

AN ACT in relation to taxes.

Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Tax  
Delinquency Amnesty Act.

Section 5. Definitions. As used in this Act:

"Department" means the Illinois Department of Revenue.

"Rules" means any rules adopted or forms prescribed by  
the Department.

"Taxable period" means any period of time for which any  
tax is imposed by and owed to the State of Illinois.

"Taxpayer" means any person, corporation, or other entity  
subject to any tax, except for the motor fuel use tax,  
imposed by any law of the State of Illinois and payable to  
the State of Illinois.

Section 10. Amnesty program. The Department shall  
establish an amnesty program for all taxpayers owing any tax  
imposed by reason of or pursuant to authorization by any law  
of the State of Illinois and collected by the Department.

The amnesty program shall be for a period from October 1,  
2003 through November 15, 2003.

The amnesty program shall provide that, upon payment by a  
taxpayer of all taxes due from that taxpayer to the State of  
Illinois for any taxable period ending after June 30, 1983  
and prior to July 1, 2002, the Department shall abate and not  
seek to collect any interest or penalties that may be  
applicable and the Department shall not seek civil or  
criminal prosecution for any taxpayer for the period of time  
for which amnesty has been granted to the taxpayer. Failure  
to pay all taxes due to the State for a taxable period shall

invalidate any amnesty granted under this Act. Amnesty shall be granted only if all amnesty conditions are satisfied by the taxpayer.

Amnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of this State for nonpayment, delinquency, or fraud in relation to any State tax imposed by any law of the State of Illinois.

Voluntary payments made under this Act shall be made by cash, check, guaranteed remittance, or ACH debit.

The Department shall adopt rules as necessary to implement the provisions of this Act.

Except as otherwise provided in this Section, all money collected under this Act that would otherwise be deposited into the General Revenue Fund shall be deposited as follows: (i) one-half into the Common School Fund; (ii) one-half into the General Revenue Fund. Two percent of all money collected under this Act shall be deposited by the State Treasurer into the Tax Compliance and Administration Fund and, subject to appropriation, shall be used by the Department to cover costs associated with the administration of this Act.

Section 905. The Uniform Penalty and Interest Act is amended by changing Sections 3-2, 3-3, 3-4, 3-5, 3-6, and 3-7.5 as follows:

(35 ILCS 735/3-2) (from Ch. 120, par. 2603-2)

Sec. 3-2. Interest.

(a) Interest paid by the Department to taxpayers and interest charged to taxpayers by the Department shall be paid at the annual rate determined by the Department. That rate shall be the underpayment rate established under Section 6621 of the Internal Revenue Code.

(b) The interest rate shall be adjusted on a semiannual basis, on January 1 and July 1, based upon the underpayment rate going into effect on that January 1 or July 1 under Section 6621 of the Internal Revenue Code.

(c) This subsection (c) is applicable to returns due on and before December 31, 2000. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax and penalty due. 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 such notice and demand, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(c-5) This subsection (c-5) is applicable to returns due on and after January 1, 2001. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax due. 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, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(d) No interest shall be paid upon any overpayment of tax if the overpayment is refunded or a credit approved within 90 days after the last date prescribed for filing the original return, or within 90 days of the receipt of the processable return, or within 90 days after the date of overpayment, whichever date is latest, as determined without regard to processing time by the Comptroller or without regard to the date on which the credit is applied to the taxpayer's account. In order for an original return to be processable for purposes of this Section, it must be in the form prescribed or approved by the Department, signed by the person authorized by law, and contain all information, schedules, and support documents necessary to determine the

tax due and to make allocations of tax as prescribed by law. For the purposes of computing interest, a return shall be deemed to be processable unless the Department notifies the taxpayer that the return is not processable within 90 days after the receipt of the return; however, interest shall not accumulate for the period following this date of notice. Interest on amounts refunded or credited pursuant to the filing of an amended return or claim for refund shall be determined from the due date of the original return or the date of overpayment, whichever is later, to the date of payment by the Department without regard to processing time by the Comptroller or the date of credit by the Department or without regard to the date on which the credit is applied to the taxpayer's account. If a claim for refund relates to an overpayment attributable to a net loss carryback as provided by Section 207 of the Illinois Income Tax Act, the date of overpayment shall be the last day of the taxable year in which the loss was incurred.

(e) Interest on erroneous refunds. Any portion of the tax imposed by an Act to which this Act is applicable or any interest or penalty which has been erroneously refunded and which is recoverable by the Department shall bear interest from the date of payment of the refund. However, no interest will be charged if the erroneous refund is for an amount less than \$500 and is due to a mistake of the Department.

(f) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the interest charged by the Department under this Section shall be imposed at a rate that is 200% of the rate that would otherwise be imposed under this Section.

(Source: P.A. 91-803, eff. 1-1-01.)

(35 ILCS 735/3-3) (from Ch. 120, par. 2603-3)

Sec. 3-3. Penalty for failure to file or pay.

(a) This subsection (a) is applicable before 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). 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. 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. Beginning on the effective date of this amendatory Act of 1995, 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 Section 3-3(a) shall be abated.

(a-5) This subsection (a-5) is applicable to returns due on and after January 1, 1996 and on or before December 31, 2000. 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. However, 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 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). 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. 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. 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 Section 3-3(a-5) shall be abated.

(a-10) This subsection (a-10) is applicable to returns due on and after January 1, 2001. 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. However, 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 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). 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. 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. 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 Section 3-3(a-10) shall be abated.

