date of this amendatory Act of 1998 which  
30 underpayments are solely attributable to the change in  
31 apportionment from subsection (a) to subsection (h) of Section  
32 304. The provisions of this amendatory Act of 1998 apply to tax  
33 years ending on or after December 31, 1998.

34 (e) The penalty imposed for underpayment of estimated tax

1 by subsection (a) of this Section shall not be imposed to the  
2 extent that the Director ~~Department~~ or his or her designate  
3 determines, pursuant to Section 3-8 of the Uniform Penalty and  
4 Interest Act that the penalty should not be imposed.

5 (f) Definition of tax. For purposes of subsections (b) and  
6 (c), the term "tax" means the excess of the tax imposed under  
7 Article 2 of this Act, over the amounts credited against such  
8 tax under Sections 601(b) (3) and (4).

9 (g) Application of Section in case of tax withheld under  
10 Article 7 ~~on compensation~~. For purposes of applying this  
11 Section :

12 (1) in the case of an individual, tax withheld from  
13 compensation ~~under Article 7~~ for the taxable year shall be  
14 deemed a payment of estimated tax, and an equal part of  
15 such amount shall be deemed paid on each installment date  
16 for such taxable year, unless the taxpayer establishes the  
17 dates on which all amounts were actually withheld, in which  
18 case the amounts so withheld shall be deemed payments of  
19 estimated tax on the dates on which such amounts were  
20 actually withheld; -

21 (2) amounts timely paid by a partnership, Subchapter S  
22 corporation, or trust on behalf of a partner, shareholder,  
23 or beneficiary pursuant to subsection (f) of Section 502 or  
24 Section 709.5 and claimed as a payment of estimated tax  
25 shall be deemed a payment of estimated tax made on the last  
26 day of the taxable year of the partnership, Subchapter S  
27 corporation, or trust for which the income from the  
28 withholding is made was computed; and

29 (3) all other amounts pursuant to Article 7 shall be  
30 deemed a payment of estimated tax on the date the payment  
31 is made to the taxpayer of the amount from which the tax is  
32 withheld.

33 (g-5) Amounts withheld under the State Salary and Annuity  
34 Withholding Act. An individual who has amounts withheld under



1 paragraph (10) of Section 4 of the State Salary and Annuity  
2 Withholding Act may elect to have those amounts treated as  
3 payments of estimated tax made on the dates on which those  
4 amounts are actually withheld.

5 (i) Short taxable year. The application of this Section to  
6 taxable years of less than 12 months shall be in accordance  
7 with regulations prescribed by the Department.

8 The changes in this Section made by Public Act 84-127 shall  
9 apply to taxable years ending on or after January 1, 1986.

10 (Source: P.A. 90-448, eff. 8-16-97; 90-613, eff. 7-9-98.)

11 (35 ILCS 5/911) (from Ch. 120, par. 9-911)

12 Sec. 911. Limitations on Claims for Refund.

13 (a) In general. Except as otherwise provided in this Act:

14 (1) A claim for refund shall be filed not later than 3  
15 years after the date the return was filed (in the case of  
16 returns required under Article 7 of this Act respecting any  
17 amounts withheld as tax, not later than 3 years after the  
18 15th day of the 4th month following the close of the  
19 calendar year in which such withholding was made), or one  
20 year after the date the tax was paid, whichever is the  
21 later; and

22 (2) No credit or refund shall be allowed or made with  
23 respect to the year for which the claim was filed unless  
24 such claim is filed within such period.

25 (b) Federal changes.

26 (1) In general. In any case where notification of an  
27 alteration is required by Section 506(b), a claim for  
28 refund may be filed within 2 years after the date on which  
29 such notification was due (regardless of whether such  
30 notice was given), but the amount recoverable pursuant to a  
31 claim filed under this Section shall be limited to the  
32 amount of any overpayment resulting under this Act from  
33 recomputation of the taxpayer's net income, net loss, or

1 Article 2 credits for the taxable year after giving effect  
2 to the item or items reflected in the alteration required  
3 to be reported.

4 (2) Tentative carryback adjustments paid before  
5 January 1, 1974. If, as the result of the payment before  
6 January 1, 1974 of a federal tentative carryback  
7 adjustment, a notification of an alteration is required  
8 under Section 506(b), a claim for refund may be filed at  
9 any time before January 1, 1976, but the amount recoverable  
10 pursuant to a claim filed under this Section shall be  
11 limited to the amount of any overpayment resulting under  
12 this Act from recomputation of the taxpayer's base income  
13 for the taxable year after giving effect to the federal  
14 alteration resulting from the tentative carryback  
15 adjustment irrespective of any limitation imposed in  
16 paragraph (1) of this subsection.

