

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 700 Section 700.305 Penalty for Late Payment of Tax**

**Section 700.305 Penalty for Late Payment of Tax (UPIA Section 3-3(b), (b-5), (b-10), (b-15), and (b-20))**

- a) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 1994 and On or Before January 1, 1998. *For returns due on or after January 1, 1994, and on or before January 1, 1998, a penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed:*
- 1) *For failure to pay the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by IITA Section 506(b) (penalty for late payment or nonpayment of admitted liability). (UPIA Section 3-3(b)(1))*

EXAMPLE 1: Individual's income tax return for calendar year 1994 was due (without regard to extensions) by April 15, 1995, and his liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 1994 and January 15 of 1995, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty of \$151.88 ( $\$337.50 \times 3$  unpaid installments = \$1,012.50 estimated tax that was due, and  $\$1,012.50 \times 15\%$  penalty = \$151.88 late payment penalty) because Individual failed to pay the amounts due for each estimated tax installment.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1 and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed by virtue of the automatic extension until October 15 of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes a late payment penalty of \$174.38. The penalty for failure to timely pay the unpaid \$1,012.50 in estimated tax installments is the \$151.88 amount computed in Example 1. Failure to timely pay the remaining \$150 that was shown due on the original return date is subject to penalty as prescribed by UPIA Section 3-3(b)(1) of \$22.50 ( $\$1,500 - \$1,350 = \$150 \times 15\% = \$22.50$ ) for failure to pay the total tax by April 15.

- 2) *For failure to pay the full amount of any tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a Notice of Arithmetic Error, Notice and Demand, or Final Assessment is issued by the Department. In the case of Final Assessment arising following a protest and hearing, the 30-day period shall not begin until all*

*proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this subsection (a)(2) shall be imposed at the expiration of the period provided for the filing of a protest. (UPIA Section 3-3(b)(2)) For purposes of this subsection (a)(2):*

- A) An amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b)(2) with (b-20)(2).)
- B) The 30-day period for providing payment in response to Department notices and final assessments is effective for notices and assessments issued on or after January 1, 1996. Payments in response to notices and assessments issued prior to January 1, 1996 were due within 21 days (the effective date of P.A. 89-436).

EXAMPLE 1: Corporation timely filed its income tax return for calendar year 1994 by the March 15, 1995 unextended due date for calendar year filers. Corporation properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 1997, the Department completed an audit of Corporation's 1994 return and issued a notice of deficiency for an additional liability of \$5,000. Corporation protested the notice of deficiency, which was ultimately upheld by the courts. Corporation is subject to the late payment penalty of \$750 (15% of \$5,000) only if it does not pay the additional liability within 30 days after the Department has issued a Notice and Demand for Payment.

EXAMPLE 2: The facts are the same as in Example 1, except that the additional liability of \$5,000 assessed in 1997 is the result of a federal change. If Corporation timely reported the federal change liability, it is not subject to late payment penalty under subsection (a)(1) and is subject to the late payment penalty under subsection (a)(2) only if it does not pay the additional liability before the Department has issued a Notice and Demand for Payment of the liability and 30 days have passed. If Corporation files its report of the federal change liability after the due date, it is immediately subject to late payment penalty under subsection (a)(1).

EXAMPLE 3: Corporation timely filed its income tax return for calendar year 1993 by the March 15, 1994 unextended due date. Corporation properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 1995, the Department completed an audit of Corporation's 1994 return and issued a Notice of Deficiency for an additional liability of \$5,000. Corporation agreed to the additional liability and the Department issued a Notice and Demand for the additional liability. If the Notice and Demand was issued prior to January 1, 1996, Corporation is subject to the late payment penalty under subsection (a)(2) only if it does not pay the additional liability within 21 days. If the Notice and Demand was

issued on or after January 1, 1996, Corporation is subject to the late payment penalty under subsection (a)(2) only if it does not pay the additional liability within 30 days.

b) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 1998 and On or Before December 31, 2000. *For returns due on and after January 1, 1998 and on or before December 31, 2000, a penalty of 20% of the tax shown on the return or the tax required to be shown due on the return shall be imposed:*

1) *For failure to pay the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of the underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as a requirement of IITA Section 506(b) (penalty for late payment or nonpayment of admitted liability). (UPIA Section 3-3(b-5)(1))*