(b) This subsection is applicable 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 for failure to pay:

(1) 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 subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

(2) the full amount of any tax required to be shown due on a return and which 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 a 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. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this paragraph (2) shall be imposed at the expiration of the period provided for the filing of a protest.

(b-5) This subsection is applicable to 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 for failure to pay:

(1) 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 subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

(2) the full amount of any tax required to be shown due on a return and which 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 a 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. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this



paragraph (2) shall be imposed at the expiration of the period provided for the filing of a protest.

(b-10) This subsection (b-10) is applicable to returns due on and after January 1, 2001. A penalty shall be imposed for failure to pay:

(1) 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 subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability). The amount of penalty imposed under this subsection (b-10)(1) shall be 2% of any amount that is paid no later than 30 days after the due date, 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, 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 15% of any amount that is paid later than 180 days after the due date. 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 this subsection (b-10)(1) on the amount so paid shall not accrue for the period after the date of the notice and demand.

(2) 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 a 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 under this subsection (b-10)(2) shall be 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 provided in this subsection (b-10)(2) shall be imposed at the expiration of the period provided for the filing of a protest.

(c) For purposes of the late payment penalties, the basis of the penalty shall be the tax shown or required to be shown on a return, whichever is applicable, reduced by any part of the tax which is paid on time and by any credit which was properly allowable on the date the return was required to be filed.

(d) A penalty shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return.

(e) This subsection (e) is applicable to returns due before January 1, 2001. If both a subsection (b)(1) or (b-5)(1) penalty and a subsection (b)(2) or (b-5)(2) penalty are assessed against the same return, the subsection (b)(2) or (b-5)(2) penalty shall be assessed against only the additional tax found to be due.

(e-5) This subsection (e-5) is applicable to returns due on and after January 1, 2001. If both a subsection (b-10)(1) penalty and a subsection (b-10)(2) penalty are assessed against the same return, the subsection (b-10)(2) penalty shall be assessed against only the additional tax found to be due.

(f) If the taxpayer has failed to file the return, the Department shall determine the correct tax according to its

best judgment and information, which amount shall be prima facie evidence of the correctness of the tax due.

(g) 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.

(h) No return shall be determined to be unprocessable because of the omission of any information requested on the return pursuant to Section 2505-575 of the Department of Revenue Law (20 ILCS 2505/2505-575).

(i) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 91-239, eff. 1-1-00; 91-803, eff. 1-1-01; 92-742, eff. 7-25-02.)

(35 ILCS 735/3-4) (from Ch. 120, par. 2603-4)

Sec. 3-4. Penalty for failure to file correct information returns.

(a) Failure to file correct information returns - imposition of penalty.

(1) In general. Unless otherwise provided in a tax Act, in the case of a failure described in paragraph (2) of this subsection (a) by any person with respect to an information return, that person shall pay a penalty of \$5 for each return or statement with respect to which the failure occurs, but the total amount imposed on that person for all such failures during any calendar year shall not exceed \$25,000.

(2) Failures subject to penalty. The following

failures are subject to the penalty imposed in paragraph (1) of this subsection (a):

(A) any failure to file an information return with the Department on or before the required filing date, or

(B) any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

(b) Reduction where correction in specified period.

(1) Correction within 60 days. If any failure described in subsection (a) (2) is corrected within 60 days after the required filing date:

(A) the penalty imposed by subsection (a) shall be reduced by 50%; and

(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed 50% of the maximum prescribed in subsection (a) (1).

(c) Information return defined. An information return is any tax return required by a tax Act to be filed with the Department that does not, by law, require the payment of a tax liability.

(d) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 87-205.)

(35 ILCS 735/3-5) (from Ch. 120, par. 2603-5)

Sec. 3-5. Penalty for negligence.

(a) If any return or amended return is prepared

negligently, but without intent to defraud, and filed, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 20% of any resulting deficiency.

(b) Negligence includes any failure to make a reasonable attempt to comply with the provisions of any tax Act and includes careless, reckless, or intentional disregard of the law or regulations.

(c) No penalty shall be imposed under this Section if it is shown that failure to comply with the tax Act is due to reasonable cause. A taxpayer is not negligent if the taxpayer shows substantial authority to support the return as filed.

(d) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the penalty imposed by the Department shall be imposed in an amount that is 200% of the amount that would otherwise be imposed in accordance with this Section.

(Source: P.A. 87-205; 87-1189.)

(35 ILCS 735/3-6) (from Ch. 120, par. 2603-6)

Sec. 3-6. Penalty for fraud.

(a) If any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.

(b) If any claim is filed with intent to defraud, a penalty shall be imposed in an amount equal to 50% of the amount fraudulently claimed for credit or refund.

(c) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the

amnesty period provided for in that Act, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 87-205.)

(35 ILCS 735/3-7.5)

Sec. 3-7.5. Bad check penalty.

(a) In addition to any other penalty provided in this Act, a penalty of \$25 shall be imposed on any person who issues a check or other draft to the Department that is not honored upon presentment. The penalty imposed under this Section shall be deemed assessed at the time of presentment of the check or other draft and shall be treated for all purposes, including collection and allocation, as part of the tax or other liability for which the check or other draft represented payment.

(b) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

(Source: P.A. 91-803, eff. 1-1-01.)

Section 999. Effective date. This Act takes effect upon becoming law.