

**Illinois Department of Revenue
Regulations**

Title 86 Part 700 Section 700.300 Penalty for Late Filing or Failure to File

Section 700.300 Penalty for Late Filing or Failure to File (UPIA Section 3-3(a), (a-5), (a-10), and (a-15))

- a) Late Filing Penalty for Returns Due (without regard to extensions) On or After January 1, 1994, and Prior to January 1, 1996. *A penalty of 5% of the tax required to be shown due on a return shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing (penalty for late filing or nonfiling).* (UPIA Section 3-3(a))
 - 1) *If any unprocessable return is corrected and filed within 21 days after notice by the Department, the late filing or nonfiling penalty shall not apply.* (UPIA Section 3-3(a)) This exception to the penalty applies only if the unprocessable return was filed on or before the due date prescribed for filing of that return, with regard for any extension of filing. In other words, a taxpayer does not avoid the 5% penalty under this exception by the late filing of an unprocessable return that is then corrected within 21 days after notice by the Department.
 - 2) For purposes of this subsection (a), the "tax required to be shown due on a return" means the tax as properly computed, net of credits properly allowable, but without regard to any payment of the tax or any accelerated tax payments.
 - 3) *If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty.* (UPIA Section 3-3(a))
 - 4) *In the case of any type of tax return for which filing is due more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and no other failure to file has occurred in the two years immediately preceding the failure to file on the prescribed due date, the penalty imposed under this subsection (a) shall be abated.* (UPIA Section 3-3(a))
- b) Late Filing Penalty for Returns Due (without regard to extensions) On or After January 1, 1996 and On or Before December 31, 2000
 - 1) Tier 1 Penalty. *A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing.* (UPIA Section 3-3(a-5))

EXAMPLE 1: Taxpayer's Retailers' Occupation Tax return was due by April 20, 1996, but Taxpayer filed it on May 17, 1996. The tax required to be shown due on the return was \$10,000. Taxpayer timely paid the full \$10,000 in accelerated tax payments. A Tier 1 late filing penalty of \$200

($2\% \times \$10,000 = \200 ; \$200 is less than the \$250 maximum Tier 1 penalty, and so the penalty is \$200) is imposed because the return was not filed by the April 20 due date.

EXAMPLE 2: Individual's Illinois income tax return was due by April 15, 1996, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but Individual filed it on November 10, 1996. The tax required to be shown due on the return was \$2,000. Individual's employer withheld \$1,200 for Illinois income tax, and Individual timely paid \$500 in estimated tax payments during the year. The remaining \$300 was paid with the return. A Tier 1 late filing penalty of \$40 ($2\% \times \$2,000$, the tax required to be shown due on the return without regard to credits or timely payments = \$40, which is less than the \$250 maximum Tier 1 penalty) is imposed because the return was not filed by the October 15 due date.

EXAMPLE 3: Corporation's Illinois income tax return was due by March 15, 1996, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but Corporation filed it on November 10, 1996. The tax shown due on the return was \$1,500. On the return, Corporation failed to claim a research and development credit of \$700. Corporation subsequently filed an amended return, claiming the \$700 credit and showing a liability of \$800. The Tier 1 late filing penalty is \$30 ($2\% \times \$1,500$, the amount of tax required to be shown due on the return without regard to credits or timely payments = \$30, which is less than the \$250 maximum Tier 1 penalty).

- 2) Tier 2 Penalty. *If any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return. The maximum amount of the additional penalty is \$5,000. The amount of the additional penalty is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed (penalty for late filing or nonfiling) (UPIA Section 3-3(a-5)).*

EXAMPLE: Taxpayer's Retailers' Occupation Tax return was due by April 20, 1996, but Taxpayer did not file it. The Department issued a notice of nonfiling asking Taxpayer to file a return or to explain why no return was required. Taxpayer filed the return 45 days after the notice. The tax shown on the return was \$18,000. Taxpayer timely paid the full \$18,000 in accelerated tax payments. A Tier 1 penalty is imposed in the amount of \$250 (2% of \$18,000 in tax required to be shown due on the return without regard to timely payments = \$360, which is greater than the \$250 maximum Tier 1 penalty). A Tier 2 penalty is imposed in the amount of \$360 (2% of \$18,000 in tax due without regard to timely payments = \$360, which is greater than the \$250 minimum Tier 2 penalty and less than the \$5,000 maximum) because Taxpayer did not file the return within 30 days after the notice of nonfiling.