EXAMPLE 1: Individual's income tax return for calendar 1997 was due (without regard to extensions) by April 15, 1998, and his liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 1997 and January 15 of 1998, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15 and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty of \$202.50 ( $\$337.50 \times 3$  unpaid installments = \$1,012.50 estimated tax that was due, and  $\$1,012.50 \times 20\%$  penalty = \$202.50 late payment penalty) because Individual failed to pay the amounts due for each estimated tax installment.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1 and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed by virtue of the automatic extension until October 15 of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes a late payment penalty of \$232.50. The penalty for failure to timely pay the unpaid \$1,012.50 in estimated tax installments is the \$202.50 amount computed in Example 1. Failure to timely pay the remaining \$150 that was shown due on the original return date is subject to penalty as prescribed by UPIA Section 3-3(b)(1) of \$30.00 ( $\$1,500 - \$1,350 = \$150 \times 20\% = \$30.00$ ) for failure to pay the total tax by April 15.

2) *For failure to pay the full amount of the tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability) within 30 days after a Notice of Arithmetic Error, Notice and Demand, or Final Assessment is issued by the Department. In the case of a Final Assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without a proceeding having been instituted. In the case of a Notice of Tax Liability that becomes a Final Assessment without a protest and hearing, the penalty provided in this subsection (b) shall be*

*imposed at the expiration of the period provided for the filing of a protest. (UPIA Section 3-3(b-5)(2))*

EXAMPLE 1: Corporation timely filed its income tax return for calendar year 1997 by the March 15, 1998 unextended due date for calendar year filers. Corporation properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 2000, the Department completed an audit of Corporation's 1997 return and issued a Notice of Deficiency for an additional liability of \$5,000. Corporation protested the Notice of Deficiency, which was ultimately upheld by the courts. Corporation is subject to the late payment penalty of \$1,000 (20% of \$5,000) only if it does not pay the additional liability within 30 days after the Department has issued a Notice and Demand for Payment.

EXAMPLE 2: The facts are the same as in Example 1, except that the additional liability of \$5,000 assessed for 1997 was the result of a federal change. If Corporation timely reported the federal change liability, it is not subject to late payment penalty under subsection (b)(1) and is subject to the late payment penalty under subsection (b)(2) only if it does not pay the additional liability before the Department has issued a Notice and Demand for Payment of the liability and 30 days have passed. If Corporation filed its report of the federal change liability after the due date, it is immediately subject to late payment penalty under subsection (b)(1).

- 3) For purposes of this subsection (b), an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-5)(2) with (b-20)(2).)
- c) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 2001 and On or Before December 31, 2003. *For returns due on and after January 1, 2001 and on or before December 31, 2003, a penalty is imposed:*
- 1) *For failure to pay the tax shown due on a return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by IITA Section 506(b) (penalty for late payment or nonpayment of admitted liability).*
    - A) *The amount of the penalty imposed shall be:*
      - i) *2% of any amount that is paid no later than 30 days after the due date;*
      - ii) *5% of any amount that is paid later than 30 days after the due date and not later than 90 days after the due date;*
      - iii) *10% of any amount that is paid later than 90 days after the due date and not later than 180 days after the due date; and*
      - iv) *15% of any amount that is paid later than 180 days after the due date.*

- B) *Effective July 25, 2002, if Notice and Demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the Notice and Demand, then the penalty for late payment or nonpayment of admitted liability under subsection (c)(1)(A) on the amount so paid shall not accrue for the period after the date of the Notice and Demand (UPIA Section 3-3(b-10)(1)).*

EXAMPLE 1: Individual's income tax return for calendar year 2000 was due (without regard to extensions) by April 15, 2001, and his liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 2000 and January 15 of 2001, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, 2001 and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty for late payment of estimated tax of \$118.14. Because all payments, other than the first estimated tax installment, were made on April 15, the second and third installment payments were made more than 180 days late, and the fourth installment payment was made 90 days late. The late payment of estimated tax penalty is calculated as follows: second installment penalty ( $\$337.50 \times 15\% = \$50.63$ ) + third installment penalty ( $\$337.50 \times 15\% = \$50.63$ ) + fourth installment penalty ( $\$337.50 \times 5\% = \$16.88$ ) = \$118.14 late payment penalty for failure to pay estimated taxes.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1 and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed by virtue of the automatic extension, until October 15, 2001, of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes penalties for late payment of estimated tax and late payment of tax due with the return totaling \$166.89. Because all the estimated tax installments, other than the first, were made on October 1, the second, third and fourth installment payments were made more than 180 days late. The remaining \$150 was due on April 15 and was paid more than 90 but not more than 180 days late. The late payment of estimated tax penalty is calculated as follows for each of the 3 late estimated tax installments:  $\$337.50 \times 15\% = \$50.63$ , times 3 = \$151.89 late payment penalty for failure to pay estimated taxes. The penalty for late payment of the tax due with the return is calculated as follows:  $\$1,500 - \$1,350$  (the amount of estimated taxes due) = \$150 tax due with the return and paid late.  $\$150 \times 10\% = \$15$  late payment penalty for failure to pay tax due by April 15.

