Illinois Department of Revenue
Raymond T. Wagner, Jr., Director

Informational Bulletin

FY 93-2
August 1993

Uniform Penalty and Interest Act

TO: Taxpayers

The Uniform Penalty and Interest Act (UPIA) takes effect on January 1, 1994. This act standardizes penalty and interest bases and rates across almost all of the taxes we administer.

The UPIA establishes an entirely new system of penalty and interest assessment and will have important and widespread effects upon the liabilities of taxpayers when they are subject to penalty and interest payments.

Which taxes are affected?

The UPIA applies to **all** taxes we administer **except** the following:

- the Racing Privilege Tax Act
- the Revenue Act of 1939
- the Real Estate Transfer Tax Act
- the Coin-Operated Amusement Device and Redemption Machine Tax Act
- the Motor Fuel Use Tax Act

Which returns will be subject to penalty and interest under the UPIA?

The UPIA will apply to all returns that are

- filed late,
- paid late,
- underpaid, or
- not "processable."

What is a "processable" return?

A "processable" return is one that

- is signed by the person required by law to sign it,
- is in a format we have approved, and
- contains all information and schedules necessary to determine correct tax and make local tax allocations.

What if I file a return that is not "processable"?

Any return you file that is not "processable" will be considered not to have been filed. The notice you receive as a result of submitting such a return will explain what you must do to file the return. As long as the return is not "processable," your tax account with us will be subject to the following restrictions:

- No overpayment reflected on a nonprocessable return will be approved.
- Failure to correct the condition will result in a penalty for nonfiling.
- Any subsequently approved overpayment (refund or credit memo) will accrue interest only from the date that the return was made "processable," not from the date that it was originally received.
- No claim for credit or refund will be approved.

How will penalty and interest be figured for returns due...

before January 1, 1994?

If a return is due before January 1, 1994, penalty and interest calculations will be in accordance with the law in effect at that time, even in cases in which the assessment was not made until after January 1, 1994.

Penalty rates will be determined by the original due date of the return, and interest will accrue at the rate appropriate for the period in question.

For example, if a balance due for a return due prior to January 1, 1994, remains unpaid after January 1, 1994, penalty will be determined by the law in place prior to the UPIA; interest will accrue at the rate in effect up to January 1, 1994, and at the new rate under the UPIA on or after January 1, 1994.

on or after January 1, 1994?

If a return or payment is due on or after January 1, 1994, penalty and interest calculations will be in accordance with the UPIA.

For example, if a balance due for a return due on or after January 1, 1994, remains unpaid after the due date, penalty will be determined under the UPIA; interest will accrue at the rate in effect under the UPIA for each day the amount due remains unpaid.

How will payments be applied to my account?

Under the UPIA, we apply your payments first to tax, then to penalty, and finally to interest. Generally, we apply your payments to the oldest outstanding debt. This method of payment application ensures that interest-bearing tax and penalty amounts will be paid first in order to prevent the further accrual of interest.

Does the UPIA change the way in which I claim refunds or credits?

No. The various tax acts set forth specific procedures for claiming refunds and credits. The UPIA does not change these procedures.

What do I do if I disagree with an assessment requiring penalty and interest?

The UPIA has not changed the procedures for protesting an assessment. If you are permitted by statute to protest an assessment, as long as the statutory protest period has not expired, you may file a protest if you disagree with an assessment.

If you have incurred a penalty and can show “reasonable cause,” you may qualify for an abatement of penalty. Generally, “reasonable cause” is present when you can show that you exercised ordinary business care and prudence at the time you were unable to meet the filing or payment requirement.

Ignorance of the law does not qualify you for an abatement under “reasonable cause.”

“Reasonable cause” does not apply to the fraud and personal liability penalties (see penalty types following); nor does it apply to interest charges.

Does the UPIA provide any limitations on assessment beyond those previously in place?

We will assess a tax at any time when

- a required return has not been filed or
- a false or fraudulent return is filed.

However, if you show that your failure to file was due to “reasonable cause,” the assessment period will be limited to six years after the original due date of the return.

