

SB1641



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1641

Introduced 2/8/2023, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

35 ILCS 735/3-3

from Ch. 120, par. 2603-3

Amends the Uniform Penalty and Interest Act. In provisions concerning penalties for late payment or nonpayment of tax, removes references to an amended return. Provides that a liability resulting from a federal change that is reported and paid no later than the due date for filing the federal change amended return shall be deemed to have been paid on or before the due date prescribed for payment.

LRB103 00122 HLH 45126 b

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Uniform Penalty and Interest Act is amended
5 by changing Section 3-3 as follows:

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

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

8 (a) This subsection (a) is applicable before January 1,
9 1996. A penalty of 5% of the tax required to be shown due on a
10 return shall be imposed for failure to file the tax return on
11 or before the due date prescribed for filing determined with
12 regard for any extension of time for filing (penalty for late
13 filing or nonfiling). If any unprocessable return is corrected
14 and filed within 21 days after notice by the Department, the
15 late filing or nonfiling penalty shall not apply. If a penalty
16 for late filing or nonfiling is imposed in addition to a
17 penalty for late payment, the total penalty due shall be the
18 sum of the late filing penalty and the applicable late payment
19 penalty. Beginning on the effective date of this amendatory
20 Act of 1995, in the case of any type of tax return required to
21 be filed more frequently than annually, when the failure to
22 file the tax return on or before the date prescribed for filing
23 (including any extensions) is shown to be nonfraudulent and

1 has not occurred in the 2 years immediately preceding the
2 failure to file on the prescribed due date, the penalty
3 imposed by Section 3-3(a) shall be abated.

4 (a-5) This subsection (a-5) is applicable to returns due
5 on and after January 1, 1996 and on or before December 31,
6 2000. A penalty equal to 2% of the tax required to be shown due
7 on a return, up to a maximum amount of \$250, determined without
8 regard to any part of the tax that is paid on time or by any
9 credit that was properly allowable on the date the return was
10 required to be filed, shall be imposed for failure to file the
11 tax return on or before the due date prescribed for filing
12 determined with regard for any extension of time for filing.
13 However, if any return is not filed within 30 days after notice
14 of nonfiling mailed by the Department to the last known
15 address of the taxpayer contained in Department records, an
16 additional penalty amount shall be imposed equal to the
17 greater of \$250 or 2% of the tax shown on the return. However,
18 the additional penalty amount may not exceed \$5,000 and is
19 determined without regard to any part of the tax that is paid
20 on time or by any credit that was properly allowable on the
21 date the return was required to be filed (penalty for late
22 filing or nonfiling). If any unprocessable return is corrected
23 and filed within 30 days after notice by the Department, the
24 late filing or nonfiling penalty shall not apply. If a penalty
25 for late filing or nonfiling is imposed in addition to a
26 penalty for late payment, the total penalty due shall be the

1 sum of the late filing penalty and the applicable late payment
2 penalty. In the case of any type of tax return required to be
3 filed more frequently than annually, when the failure to file
4 the tax return on or before the date prescribed for filing
5 (including any extensions) is shown to be nonfraudulent and
6 has not occurred in the 2 years immediately preceding the
7 failure to file on the prescribed due date, the penalty
8 imposed by Section 3-3(a-5) shall be abated.

9 (a-10) This subsection (a-10) is applicable to returns due
10 on and after January 1, 2001. A penalty equal to 2% of the tax
11 required to be shown due on a return, up to a maximum amount of
12 \$250, reduced by any tax that is paid on time or by any credit
13 that was properly allowable on the date the return was
14 required to be filed, shall be imposed for failure to file the
15 tax return on or before the due date prescribed for filing
16 determined with regard for any extension of time for filing.
17 However, if any return is not filed within 30 days after notice
18 of nonfiling mailed by the Department to the last known
19 address of the taxpayer contained in Department records, an
20 additional penalty amount shall be imposed equal to the
21 greater of \$250 or 2% of the tax shown on the return. However,
22 the additional penalty amount may not exceed \$5,000 and is
23 determined without regard to any part of the tax that is paid
24 on time or by any credit that was properly allowable on the
25 date the return was required to be filed (penalty for late
26 filing or nonfiling). If any unprocessable return is corrected