EXAMPLE 3: Taxpayer's Form ST-1 for May 2001 was due on June 20, 2001. Taxpayer's quarter-monthly accelerated tax payments of

the Retailers' Occupation Tax were due on May 7, 15, 22 and 31. The amount of each accelerated payment due was \$4,500. Taxpayer did not make any accelerated payments and instead paid the total tax due with its timely filed return on June 20. Taxpayer is subject to penalty for failing to make timely accelerated tax payments. The May 7 and May 15 payments were more than 30 days but less than 90 days late, and are therefore subject to the 5% penalty. The May 22 and May 31 payments were no more than 30 days late, and are therefore subject to the 2% penalty. The late payment penalty is \$630: the \$4,500 due on May 7 x 5%, or \$225; the \$4,500 due on May 15 x 5%, or \$225; the \$4,500 due on May 22 x 2%, or \$90; plus the \$4,500 due on May 31 x 2%, or \$90. If the amount of each accelerated payment due is subsequently increased or decreased as the result of an audit or amendment to the return, the penalty under this subsection (c)(1)(B) is computed using the corrected amount.

EXAMPLE 4: Taxpayer's Form ST-1 for July, 2002, due on August 20, 2002, was timely filed but no payment was made. The Department issued Taxpayer a Notice and Demand dated September 15, 2002. Taxpayer paid the tax due on October 9, 2002. The penalty is 2% of the tax shown due on the return. Although payment was made later than 30 days after the due date, a Notice and Demand was issued on September 15, and the penalty does not increase for the period after the date of a Notice and Demand when the tax is paid within 30 days after the Notice and Demand is issued.

- 2) *For failure to pay the full amount of any tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability) within 30 days after a Notice of Arithmetic Error, Notice and Demand, or Final Assessment is issued by the Department. In the case of a Final Assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the Final Assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. The amount of penalty imposed is 20% of any amount that is not paid within the 30-day period. In the case of a notice of tax liability that becomes a Final Assessment without a protest and hearing, the penalty imposed under UPIA Section 3-3(b-10)(2) shall be imposed at the expiration of the period provided for the filing of a protest. (UPIA Section 3-3(b-10)(2))*

EXAMPLE 1: Corporation timely filed its Form IL-1120 for calendar year 2000 by the March 15, 2001 unextended due date. Corporation properly made all estimated tax payments and paid the remainder of its reported tax liability with the return. In 2003, the Department completed an audit of Corporation's 2000 return and issued a notice of deficiency for an additional liability of \$5,000. Corporation protested the Notice of Deficiency, which was ultimately upheld by the courts. Corporation is subject to the late payment penalty of \$1,000 (20% of \$5,000) only if it does not pay the additional liability within 30 days after the Department has issued a Notice and Demand for Payment.

EXAMPLE 2: The facts are the same as in Example 1, except that the additional liability of \$5,000 assessed for 2000 is the result of a federal

change. If Corporation timely reported the federal change liability, it is not subject to late payment penalty under subsection (c)(1) and is subject to the late payment penalty under subsection (c)(2) only if it does not pay the additional liability before the Department has issued a Notice and Demand for Payment of the liability and 30 days have passed. If Corporation files its report of the federal change liability after the deadline, it is immediately subject to late payment penalty under subsection (c)(1).

