

# HB0500



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0500

Introduced 02/01/07, by Rep. Jim Sacia

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/902

from Ch. 120, par. 9-902

Amends the Illinois Income Tax Act. Provides that the Director of Revenue shall, no earlier than 6 weeks (now, as soon as practicable) after an amount payable is assessed, give notice to each person liable for any unpaid portion of the assessment, stating the amount unpaid and demanding payment thereof.

LRB095 04370 BDD 24413 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 Illinois Income Tax Act is amended by  
5 changing Section 902 as follows:

6 (35 ILCS 5/902) (from Ch. 120, par. 9-902)

7 Sec. 902. Notice and Demand.

8 (a) In general. Except as provided in subsection (b) the  
9 Director shall, no earlier than 6 weeks ~~as soon as practicable~~  
10 after an amount payable under this Act is deemed assessed (as  
11 provided in Section 903), give notice to each person liable for  
12 any unpaid portion of such assessment, stating the amount  
13 unpaid and demanding payment thereof. In the case of tax deemed  
14 assessed with the filing of a return, the Director shall give  
15 notice no later than 3 years after the date the return was  
16 filed. Upon receipt of any notice and demand there shall be  
17 paid at the place and time stated in such notice the amount  
18 stated in such notice. Such notice shall be left at the  
19 dwelling or usual place of business of such person or shall be  
20 sent by mail to the person's last known address.

21 (b) Judicial review. In the case of a deficiency deemed  
22 assessed under Section 903(a)(2) after the filing of a protest,  
23 notice and demand shall not be made with respect to such

1 assessment until all proceedings in court for the review of  
2 such assessment have terminated or the time for the taking  
3 thereof has expired without such proceedings being instituted.

4 (c) Action for recovery of taxes. At any time that the  
5 Department might commence proceedings for a levy under Section  
6 1109, regardless of whether a notice of lien was filed under  
7 the provisions of Section 1103, it may bring an action in any  
8 court of competent jurisdiction within or without this State in  
9 the name of the people of this State to recover the amount of  
10 any taxes, penalties and interest due and unpaid under this  
11 Act. In such action, the certificate of the Department showing  
12 the amount of the delinquency shall be prima facie evidence of  
13 the correctness of such amount, its assessment and of the  
14 compliance by the Department with all the provisions of this  
15 Act.

16 (d) Sales or transfers outside the usual course of  
17 business-Report-Payment of Tax - Rights and duties of purchaser  
18 or transferee - penalty. If any taxpayer, outside the usual  
19 course of his business, sells or transfers the major part of  
20 any one or more of (A) the stock of goods which he is engaged in  
21 the business of selling, or (B) the furniture or fixtures, or  
22 (C) the machinery and equipment, or (D) the real property, of  
23 any business that is subject to the provisions of this Act, the  
24 purchaser or transferee of such assets shall, no later than 10  
25 business days after the sale or transfer, file a notice of sale  
26 or transfer of business assets with the Chicago office of the

1 Department disclosing the name and address of the seller or  
2 transferor, the name and address of the purchaser or  
3 transferee, the date of the sale or transfer, a copy of the  
4 sales contract and financing agreements which shall include a  
5 description of the property sold or transferred, the amount of  
6 the purchase price or a statement of other consideration for  
7 the sale or transfer, and the terms for payment of the purchase  
8 price, and such other information as the Department may  
9 reasonably require. If the purchaser or transferee fails to  
10 file the above described notice of sale with the Department  
11 within the prescribed time, the purchaser or transferee shall  
12 be personally liable to the Department for the amount owed  
13 hereunder by the seller or transferor but unpaid, up to the  
14 amount of the reasonable value of the property acquired by the  
15 purchaser or transferee. The purchaser or transferee shall pay  
16 the Department the amount of tax, penalties, and interest owed  
17 by the seller or transferor under this Act, to the extent they  
18 have not been paid by the seller or transferor. The seller or  
19 transferor, or the purchaser or transferee, at least 10  
20 business days before the date of the sale or transfer, may  
21 notify the Department of the intended sale or transfer and  
22 request the Department to make a determination as to whether  
23 the seller or transferor owes any tax, penalty or interest due  
24 under this Act. The Department shall take such steps as may be  
25 appropriate to comply with such request.

26 Any order issued by the Department pursuant to this Section

1 to withhold from the purchase price shall be issued within 10  
2 business days after the Department receives notification of a  
3 sale as provided in this Section. The purchaser or transferee  
4 shall withhold such portion of the purchase price as may be  
5 directed by the Department, but not to exceed a minimum amount  
6 varying by type of business, as determined by the Department  
7 pursuant to regulations, plus twice the outstanding unpaid  
8 liabilities and twice the average liability of preceding  
9 filings times the number of unfiled returns which were not  
10 filed when due, to cover the amount of all tax, penalty, and  
11 interest due and unpaid by the seller or transferor under this  
12 Act or, if the payment of money or property is not involved,  
13 shall withhold the performance of the condition that  
14 constitutes the consideration for the sale or transfer. Within  
15 60 business days after issuance of the initial order to  
16 withhold, the Department shall provide written notice to the  
17 purchaser or transferee of the actual amount of all taxes,  
18 penalties and interest then due and whether or not additional  
19 amounts may become due as a result of unpaid taxes required to  
20 be withheld by an employer, returns which were not filed when  
21 due, pending assessments and audits not completed. The  
22 purchaser or transferee shall continue to withhold the amount  
23 directed to be withheld by the initial order or such lesser  
24 amount as is specified by the final withholding order or to  
25 withhold the performance of the condition which constitutes the  
26 consideration for the sale or transfer until the purchaser or

1 transferee receives from the Department a certificate showing  
2 that no unpaid tax, penalty or interest is due from the seller  
3 or transferor under this Act.

4 The purchaser or transferee is relieved of any duty to  
5 continue to withhold from the purchase price and of any  
6 liability for tax, penalty, or interest due hereunder from the  
7 seller or transferor if the Department fails to notify the  
8 purchaser or transferee in the manner provided herein of the  
9 amount to be withheld within 10 business days after the sale or  
10 transfer has been reported to the Department or within 60  
11 business days after issuance of the initial order to withhold,  
12 as the case may be. The Department shall have the right to  
13 determine amounts claimed on an estimated basis to allow for  
14 periods for which returns were not filed when due, pending  
15 assessments and audits not completed, however the purchaser or  
16 transferee shall be personally liable only for the actual  
17 amount due when determined.

18 If the seller or transferor has failed to pay the tax,  
19 penalty, and interest due from him hereunder and the Department  
20 makes timely claim therefor against the purchaser or transferee  
21 as hereinabove provided, then the purchaser or transferee shall  
22 pay to the Department the amount so withheld from the purchase  
23 price. If the purchaser or transferee fails to comply with the  
24 requirements of this Section, the purchaser or transferee shall  
25 be personally liable to the Department for the amount owed  
26 hereunder by the seller or transferor up to the amount of the

1 reasonable value of the property acquired by the purchaser or  
2 transferee.

3 Any person who shall acquire any property or rights thereto  
4 which, at the time of such acquisition, is subject to a valid  
5 lien in favor of the Department, shall be personally liable to  
6 the Department for a sum equal to the amount of taxes,  
7 penalties and interests, secured by such lien, but not to  
8 exceed the reasonable value of such property acquired by him.

9 (Source: P.A. 94-776, eff. 5-19-06.)