1 and filed within 30 days after notice by the Department, the
2 late filing or nonfiling penalty shall not apply. If a penalty
3 for late filing or nonfiling is imposed in addition to a
4 penalty for late payment, the total penalty due shall be the
5 sum of the late filing penalty and the applicable late payment
6 penalty. In the case of any type of tax return required to be
7 filed more frequently than annually, when the failure to file
8 the tax return on or before the date prescribed for filing
9 (including any extensions) is shown to be nonfraudulent and
10 has not occurred in the 2 years immediately preceding the
11 failure to file on the prescribed due date, the penalty
12 imposed by this subsection (a-10) shall be abated. This
13 subsection (a-10) does not apply to transaction reporting
14 returns required by Section 3 of the Retailers' Occupation Tax
15 Act and Section 9 of the Use Tax Act that would not, when
16 properly prepared and filed, result in the imposition of a
17 tax; however, those returns are subject to the penalty set
18 forth in subsection (a-15).

19 (a-15) A penalty of \$100 shall be imposed for failure to
20 file a transaction reporting return required by Section 3 of
21 the Retailers' Occupation Tax Act and Section 9 of the Use Tax
22 Act on or before the date a return is required to be filed;
23 provided, however, that this penalty shall be imposed only if
24 the return when properly prepared and filed would not result
25 in the imposition of a tax. If such a transaction reporting
26 return would result in the imposition of a tax when properly

1 prepared and filed, then that return is subject to the
2 provisions of subsection (a-10).

3 (b) This subsection is applicable before January 1, 1998.
4 A penalty of 15% of the tax shown on the return or the tax
5 required to be shown due on the return shall be imposed for
6 failure to pay:

7 (1) the tax shown due on the return on or before the
8 due date prescribed for payment of that tax, an amount of
9 underpayment of estimated tax, or an amount that is
10 reported in an amended return other than an amended return
11 timely filed as required by subsection (b) of Section 506
12 of the Illinois Income Tax Act (penalty for late payment
13 or nonpayment of admitted liability); or

14 (2) the full amount of any tax required to be shown due
15 on a return and which is not shown (penalty for late
16 payment or nonpayment of additional liability), within 30
17 days after a notice of arithmetic error, notice and
18 demand, or a final assessment is issued by the Department.
19 In the case of a final assessment arising following a
20 protest and hearing, the 30-day period shall not begin
21 until all proceedings in court for review of the final
22 assessment have terminated or the period for obtaining a
23 review has expired without proceedings for a review having
24 been instituted. In the case of a notice of tax liability
25 that becomes a final assessment without a protest and
26 hearing, the penalty provided in this paragraph (2) shall

1 be imposed at the expiration of the period provided for
2 the filing of a protest.

3 (b-5) This subsection is applicable to returns due on and
4 after January 1, 1998 and on or before December 31, 2000. A
5 penalty of 20% of the tax shown on the return or the tax
6 required to be shown due on the return shall be imposed for
7 failure to pay:

8 (1) the tax shown due on the return on or before the
9 due date prescribed for payment of that tax, an amount of
10 underpayment of estimated tax, or an amount that is
11 reported in an amended return other than an amended return
12 timely filed as required by subsection (b) of Section 506
13 of the Illinois Income Tax Act (penalty for late payment
14 or nonpayment of admitted liability); or

15 (2) the full amount of any tax required to be shown due
16 on a return and which is not shown (penalty for late
17 payment or nonpayment of additional liability), within 30
18 days after a notice of arithmetic error, notice and
19 demand, or a final assessment is issued by the Department.
20 In the case of a final assessment arising following a
21 protest and hearing, the 30-day period shall not begin
22 until all proceedings in court for review of the final
23 assessment have terminated or the period for obtaining a
24 review has expired without proceedings for a review having
25 been instituted. In the case of a notice of tax liability
26 that becomes a final assessment without a protest and

1 hearing, the penalty provided in this paragraph (2) shall
2 be imposed at the expiration of the period provided for
3 the filing of a protest.