- 3) For purposes of this subsection (c), an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-10)(2) with (b-20)(2).)
- d) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 2004 and On or Before December 31, 2004. For returns due on or after January 1, 2004, and on or before December 31, 2004, UPIA Section 3-3(b-15) imposes a penalty for failure to pay the tax shown due on a return, or the tax required to be shown due on a return, including tax shown on an amended return, on or before the due date prescribed for payment of the tax, or imposes a penalty for an amount of underpayment of estimated tax.
- 1) The amount of the penalty imposed is determined according to the following schedule:
    - A) *2% of the amount paid not later than 30 days after the due date prescribed for payment of the tax;*
    - B) *10% of the amount paid later than 30 days after the due date, but not later than 90 days after the due date prescribed for payment of the tax;*
    - C) *15% of the amount paid later than 90 days after the due date, but not later than 180 days after the due date prescribed for payment of the tax; and*
    - D) *20% of any amount that is paid later than 180 days after the due date prescribed for payment of the tax.*
  - 2) Notwithstanding subsection (d)(1), *if an amount of tax is paid no later than 30 days after the date of a Notice and Demand issued with respect to that tax, the penalty imposed under this subsection (d) with respect to the amount so paid shall not increase over the penalty applicable as of the date of the Notice and Demand.* (UPIA Section 3-3(b-15))
  - 3) For purposes of this subsection (d), an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-15)(2) with (b-20)(2).)
  - 4) No penalty is imposed under this subsection (d) for failure to timely pay the tax shown due on an amended federal change return timely filed pursuant to IITA Section 506(b), but only to the extent the failure relates to the federal change reported under that Section.

- 5) The provisions of this subsection (d) may be illustrated by the following examples:

EXAMPLE 1: Individual's income tax return for calendar year 2003 was due (without regard to extensions) by April 15, 2004, and the liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 2003 and January 15 of 2004, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, 2004, and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty for late payment of estimated tax of \$185.63. Because all payments other than the first estimated tax installment were made on April 15, the second and third installment payments were made more than 180 days late, and the fourth installment payment was made 91 days late. The late payment of estimated tax penalty is calculated as follows: second installment penalty ( $\$337.50 \times 20\% = \$67.50$ ) + third installment penalty ( $\$337.50 \times 20\% = \$67.50$ ) + fourth quarter penalty ( $\$337.50 \times 15\% = \$50.63$ ) = \$185.63 late payment penalty for failure to pay estimated taxes.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1, 2004, and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed, by virtue of the automatic extension until October 15, 2001 of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. The penalty owed by Individual for late payment of estimated tax and late payment of tax due with the return is \$225. Because all the estimated tax installments, other than the first, were made on October 1, the second, third and fourth installment payments were made more than 180 days late. The remaining \$150 was due on April 15 and was paid more than 90 but not more than 180 days late. The late payment of estimated tax penalty is calculated as follows for each of the 3 late estimated tax installments:  $\$337.50 \times 20\% = \$67.50$ , times 3 = \$202.50 late payment penalty for failure to pay estimated taxes. The penalty for late payment of the tax due with the return is calculated as follows:  $\$1,500 - \$1,350$  (the amount of estimated taxes due) = \$150 tax due with the return and paid late.  $\$150 \times 15\% = \$22.50$  late payment penalty for failure to pay tax due by April 15.

EXAMPLE 3: Taxpayer's Form ST-1 for May 2004 was due June 20, 2004. Taxpayer's quarter-monthly accelerated tax payments of the Retailers' Occupation Tax were due on May 7, 15, 22 and 31. The amount of each accelerated payment due was \$4,500. Taxpayer did not make any accelerated payments and instead paid the total tax due with its timely filed return on June 20. Taxpayer is subject to penalty for failing to make timely accelerated tax payments. The May 7 and May 15 payments were made later than 30 days after the due date, but not later than 90 days after the due date. The May 22 and May 31 payments were made not later than 30 days after the due date. The late payment penalty is \$1,080: the \$4,500 due on May 7 times 10%, or \$450; the \$4,500 due on May 15 times 10%, or \$450; the \$4,500 due on May 22 times 2%, or \$90; plus the \$4,500 due on

May 31 times 2%, or \$90. If the amount of each accelerated payment due is subsequently increased or decreased as the result of an audit or amendment to the return, the penalty under this subsection (d) is computed using the corrected amount.

EXAMPLE 4: Taxpayer's Form ST-1 for July 2004, due on August 20, 2004, was timely filed. No accelerated payments were due and none was made, and no payment was made with the return. The Department issued Taxpayer a Notice and Demand dated September 15, 2004. Taxpayer paid the tax due on October 9, 2004. The penalty is 2% of the tax shown due on the return. Although payment was made later than 30 days after the due date, a Notice and Demand was issued on September 15, and the penalty does not increase for the period after the date of a Notice and Demand when the tax is paid within 30 days after the Notice and Demand is issued.

