

**Illinois Department of Revenue
Regulations**

Title 86 Part 700 Section 700.340 Personal Liability Penalty

Section 700.340 Personal Liability Penalty (UPIA Section 3-7)

- a) *Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. (UPIA Section 3-7(a))*

- b) *The term willful "has generally been defined as involving intentional, knowing and voluntary acts or, alternatively, reckless disregard for obvious or known risks. [Relevant] cases specifically find that according other corporate creditors preferential treatment over governmental tax obligation constitutes wilful behavior. Further, they find that, in a civil action, wilful conduct does not require bad purpose or intent to defraud the government." (Department of Revenue v. Heartland Investments, Inc., 106 Ill. 2d 19 (1985))*

- c) *The Department shall issue a notice of penalty liability for the amount claimed by the Department pursuant to this Section. Procedures for protest and review of a Notice of Penalty Liability issued pursuant to this Section and assessment of the penalty shall be the same as those prescribed for protest and review of a Notice of Tax Liability or a Notice of Deficiency, as the case may be, and the assessment of tax liability under the Act imposing that liability. (UPIA Section 3-7(b))*

- d) *The personal liability imposed by UPIA Section 3-7 survive the dissolution of a partnership or corporation. (UPIA Section 3-7(c))*

- e) *In addition to any other remedy provided for by the laws of this State, and provided that no hearing or proceeding for review is pending, any Section of a tax Act that provides a means for collection of taxes shall in the same manner and to the same extent provide a means for the collection of the penalty imposed by this Section. (UPIA Section 3-7(d))*

- f) *Officer or employee of any taxpayer includes a partner of a partnership, a manager or member of a limited liability company, and a member of a registered limited liability partnership. (UPIA Section 3-7(e))*

- g) *A trust tax is any tax for which an amount is collected or withheld by a taxpayer from another person, and any tax for which an amount is required to be collected or withheld by a taxpayer from another person, regardless of whether it is in fact collected or withheld. (UPIA Section 3-7(f))*

- h) *The personal liability imposed by this Section is in addition to liability incurred by a partner of a partnership or limited liability partnership resulting from the issuance of a notice of tax liability issued to the partnership or limited liability partnership. (UPIA Section 3-7(g))*

- i) *In addition to any other basis for imposition of liability under the UPIA, including under*

subsection (a), any person who collects, withholds, or receives a tax, or any amount represented to be a tax, from another person holds the amount so collected or withheld in special trust for the benefit of the Department and is liable to the Department for the amount so withheld or collected plus accrued interest and penalty on that amount. For purposes of this subsection (i), "person" has the same definition as provided in ROTA Section 1. (UPIA Section 3-7(h)) Under ROTA Section 1, "person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

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