- 3) *If any unprocessable return is corrected and filed within 30 days after notice by the*

Department, the late filing or nonfiling penalty shall not apply. (UPIA Section 3-3(a-5)) This exception to the penalty applies only if the unprocessable return was filed on or before the due date prescribed for filing of that return, with regard for any extension of filing. In other words, a taxpayer does not avoid the penalty under this exception by the late filing of an unprocessable return which is then corrected within 30 days after notice by the Department.

- 4) *In the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and no other failure to file has occurred in the two years immediately preceding the failure to file on the prescribed due date, the penalty imposed under this subsection (b) does not apply. (UPIA Section 3-3(a-5))*
- c) Late Filing Penalty for Returns Due (without regard to extensions) On or After January 1, 2001
- 1) Tier 1 Penalty. *A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, reduced by any tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing. (UPIA Section 3-3(a-10))*

EXAMPLE 1: Taxpayer's Retailers' Occupation Tax return was due by April 20, 2001, but Taxpayer filed it on May 17, 2001. The tax required to be shown due on the return was \$10,000. Taxpayer timely paid the full \$10,000 in accelerated tax payments. A penalty of 2% of the tax required to be shown due on the return is applicable for the late filing of the return but no penalty is assessed because, after taking into account the tax paid on time, the tax liability was zero.

EXAMPLE 2: Individual's Illinois income tax return was due by April 15, 2001, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but Individual filed it on November 10, 2001. The tax required to be shown due on the return was \$2,000. Individual's employer withheld \$1,200 for Illinois Income Tax, and Individual timely paid \$500 in estimated tax payments during the year. The remaining \$300 was paid with the return. A Tier 1 late filing penalty of \$6 (2% x \$300, the tax required to be shown due on the return reduced by credits and timely payments = \$6, which is less than the \$250 maximum Tier 1 penalty) is imposed because the return was not filed by the October 15 extended due date.

EXAMPLE 3: Corporation's Illinois income tax return was due by March 15, 2001, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but Corporation filed it on November 10, 2001. The tax liability shown on the return was \$1,500. On the return, Corporation failed to claim a research and development credit of \$700. Corporation subsequently filed an amended return, claiming the \$700 credit and showing a liability of \$800. The Tier 1 late filing penalty is \$16 (2% x

\$800, the amount of tax required to be shown due on the return reduced by credits and timely payments = \$16, which is less than the \$250 maximum Tier 1 penalty).

- 2) Tier 2 Penalty. *If any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return. However, the additional penalty amount may not exceed \$5,000 and the penalty is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed (penalty for late filing or nonfiling). (UPIA Section 3-3(a-10))*

EXAMPLE: Taxpayer's Retailers' Occupation Tax return was due by April 20, 2001, but Taxpayer did not file it. The Department issued a notice of nonfiling asking Taxpayer to file a return or to explain why no return was due. Taxpayer filed the return 45 days after the notice. The tax liability shown on the return was \$18,000. Taxpayer timely paid the full \$18,000 in accelerated tax payments. No Tier 1 late filing penalty is assessed because, after taking into account the tax paid on time, the tax liability was zero. A Tier 2 penalty is imposed in the amount of \$360 (2% of \$18,000 in tax due without regard to timely payments = \$360, which is greater than the \$250 minimum Tier 2 Penalty and less than the \$5,000 maximum) because Taxpayer did not file the return within 30 days after the notice of nonfiling.

- 3) *If any unprocessable return is corrected and filed within 30 days after notice by the Department, the late filing or nonfiling penalty shall not apply. (UPIA Section 3-3(a-10))* This exception to the penalty applies only if the unprocessable return was filed on or before the due date prescribed for filing of that return, with regard for any extension for filing. In other words, a taxpayer does not avoid the penalty under this exception by the late filing of an unprocessable return that is then corrected within 30 days after notice by the Department.
- 4) *In the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed due date, the penalty imposed by this subsection (c) shall be abated. (UPIA Section 3-3(a-10))*
- d) *A penalty of \$100 shall be imposed for failure to file a transaction reporting return required by ROTA Section 3 and UTA Section 9 on or before the date the return is required to be filed; provided, however, that this penalty shall be imposed only if the return, when properly prepared and filed, would not result in the imposition of a tax. If the transaction reporting return would result in the imposition of a tax when properly prepared and filed, then that return is subject to the provisions of subsection (c). (UPIA Section 3-3(a-15))* The penalty imposed under this subsection (d) does not apply to returns due, without regard to extensions, after August 10, 2015 (the effective date of P.A. 99-335).