- e) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 2005. For returns due on or after January 1, 2005, UPIA Section 3-3(b-20) imposes underpayment penalties as follows:
- 1) Failure to Make Accelerated Tax Payments. UPIA Section 3-3(b-20)(1) imposes a penalty *for failure to pay, prior to the due date for payment, any amount of tax the payment of which is required to be made prior to the filing of a return or without a return (penalty for late payment or nonpayment of estimated or accelerated tax)*. The penalty is imposed at the rate of:
    - A) *2% of any amount that is paid no later than 30 days after the due date; and*
    - B) *10% of any amount that is paid later than 30 days after the due date. (UPIA Section 3-3(b-20)(1))*
  - 2) Failure to Pay Tax. UPIA Section 3-3(b-20)(2) imposes a penalty *for failure to pay the tax shown due or required to be shown due on a return on or before the due date prescribed for payment of that tax or an amount that is reported in an amended return (penalty for late payment or nonpayment of tax)*. The penalty is imposed at the rate of:
    - A) *2% of any amount that is paid no later than 30 days after the due date;*
    - B) *10% of any amount that is paid later than 30 days after the due date and prior to the date the Department has initiated an audit or investigation of the taxpayer; and*
    - C) *20% of any amount that is paid after the date the Department has initiated an audit or investigation of the taxpayer. (UPIA Section 3(b-20)(2))*
      - i) *The rate imposed under this subsection (e)(2)(C) shall be reduced to 15% if the entire amount due on an amended return (following completion of an occupation, use or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit) is paid not later than 30 days after the Department has provided the taxpayer with the amended return or form for waiver of restrictions. (UPIA Section 3-3(b-20)(2)) For purposes of this*

subsection (e)(2)(C), the "entire amount due" on an amended return or waiver of restrictions on assessment means the tax, including any reduction in vendor's discount resulting from late payment of taxes, but does not include any interest, penalty or excess sales tax collected from customers and not refunded.

- ii) The reduction of the rate to 15% is allowed for occupation, use or excise taxes only if, in addition to paying the tax, the taxpayer signs and returns the amended return not later than 30 days after it has been provided to the taxpayer by the Department.
  - iii) *The reduction of the rate to 15% shall be rescinded if the taxpayer makes any claim for refund or credit of the tax liability, penalties or interest determined to be due upon audit, except in the case of a claim based on a carryover of a loss or credit, the availability of which was not determined in the audit. (UPIA Section 3-3(b-20)(2))* The rescission of the 15% rate applies only to the amount of the refund or credit that is claimed and that is finally disallowed.
- 3) Special Provisions. For purposes of imposing the penalty under subsection (e)(2):
- A) *Any overpayment reported on an original return that has been allowed as a refund or credit to the taxpayer shall be deemed to have not been paid on or before the due date for payment. (UPIA Section 3-3(b-20)(2))* However, an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an amended return.
  - B) Federal Change Returns Filed Under IITA Section 506(b)
    - i) The penalty under subsection (e)(2) is not imposed on an amount shown due on an amended federal change return timely filed pursuant to IITA Section 506(b), but only to the extent that amount results from the federal change being timely reported.
    - ii) The filing of a claim for refund pursuant to IITA Section 506(b) does not cause the reduction of the penalty rate to 15% to be rescinded pursuant to subsection (e)(2)(C)(iii).
  - C) Protest Act Payments. *Any amount paid under protest pursuant to the provisions of the State Officers and Employees Money Disposition Act (Protest Act) [30 ILCS 230] shall be deemed to have been paid after the Department has initiated an audit and more than 30 days after the Department has provided the taxpayer with an amended return (following completion of an occupation, use or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit). (UPIA Section 3-3(b-20)(2))* Subsection (e)(2)(C) applies only to payments that are not timely. A payment made under the Protest Act on or before the date the payment was due is not deemed to have been paid late.
  - D) Initiation of an Audit or Investigation. For purposes of subsection (e)(2):