4 (b-10) This subsection (b-10) is applicable to returns due
5 on and after January 1, 2001 and on or before December 31,
6 2003. A penalty shall be imposed for failure to pay:

7 (1) the tax shown due on a return on or before the due
8 date prescribed for payment of that tax, an amount of
9 underpayment of estimated tax, or an amount that is
10 reported in an amended return other than an amended return
11 timely filed as required by subsection (b) of Section 506
12 of the Illinois Income Tax Act (penalty for late payment
13 or nonpayment of admitted liability). The amount of
14 penalty imposed under this subsection (b-10)(1) shall be
15 2% of any amount that is paid no later than 30 days after
16 the due date, 5% of any amount that is paid later than 30
17 days after the due date and not later than 90 days after
18 the due date, 10% of any amount that is paid later than 90
19 days after the due date and not later than 180 days after
20 the due date, and 15% of any amount that is paid later than
21 180 days after the due date. If notice and demand is made
22 for the payment of any amount of tax due and if the amount
23 due is paid within 30 days after the date of the notice and
24 demand, then the penalty for late payment or nonpayment of
25 admitted liability under this subsection (b-10)(1) on the
26 amount so paid shall not accrue for the period after the

1 date of the notice and demand.

2 (2) the full amount of any tax required to be shown due
3 on a return and that is not shown (penalty for late payment
4 or nonpayment of additional liability), within 30 days
5 after a notice of arithmetic error, notice and demand, or
6 a final assessment is issued by the Department. In the
7 case of a final assessment arising following a protest and
8 hearing, the 30-day period shall not begin until all
9 proceedings in court for review of the final assessment
10 have terminated or the period for obtaining a review has
11 expired without proceedings for a review having been
12 instituted. The amount of penalty imposed under this
13 subsection (b-10)(2) shall be 20% of any amount that is
14 not paid within the 30-day period. In the case of a notice
15 of tax liability that becomes a final assessment without a
16 protest and hearing, the penalty provided in this
17 subsection (b-10)(2) shall be imposed at the expiration of
18 the period provided for the filing of a protest.

19 (b-15) This subsection (b-15) is applicable to returns due
20 on and after January 1, 2004 and on or before December 31,
21 2004. A penalty shall be imposed for failure to pay the tax
22 shown due or required to be shown due on a return on or before
23 the due date prescribed for payment of that tax, an amount of
24 underpayment of estimated tax, or an amount that is reported
25 in an amended return other than an amended return timely filed
26 as required by subsection (b) of Section 506 of the Illinois

1 Income Tax Act (penalty for late payment or nonpayment of
2 admitted liability). The amount of penalty imposed under this
3 subsection (b-15)(1) shall be 2% of any amount that is paid no
4 later than 30 days after the due date, 10% of any amount that
5 is paid later than 30 days after the due date and not later
6 than 90 days after the due date, 15% of any amount that is paid
7 later than 90 days after the due date and not later than 180
8 days after the due date, and 20% of any amount that is paid
9 later than 180 days after the due date. If notice and demand is
10 made for the payment of any amount of tax due and if the amount
11 due is paid within 30 days after the date of this notice and
12 demand, then the penalty for late payment or nonpayment of
13 admitted liability under this subsection (b-15)(1) on the
14 amount so paid shall not accrue for the period after the date
15 of the notice and demand.

16 (b-20) This subsection (b-20) is applicable to returns due
17 on and after January 1, 2005 and before January 1, 2024.