If you are a nonfiler for a particular tax type and voluntarily disclose your liability before we initiate an audit or investigation

- by scheduling an audit appointment with you or
- by sending you correspondence regarding a possible tax liability or
- by opening a criminal investigation file,

the assessment period is limited to four years from the original due date.

Informational Bulletin FY 93-26 explains our Voluntary Disclosure program. You can obtain a copy of this bulletin by calling or writing us. Our telephone numbers and address are printed at the bottom of this bulletin.

What are the penalty types, bases, and rates?

Under the UPIA, six types of penalties may be assessed:

- Penalty for late filing or nonfiling
  - at the rate of 5 percent of the tax amount required to be shown due on the return.
  - In figuring this penalty, estimated payments, accelerated payments, prior overpayments, and credits will not be applied to reduce the amount subject to penalty.
- Penalty for failure to pay
  a: admitted liability
  - at the rate of 15 percent of the tax amount shown due on the return.
  - This penalty will apply to any failure to make required estimated or accelerated payments and payments required with returns.
  - In figuring this penalty, any taxes paid on time will be applied to reduce the amount subject to penalty.

b: additional liability

- at the rate of 15 percent of the tax amount required to be shown due on the return.
- This penalty will apply to any increases in tax due as a result of action on our part.
- This penalty will not be assessed when you pay the additional tax within 21 days after we notify you of the additional tax due. If you protest the additional tax, the 21-day period will not begin until the protest has been heard and all court proceedings to review the protest have ended, or until the time for obtaining a review has expired.
- This penalty will not be assessed if you pay on time any Illinois tax liability occurring as a result of a federal change.

- Penalty for failure to file correct and complete information returns (returns that do not, by law, require the payment of a tax liability)
  - at the rate of $5 per violation, not to exceed $25,000.
  - If you correct this failure within 60 days of the return's due date, the rate is $2.50 per violation, not to exceed $12,500.
  - Exception: This penalty is $75 per violation when you fail to file Form RMFT-5-SFB, Bulk User's Tax Return.
- Penalty for negligence (careless, reckless, or intentional disregard of law or regulations)
  - at the rate of 20 percent of the deficiency attributable to the negligent act.
  - This penalty will not be assessed if you show substantial authority to support the return as filed.
- Penalty for fraud
  - at the rate of 50 percent of the deficiency attributable to the fraudulent act.
- Penalty for personal liability
  - at an amount equal to the tax, penalty, and interest assessed against the corporation or partnership.
  - This penalty will be assessed against any responsible employee or officer of a corporation or partnership who willfully fails to file or pay, or attempts to evade or defeat payment of any trust tax. (A trust tax exists in cases in which a taxpayer is required to collect or withhold taxes from another person on behalf of the state—including cases in which excess taxes are collected.)

Can multiple penalties be assessed against the same return?

Yes. A specific penalty will be issued for each corresponding violation. In cases in which more than one penalty applies, your notice will reflect the sum of the penalties.

How is the interest rate determined?

Interest is simple interest figured using a daily rate. Beginning January 1, 1994, we will review the daily rate twice each year—on January 1 and July 1—and adjust the rate as necessary in accordance with the underpayment rate established in the Internal Revenue Code. We will pay taxpayers interest on overpayments or charge taxpayers interest on underpayments at the same rate.

How is interest charged taxpayers?

Interest accrues on the sum of tax and penalty due from the original due date of the return or the imposition of the penalty.

When will the department pay interest to taxpayers?

If we do not refund or approve a credit for an overpayment within 90 days, we will pay interest on the amount of overpayment from the date of the overpayment until we issue a refund or approve a credit.

(The 90-day period is measured from the due date of the original return, the receipt of a processable return, or the date of overpayment, whichever is later. In the case of a net operating loss carryback, the date from which interest is paid is the last day of the loss year.)

Questions?

If you have questions or need more information, please call or write us. Our telephone numbers and address are printed at the end of this bulletin.

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(111,900 copies - 08/93 - P.O. Number 47742)

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1 800 544-5304 TDD teletype device **for hearing impaired only**

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