- i) An "audit" refers to actions taken by the Audit Bureau of the Department.
  - ii) An "investigation" refers to actions taken by the Bureau of Criminal Investigation of the Department.
  - iii) An audit or investigation is initiated on the date a representative of the Department first contacts the taxpayer, whether by telephone, mail, email or otherwise, informing the taxpayer that the Department is reviewing the taxpayer's return, failure to file a return, or identified transactions for the period at issue.
  - iv) An audit or investigation is not initiated by a communication regarding a mathematical error or suspected mathematical error on the taxpayer's original or amended return, or regarding the failure of the taxpayer to sign or include all necessary attachments to an original or amended return that has been filed.
  - v) The Department has the burden of providing evidence that an audit or investigation of a tax period was initiated prior to the date a specific payment of tax for that period was made.
  - vi) The initiation of an income tax audit or investigation of a partnership, Subchapter S corporation, trust or estate also serves as the initiation of an income tax audit or investigation of the partners, shareholders or beneficiaries, but only with respect to any income tax liability arising from those entities' interest in the partnership, Subchapter S corporation, trust or estate.
- E) Provision of a Waiver of Restrictions on Assessment or Amended Return After Completion of an Audit or Investigation. For purposes of subsection (e)(2):
- i) A waiver of restrictions on assessment or an amended return is presented to the taxpayer when mailed or, if delivered by another means, when received by the taxpayer or by an authorized representative of the taxpayer.
  - ii) If a taxpayer is entitled to request review of an audit by the Informal Conference Board, the audit is not completed until a waiver of restrictions on assessment or an amended return is presented to the taxpayer on a date that is after the date on which:
    - the Informal Conference Board issues its final Action Decision to the taxpayer: or
    - if the taxpayer fails to request review, the taxpayer's right to request review by the Informal Conference Board expires.
- F) IITA Section 704A(c)(1), (2) and (3) provide that payments of income taxes withheld by an employer from employee compensation are due before the

return reporting the withholding is due. However, IITA Section 704A(c)(4) provides that payment of any tax that was withheld or required to be withheld during the period for which the return is due, and that had not previously been paid to the Department, was due on the due date of the return. Accordingly, any amount of withholding that is not paid by the due date of the return is subject to penalty under subsection (e)(2).

- 4) *The penalty imposed under subsection (e)(2) shall be deemed assessed at the time the tax upon which the penalty is computed is assessed, except that, if the reduction of the penalty rate to 15% is rescinded under subsection (e)(2)(C)(iii) because a claim for refund or credit has been filed, the increase in penalty shall be deemed assessed at the time the claim for refund or credit is filed.* (UPIA Section 3-3(b-20)(3))
- 5) The provisions of this subsection (e) may be illustrated by the following additional examples.

EXAMPLE 1: Individual's income tax return for calendar year 2004 was due (without regard to extensions) by April 15, 2005, and the liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 2004 and January 15 of 2005, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, 2005 and paid the remaining \$1,162.50 liability with the return. Individual owes penalties for late payment of estimated tax and late payment of tax due with the return of \$101.25. Because all payments, other than the first estimated tax installment, were made on April 15, the second, third and fourth installment payments were made more than 30 days late. The late payment of estimated tax penalty is calculated as follows: 3 late installments each incur a penalty of  $\$337.50 \times 10\% = \$33.75$ , times 3 = \$101.25 late payment penalty for failure to pay estimated taxes.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1, 2005, and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed, by virtue of the automatic extension, until October 15, 2005, of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes the same \$101.25 penalty for late payment of estimated tax, and the late payment of tax due with the return is \$15. The penalty for late payment of the tax due with the return is calculated as follows:  $\$1,500 - \$1,350$  (the amount of estimated taxes due) = \$150 tax due with the return and paid late. The payment was made more than 30 days late, but before the Department had initiated an audit or investigation, so the penalty is  $\$150 \times 10\% = \$15$  for failure to pay tax due by April 15.

EXAMPLE 3: Taxpayer, a corporation, is a calendar year taxpayer. For its 2004 taxable year, Taxpayer made timely installment payments of estimated tax of \$50,000 each quarter. On March 15, 2005, Taxpayer filed

its calendar 2004 Illinois income tax return, showing total tax imposed of \$180,000 (net of Article 2 credits). Taxpayer's return requested that the \$20,000 overpayment be applied against its estimated tax payment obligation for 2005. After an audit by the Department in 2006, it was determined that the taxpayer owed additional tax of \$120,000, or a total of \$300,000. Taxpayer is not subject to penalty under this subsection (e) for failure to make timely payment of estimated taxes because each of its timely payments exceeded 25% of the \$180,000 tax shown due on its return. Taxpayer is subject to penalty under this subsection (e) for failure to timely pay the tax required to be shown due on the return. The amount that was paid late was the \$300,000 owed minus the \$180,000 liability shown on the original return, or \$120,000. The \$20,000 overpayment shown on the original return was not timely paid because it was credited against the taxpayer's 2005 estimated tax payment obligation. Because the tax was paid after the initiation of an audit, the penalty is \$24,000 (\$120,000 times 20%).