17 (c) Extension by agreement. Where, before the expiration of  
18 the time prescribed in this section for the filing of a claim  
19 for refund, both the Department and the claimant shall have  
20 consented in writing to its filing after such time, such claim  
21 may be filed at any time prior to the expiration of the period  
22 agreed upon. The period so agreed upon may be extended by  
23 subsequent agreements in writing made before the expiration of  
24 the period previously agreed upon. In the case of a taxpayer  
25 who is a partnership, Subchapter S corporation, or trust and  
26 who enters into an agreement with the Department pursuant to  
27 this subsection on or after January 1, 2003, a claim for refund  
28 may be issued to the partners, shareholders, or beneficiaries  
29 of the taxpayer at any time prior to the expiration of the  
30 period agreed upon. Any refund allowed pursuant to the claim,  
31 however, shall be limited to the amount of any overpayment of  
32 tax due under this Act that results from recomputation of items  
33 of income, deduction, credits, or other amounts of the taxpayer  
34 that are taken into account by the partner, shareholder, or

1 beneficiary in computing its liability under this Act.

2 (d) Limit on amount of credit or refund.

3 (1) Limit where claim filed within 3-year period. If  
4 the claim was filed by the claimant during the 3-year  
5 period prescribed in subsection (a), the amount of the  
6 credit or refund shall not exceed the portion of the tax  
7 paid within the period, immediately preceding the filing of  
8 the claim, equal to 3 years plus the period of any  
9 extension of time for filing the return.

10 (2) Limit where claim not filed within 3-year period.  
11 If the claim was not filed within such 3-year period, the  
12 amount of the credit or refund shall not exceed the portion  
13 of the tax paid during the one year immediately preceding  
14 the filing of the claim.

15 (e) Time return deemed filed. For purposes of this section  
16 a tax return filed before the last day prescribed by law for  
17 the filing of such return (including any extensions thereof)  
18 shall be deemed to have been filed on such last day.

19 (f) No claim for refund based on the taxpayer's taking a  
20 credit for estimated tax payments as provided by Section  
21 601(b)(2) or for any amount paid by a taxpayer pursuant to  
22 Section 602(a) or for any amount of credit for tax withheld  
23 pursuant to Article 7 ~~Section 701~~ may be filed more than 3  
24 years after the due date, as provided by Section 505, of the  
25 return which was required to be filed relative to the taxable  
26 year for which the payments were made or for which the tax was  
27 withheld. The changes in this subsection (f) made by this  
28 amendatory Act of 1987 shall apply to all taxable years ending  
29 on or after December 31, 1969.

30 (g) Special Period of Limitation with Respect to Net Loss  
31 Carrybacks. If the claim for refund relates to an overpayment  
32 attributable to a net loss carryback as provided by Section  
33 207, in lieu of the 3 year period of limitation prescribed in  
34 subsection (a), the period shall be that period which ends 3

1 years after the time prescribed by law for filing the return  
2 (including extensions thereof) for the taxable year of the net  
3 loss which results in such carryback (or, on and after August  
4 13, 1999, with respect to a change in the carryover of an  
5 Article 2 credit to a taxable year resulting from the carryback  
6 of a Section 207 loss incurred in a taxable year beginning on  
7 or after January 1, 2000, the period shall be that period that  
8 ends 3 years after the time prescribed by law for filing the  
9 return (including extensions of that time) for that subsequent  
10 taxable year), or the period prescribed in subsection (c) in  
11 respect of such taxable year, whichever expires later. In the  
12 case of such a claim, the amount of the refund may exceed the  
13 portion of the tax paid within the period provided in  
14 subsection (d) to the extent of the amount of the overpayment  
15 attributable to such carryback. On and after August 13, 1999,  
16 if the claim for refund relates to an overpayment attributable  
17 to the carryover of an Article 2 credit, or of a Section 207  
18 loss, earned, incurred (in a taxable year beginning on or after  
19 January 1, 2000), or used in a year for which a notification of  
20 a change affecting federal taxable income must be filed under  
21 subsection (b) of Section 506, the claim may be filed within  
22 the period prescribed in paragraph (1) of subsection (b) in  
23 respect of the year for which the notification is required. In  
24 the case of such a claim, the amount of the refund may exceed  
25 the portion of the tax paid within the period provided in  
26 subsection (d) to the extent of the amount of the overpayment  
27 attributable to the recomputation of the taxpayer's Article 2  
28 credits, or Section 207 loss, earned, incurred, or used in the  
29 taxable year for which the notification is given.

30 (h) Claim for refund based on net loss. On and after the  
31 effective date of this amendatory Act of the 92nd General  
32 Assembly, no claim for refund shall be allowed to the extent  
33 the refund is the result of an amount of net loss incurred  
34 under Section 207 of this Act that was not reported to the

1 Department within 3 years of the due date (including  
2 extensions) of the return for the loss year on either the  
3 original return filed by the taxpayer or on amended return.  
4 (Source: P.A. 91-541, eff. 8-13-99; 92-846, eff. 8-23-02.)".