



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1608

Introduced 2/20/2015, by Sen. Kyle McCarter

SYNOPSIS AS INTRODUCED:

35 ILCS 735/3-3

from Ch. 120, par. 2603-3

Amends the Uniform Penalty and Interest Act. Provides that provisions imposing a penalty of \$100 for failure to file a transaction reporting return under the Retailers' Occupation Tax Act or the Use Tax Act apply only to transaction reporting returns that would not, when properly prepared and filed, result in the imposition of a tax (currently, those provisions apply regardless of whether a tax would be imposed). Provides that transaction reporting returns that would result in the imposition of a tax when properly prepared and filed are subject to the standard penalty for failure to file (2% of the tax required to be shown due on the return, up to a maximum amount of \$250). Effective immediately.

LRB099 10335 HLH 30562 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 Section 3-3 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) ~~Section 3-3(a-10)~~ shall be abated. This subsection
13 (a-10) does not apply to transaction reporting returns required
14 by Section 3 of the Retailers' Occupation Tax Act and Section 9
15 of the Use Tax Act that would not, when properly prepared and
16 filed, result in the imposition of a tax; however, those
17 returns are subject to the penalty set forth in subsection
18 (a-15).

19 (a-15) A ~~In addition to any other penalties imposed by law~~
20 ~~for the failure to file a return,~~ a penalty of \$100 shall be
21 imposed for failure to file a transaction reporting return
22 required by Section 3 of the Retailers' Occupation Tax Act and
23 Section 9 of the Use Tax Act on or before the date a return is
24 required to be filed; provided, however, that this ~~.—This~~
25 penalty shall be imposed only if ~~regardless of whether~~ the
26 return when properly prepared and filed would not result in the

1 imposition of a tax. If such a transaction reporting return
2 would result in the imposition of a tax when properly prepared
3 and filed, then that return is subject to the provisions of
4 subsection (a-10).

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

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

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

1 becomes a final assessment without a protest and hearing,
2 the penalty provided in this paragraph (2) shall be imposed
3 at the expiration of the period provided for the filing of
4 a protest.

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

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

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

1 instituted. In the case of a notice of tax liability that
2 becomes a final assessment without a protest and hearing,
3 the penalty provided in this paragraph (2) shall be imposed
4 at the expiration of the period provided for the filing of
5 a protest.

6 (b-10) This subsection (b-10) is applicable to returns due
7 on and after January 1, 2001 and on or before December 31,
8 2003. A penalty shall be imposed for failure to pay:

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

1 admitted liability under this subsection (b-10)(1) on the
2 amount so paid shall not accrue for the period after the
3 date of the notice and demand.

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

21 (b-15) This subsection (b-15) is applicable to returns due
22 on and after January 1, 2004 and on or before December 31,
23 2004. A penalty shall be imposed for failure to pay the tax
24 shown due or required to be shown due on a return on or before
25 the due date prescribed for payment of that tax, an amount of
26 underpayment of estimated tax, or an amount that is reported in

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

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

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

1 date and 10% of any amount that is paid later than 30 days
2 after the due date.

3 (2) A penalty shall be imposed for failure to pay the
4 tax shown due or required to be shown due on a return on or
5 before the due date prescribed for payment of that tax or
6 an amount that is reported in an amended return other than
7 an amended return timely filed as required by subsection
8 (b) of Section 506 of the Illinois Income Tax Act (penalty
9 for late payment or nonpayment of tax). The amount of
10 penalty imposed under this paragraph (2) shall be 2% of any
11 amount that is paid no later than 30 days after the due
12 date, 10% of any amount that is paid later than 30 days
13 after the due date and prior to the date the Department has
14 initiated an audit or investigation of the taxpayer, and
15 20% of any amount that is paid after the date the
16 Department has initiated an audit or investigation of the
17 taxpayer; provided that the penalty shall be reduced to 15%
18 if the entire amount due is paid not later than 30 days
19 after the Department has provided the taxpayer with an
20 amended return (following completion of an occupation,
21 use, or excise tax audit) or a form for waiver of
22 restrictions on assessment (following completion of an
23 income tax audit); provided further that the reduction to
24 15% shall be rescinded if the taxpayer makes any claim for
25 refund or credit of the tax, penalties, or interest
26 determined to be due upon audit, except in the case of a

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

17 (3) The penalty imposed under this subsection (b-20)
18 shall be deemed assessed at the time the tax upon which the
19 penalty is computed is assessed, except that, if the
20 reduction of the penalty imposed under paragraph (2) of
21 this subsection (b-20) to 15% is rescinded because a claim
22 for refund or credit has been filed, the increase in
23 penalty shall be deemed assessed at the time the claim for
24 refund or credit is filed.

25 (c) For purposes of the late payment penalties, the basis
26 of the penalty shall be the tax shown or required to be shown

1 on a return, whichever is applicable, reduced by any part of
2 the tax which is paid on time and by any credit which was
3 properly allowable on the date the return was required to be
4 filed.

5 (d) A penalty shall be applied to the tax required to be
6 shown even if that amount is less than the tax shown on the
7 return.

8 (e) This subsection (e) is applicable to returns due before
9 January 1, 2001. If both a subsection (b)(1) or (b-5)(1)
10 penalty and a subsection (b)(2) or (b-5)(2) penalty are
11 assessed against the same return, the subsection (b)(2) or
12 (b-5)(2) penalty shall be assessed against only the additional
13 tax found to be due.

14 (e-5) This subsection (e-5) is applicable to returns due on
15 and after January 1, 2001. If both a subsection (b-10)(1)
16 penalty and a subsection (b-10)(2) penalty are assessed against
17 the same return, the subsection (b-10)(2) penalty shall be
18 assessed against only the additional tax found to be due.

19 (f) If the taxpayer has failed to file the return, the
20 Department shall determine the correct tax according to its
21 best judgment and information, which amount shall be prima
22 facie evidence of the correctness of the tax due.

23 (g) The time within which to file a return or pay an amount
24 of tax due without imposition of a penalty does not extend the
25 time within which to file a protest to a notice of tax
26 liability or a notice of deficiency.

1 (h) No return shall be determined to be unprocessable
2 because of the omission of any information requested on the
3 return pursuant to Section 2505-575 of the Department of
4 Revenue Law (20 ILCS 2505/2505-575).

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

13 (j) If a taxpayer has a tax liability for the taxable
14 period ending after June 30, 2002 and prior to July 1, 2009
15 that is eligible for amnesty under the Tax Delinquency Amnesty
16 Act, except for any tax liability reported pursuant to Section
17 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that
18 is not final, and the taxpayer fails to satisfy the tax
19 liability during the amnesty period provided for in that Act
20 for that taxable period, then the penalty imposed by the
21 Department under this Section shall be imposed in an amount
22 that is 200% of the amount that would otherwise be imposed
23 under this Section.

24 (Source: P.A. 98-425, eff. 8-16-13.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.