EXAMPLE 4: The facts are the same as in Example 3 except that the additional \$120,000 in tax due was paid within 30 days after the Department issued to Taxpayer, after completion of the audit, a Form IL-870, Waiver of Restrictions, showing the \$120,000 in additional tax due. The penalty is \$18,000 (\$120,000 times 15%).

EXAMPLE 5: The facts are the same as in Example 3 except that the additional \$120,000 in tax due was reported by Taxpayer on an amended return that was timely filed pursuant to IITA Section 506(b). Taxpayer is not subject to penalty for failure to timely pay the additional tax because the tax was reported on a timely-filed federal change return.

EXAMPLE 6: Taxpayer's Form ST-1 for May 2005 is due June 20, 2005. Taxpayer's quarter-monthly accelerated tax payments of the Retailers' Occupation Tax were due on May 7, 15, 22 and 31. The amount of each accelerated payment due was \$4,500. Taxpayer did not make any accelerated payments and instead paid the total tax due upon the timely filing of its return on June 20. Taxpayer is subject to penalty under subsection (e)(1) for failure to pay accelerated payments of the tax shown on the return on or before the due dates prescribed for payment. The May 7 and May 15 payments were made later than 30 days after the due date. The May 22 and May 31 payments were made not later than 30 days after the due date. Taxpayer's late payment penalty is therefore \$1,080: the \$4,500 due on May 7 times 10%, or \$450; the \$4,500 due on May 15 times 10%, or \$450; the \$4,500 due on May 22 times 2%, or \$90; plus the \$4,500 due on May 31 times 2%, or \$90. If the amount of each accelerated payment due is subsequently increased or decreased as the result of an audit or amendment to the return, the penalty under this subsection (e)(5) is computed using the corrected amount.

EXAMPLE 7: Taxpayer's Form ST-1 for July 2005, due on August 20, 2005, was timely filed. No accelerated payments were required or made, and no payment was made with the return. The Department issued Taxpayer a Notice and Demand dated September 16, 2005, Taxpayer paid the tax due on October 9, 2005. The penalty is 10% of the tax shown due on the return

because the payment was made more than 30 days after the due date for payment on the Notice and Demand. Unlike the penalty imposed under subsection (d), the penalty imposed under this subsection (e) may increase after a Notice and Demand has been issued, even if the taxpayer pays the entire amount due before the date for payment indicated in the Notice and Demand. The Notice and Demand is not the initiation of an audit or an investigation, so the penalty under subsection (e)(2) does not apply.

EXAMPLE 8: Upon completion of an audit, the Department determines that Taxpayer has underpaid its 2005 income tax liability by \$10,000. At the request of Taxpayer, the Department presents Taxpayer with a Form IL-870, Waiver of Restrictions, showing an underpayment of \$8,000 and a Notice of Deficiency for the remaining \$2,000. Taxpayer immediately signs the Form IL-870 and pays the \$8,000 in tax shown due on that form. Taxpayer files a protest of the Notice of Deficiency. After an administrative hearing, the Department determines that the \$2,000 shown on the Notice of Deficiency was not due. The 15% penalty rate applies to the \$8,000 deficiency conceded by Taxpayer, because it paid that entire deficiency within 30 days after receiving the Form IL-870.

EXAMPLE 9: If, in Example 8, it is ultimately determined that Taxpayer owed \$500 of the \$2,000 deficiency it protested, the 20% rate will apply only to the \$500 liability that was not paid within 30 days after the taxpayer received the Form IL-870.

EXAMPLE 10: After the audit in Example 8, the Department presents Taxpayer with a Form IL-870 showing the entire underpayment of \$10,000. Taxpayer immediately signs the Form IL-870 and pays the tax due. Taxpayer subsequently files a refund claim for \$2,000, of which \$1,500 is allowed. The 15% penalty rate will be rescinded only with respect to the \$500 refund claim that is disallowed, and not to the \$8,000 for which no refund was claimed or to the \$1,500 for which the refund claim was allowed.