18 (1) A penalty shall be imposed for failure to pay,
19 prior to the due date for payment, any amount of tax the
20 payment of which is required to be made prior to the filing
21 of a return or without a return (penalty for late payment
22 or nonpayment of estimated or accelerated tax). The amount
23 of penalty imposed under this paragraph (1) shall be 2% of
24 any amount that is paid no later than 30 days after the due
25 date and 10% of any amount that is paid later than 30 days
26 after the due date.

1 (2) A penalty shall be imposed for failure to pay the
2 tax shown due or required to be shown due on a return on or
3 before the due date prescribed for payment of that tax or
4 an amount that is reported in an amended return other than
5 an amended return timely filed as required by subsection
6 (b) of Section 506 of the Illinois Income Tax Act (penalty
7 for late payment or nonpayment of tax). The amount of
8 penalty imposed under this paragraph (2) shall be 2% of
9 any amount that is paid no later than 30 days after the due
10 date, 10% of any amount that is paid later than 30 days
11 after the due date and prior to the date the Department has
12 initiated an audit or investigation of the taxpayer, and
13 20% of any amount that is paid after the date the
14 Department has initiated an audit or investigation of the
15 taxpayer; provided that the penalty shall be reduced to
16 15% if the entire amount due is paid not later than 30 days
17 after the Department has provided the taxpayer with an
18 amended return (following completion of an occupation,
19 use, or excise tax audit) or a form for waiver of
20 restrictions on assessment (following completion of an
21 income tax audit); provided further that the reduction to
22 15% shall be rescinded if the taxpayer makes any claim for
23 refund or credit of the tax, penalties, or interest
24 determined to be due upon audit, except in the case of a
25 claim filed pursuant to subsection (b) of Section 506 of
26 the Illinois Income Tax Act or to claim a carryover of a

1 loss or credit, the availability of which was not
2 determined in the audit. For purposes of this paragraph
3 (2), any overpayment reported on an original return that
4 has been allowed as a refund or credit to the taxpayer
5 shall be deemed to have not been paid on or before the due
6 date for payment and any amount paid under protest
7 pursuant to the provisions of the State Officers and
8 Employees Money Disposition Act shall be deemed to have
9 been paid after the Department has initiated an audit and
10 more than 30 days after the Department has provided the
11 taxpayer with an amended return (following completion of
12 an occupation, use, or excise tax audit) or a form for
13 waiver of restrictions on assessment (following completion
14 of an income tax audit).

15 (3) The penalty imposed under this subsection (b-20)
16 shall be deemed assessed at the time the tax upon which the
17 penalty is computed is assessed, except that, if the
18 reduction of the penalty imposed under paragraph (2) of
19 this subsection (b-20) to 15% is rescinded because a claim
20 for refund or credit has been filed, the increase in
21 penalty shall be deemed assessed at the time the claim for
22 refund or credit is filed.

23 (b-25) This subsection (b-25) is applicable to returns due
24 on or after January 1, 2024.

25 (1) A penalty shall be imposed for failure to pay,
26 prior to the due date for payment, any amount of tax the

1 payment of which is required to be made prior to the filing
2 of a return or without a return (penalty for late payment
3 or nonpayment of estimated or accelerated tax). The amount
4 of penalty imposed under this paragraph (1) shall be 2% of
5 any amount that is paid no later than 30 days after the due
6 date and 10% of any amount that is paid later than 30 days
7 after the due date.

