

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 100 Section 100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)</b>
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**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**Section 100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)**

- a) Failure to file returns. *In addition to any other penalties imposed by the IITA, an employer failing to file a quarterly return or the annual transmittal form for wage and tax statements required by IITA Section 704 or regulations promulgated under the statute shall incur a penalty for each such failure as prescribed by UPIA Section 3-3 [35 ILCS 735/3-3]. (IITA Section 1104) See 86 Ill. Adm. Code 700.300 for more guidance on the penalty for failure to file quarterly and annual returns.*
  
- b) Failure to pay. UPIA Section 3-3(b), (b-5), (b-10), (b-15) and (b-20) provides for penalties for failure to pay amounts shown due on a return on or before the due date for payment. Pursuant to 86 Ill. Adm. Code 700.500(c), any payment of taxes withheld during a quarter shall be applied against the earliest unpaid liability for that quarter under Section 100.7320(b) or (c) or 100.7325(b) or (c).

EXAMPLE 1: An employer required to make semi-weekly payments is required to deposit \$500 on the 10<sup>th</sup>, 18<sup>th</sup> and 25<sup>th</sup> day of a month and on the 3<sup>rd</sup> day of the following month. Employer makes a payment of \$700 on the 15<sup>th</sup> of the month and pays the remaining \$1,300 of the liability on the 15<sup>th</sup> of the following month. No other payments are made during that period. \$500 of the payment on the 15<sup>th</sup> of the month is applied in satisfaction of the amount due on the 10<sup>th</sup>, and the remaining \$200 is applied toward the amount due on the 18<sup>th</sup>. The remainder of the amount due on the 18<sup>th</sup> and the remaining amounts due are unpaid until the 15<sup>th</sup> of the following month. Any amount withheld in the following month and due on or before the 15<sup>th</sup> of that month is subject to late payment penalty because the payment made on the 15<sup>th</sup> is applied to amounts due in the first month.

EXAMPLE 2: The employer in Example 1 makes payments of \$500 on the 18<sup>th</sup> and 25<sup>th</sup> days of the month and on the 3<sup>rd</sup> of the following month. The balance is paid on the 15<sup>th</sup> of the following month. The payment made on the 18<sup>th</sup> is applied to the amount due on the 10<sup>th</sup>, the payment made on the 25<sup>th</sup> is applied to the amount due on the 18<sup>th</sup>, and the payment made on the 3<sup>rd</sup> is applied to the amount due on the 25<sup>th</sup>. The penalty for late payment will therefore apply to all four amounts.

- c) Failure to withhold. *If an employer fails to deduct and withhold any amount of tax as required under Article 7 of the IITA, and thereafter the tax on account of which such amount was required to be deducted and withheld is paid, such amount of tax shall not*

*be collected from the employer, but the employer shall not be relieved from liability for penalties or interest otherwise applicable in respect of such failure to deduct and withhold. (IITA Sections 706 and 713) The amount required to be deducted and withheld during a year shall be considered paid by the employee if the employee pays his or her entire Illinois income tax liability for that year, even if that liability is less than the amount required to be deducted and withheld by the employer. Any employer who fails to deduct and withhold the required amount of tax shall be liable for any underpayment of tax by the employee (excluding interest and penalties imposed on the employee), up to the amount the employer improperly failed to deduct and withhold, together with interest and penalties for failure to deduct and withhold; provided that the amount of tax due from the employee shall not be collected more than once under this provision.*

- d) *Personal liability penalty. Any person required to collect, truthfully account for, and pay over the tax required to be paid over under Article 7 of the IITA who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof shall, in addition to other penalties provided by law, be liable for the penalty imposed by UPIA Section 3-7. (IITA Section 1002(d)) (See 86 Ill. Adm. Code 700.340.)*

(Source: Added at 32 Ill. Reg. 17492, effective October 24, 2008)