- f) Unless a specific provision of the UPIA or a tax Act provides otherwise:
- 1) *For purposes of the late payment penalties imposed under this Section, the basis of the penalty shall be the tax shown or required to be shown on the return, whichever is applicable, reduced by any part of the tax that is paid on time and by any credit that was properly allowable on the date the return was due. (UPIA Section 3-3(c))*
  - 2) For purposes of this Section, the maximum amount of Manufacturer's Purchase Credit that is allowable on the date a return is due for a tax period is the amount actually claimed on a timely-filed return for that tax period.
  - 3) If a penalty is imposed on the basis of the tax required to be shown on a return, *the penalty shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return. (UPIA Section 3-3(d))*

EXAMPLE 1: A renter of automobiles for periods of one year or less has tax due under the Automobile Renting Occupation and Use Tax for the rental receipts received during the month of June 1994 on July 20, 1994.

The tax shown on the return filed on July 20, 1994 is \$500, but the taxpayer remits no payment of the tax when the return is filed. On August 1, 1994 the taxpayer files an amended return reducing its tax liability to \$400 and also remits \$400. Assuming that the \$400 amount shown on the amended return is correct, the taxpayer owes a late payment penalty on the \$400 amount required to be shown on the original return, not the \$500 amount that was shown on the original return.

EXAMPLE 2: The penalty for failure to make timely payments of estimated tax under IITA Section 804 is imposed on the *required installment*, which is defined in IITA Section 804(c)(1)(A) as 25% of the *required annual payment*, which is defined in IITA Section 804(c)(1)(B)(i) as 90% of the tax shown on the return for the taxable year, or if no return is filed, 90% of the tax for that year. Accordingly, if a return is filed for a taxable year, and the alternative computations of the required annual payment under IITA Section 804(c)(1)(B)(ii) and (iii) do not apply, any penalty for failure to make timely payments of estimated taxes will be computed on the basis of the tax shown on the original return, regardless of whether the tax required to be shown is greater or less than the tax shown.

- g) *If both a penalty under subsection (a)(1) or (b)(1) and a penalty under subsection (a)(2) or (b)(2) are assessed against the same return, the penalty imposed under subsection (a)(2) or (b)(2) shall be assessed against only the additional tax found to be due. (UPIA Section 3-3(e)) If both a penalty under subsection (c)(1) and a penalty under subsection (c)(2) are assessed against the same return, the penalty under subsection (c)(2) shall be assessed against only the additional tax found to be due. (UPIA Section 3-3(e-5))*

EXAMPLE 1: An employer has withholding tax due for the third quarter of 1994. The return is filed timely, reporting tax withheld of \$2,000, but timely payments total only \$1,500, leaving a tax balance due of \$500. The late payment penalty under subsection (a)(1) equal to \$75 (15% of the \$500 underpayment) is assessed. The employer does not pay the additional liability within 30 days after Notice and Demand for Payment. Although the total tax that was not paid on time was \$1,200, the penalty under subsection (a)(2) is imposed only on the \$700 additional tax due, and not the \$500 underpayment on which the penalty under subsection (a)(1) was imposed.

EXAMPLE 2: Corporation timely files its income tax return for calendar year 2000 on March 15, 2001 showing total tax due of \$30,000. Corporation timely made \$27,000 in estimated tax payments, but failed to pay the \$3,000 tax balance due with the return. Corporation pays the \$3,000 tax due on June 15, 2001, later than 90 days but not later than 180 days after the due date. The penalty for late payment of tax due under subsection (c)(1) is \$300 (\$3,000 x 10%). In 2003, the Department completes an audit of Corporation's 2000 return, increasing the tax due to \$36,000. Corporation agrees to the audit finding but does not pay the additional liability until 45 days after Notice and Demand is issued. Corporation is assessed an additional late payment penalty under subsection (c)(2) of \$1,200 (the \$6,000 in additional tax due x 20%).

- h) *If the taxpayer has failed to file a return, and the Department determines the correct amount of tax according to its best judgment and information, that amount shall be prima facie evidence of the correctness of the tax due. (UPIA Section 3-3(f))*

- i) *The time within which to file a return or pay an amount of tax due without imposition of a penalty does not extend the time within which to file a protest to a Notice of Tax Liability or a Notice of Deficiency. (UPIA Section 3-3(g))*

(Source: Added at 43 Ill. Reg.14342, effective November 26, 2019)