8 (2) A penalty shall be imposed for failure to pay the
9 tax shown due or required to be shown due on a return on or
10 before the due date prescribed for payment of that tax
11 (penalty for late payment or nonpayment of tax). The
12 amount of penalty imposed under this paragraph (2) shall
13 be 2% of any amount that is paid no later than 30 days
14 after the due date, 10% of any amount that is paid later
15 than 30 days after the due date and prior to the date the
16 Department initiates an audit or investigation of the
17 taxpayer, and 20% of any amount that is paid after the date
18 the Department initiates an audit or investigation of the
19 taxpayer; provided that the penalty shall be reduced to
20 15% if the entire amount due is paid not later than 30 days
21 after the Department provides the taxpayer with an amended
22 return (following completion of an occupation, use, or
23 excise tax audit) or a form for waiver of restrictions on
24 assessment (following completion of an income tax audit);
25 provided further that the reduction to 15% shall be
26 rescinded if the taxpayer makes any claim for refund or

1 credit of the tax, penalties, or interest determined to be
2 due upon audit, except in the case of a claim filed
3 pursuant to subsection (b) of Section 506 of the Illinois
4 Income Tax Act or to claim a carryover of a loss or credit,
5 the availability of which was not determined in the audit.
6 For purposes of this paragraph (2):

7 (A) any overpayment reported on an original return
8 that has been allowed as a refund or credit to the
9 taxpayer shall be deemed to have not been paid on or
10 before the due date for payment;

11 (B) any amount paid under protest pursuant to the
12 provisions of the State Officers and Employees Money
13 Disposition Act shall be deemed to have been paid
14 after the Department has initiated an audit and more
15 than 30 days after the Department has provided the
16 taxpayer with an amended return (following completion
17 of an occupation, use, or excise tax audit) or a form
18 for waiver of restrictions on assessment (following
19 completion of an income tax audit); and

20 (C) any liability resulting from a federal change
21 required to be reported under subsection (b) of
22 Section 506 of the Illinois Income Tax Act that is
23 reported and paid no later than the due date for filing
24 the federal change amended return shall be deemed to
25 have been paid on or before the due date prescribed for
26 payment.

1 (3) The penalty imposed under this subsection (b-25) shall
2 be deemed assessed at the time the tax upon which the penalty
3 is computed is assessed, except that, if the reduction of the
4 penalty imposed under paragraph (2) of this subsection (b-25)
5 to 15% is rescinded because a claim for refund or credit has
6 been filed, the increase in penalty shall be deemed assessed
7 at the time the claim for refund or credit is filed.

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

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

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

23 (e-5) This subsection (e-5) is applicable to returns due
24 on and after January 1, 2001. If both a subsection (b-10)(1)
25 penalty and a subsection (b-10)(2) penalty are assessed
26 against the same return, the subsection (b-10)(2) penalty

1 shall be assessed against only the additional tax found to be
2 due.

3 (f) If the taxpayer has failed to file the return, the
4 Department shall determine the correct tax according to its
5 best judgment and information, which amount shall be prima
6 facie evidence of the correctness of the tax due.

7 (g) The time within which to file a return or pay an amount
8 of tax due without imposition of a penalty does not extend the
9 time within which to file a protest to a notice of tax
10 liability or a notice of deficiency.

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

15 (i) If a taxpayer has a tax liability for the taxable
16 period ending after June 30, 1983 and prior to July 1, 2002
17 that is eligible for amnesty under the Tax Delinquency Amnesty
18 Act and the taxpayer fails to satisfy the tax liability during
19 the amnesty period provided for in that Act for that taxable
20 period, then the penalty imposed by the Department under this
21 Section shall be imposed in an amount that is 200% of the
22 amount that would otherwise be imposed under this Section.

23 (j) If a taxpayer has a tax liability for the taxable
24 period ending after June 30, 2002 and prior to July 1, 2009
25 that is eligible for amnesty under the Tax Delinquency Amnesty
26 Act, except for any tax liability reported pursuant to Section

1 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that
2 is not final, and the taxpayer fails to satisfy the tax
3 liability during the amnesty period provided for in that Act
4 for that taxable period, then the penalty imposed by the
5 Department under this Section shall be imposed in an amount
6 that is 200% of the amount that would otherwise be imposed
7 under this Section.

8 (Source: P.A. 98-425, eff. 8-16-13; 99-335, eff. 8-10-15.)