

# SB2921



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB2921

Introduced 2/18/2016, by Sen. Toi W. Hutchinson - Pamela J. Althoff

#### SYNOPSIS AS INTRODUCED:

35 ILCS 735/3-3

from Ch. 120, par. 2603-3

Amends the Uniform Penalty and Interest Act. Provides that the penalty for failure to pay the tax shown due or required to be shown due on a return shall be 15% (instead of 20%) of any amount that is paid after the date the Department has initiated an audit or investigation of the taxpayer. Provides that the penalty shall be rescinded if the taxpayer paid to the Department at least 95% of the final liability resulting from an audit or investigation prior to the initiation of the audit or investigation

LRB099 18716 HLH 43100 b

FISCAL NOTE ACT  
MAY APPLY

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 Act  
20 of 1995, in the case of any type of tax return required to be  
21 filed more frequently than annually, when the failure to file  
22 the tax return on or before the date prescribed for filing  
23 (including any extensions) is shown to be nonfraudulent and has

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

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

1 penalty and the applicable late payment penalty. In the case of  
2 any type of tax return required to be filed more frequently  
3 than annually, when the failure to file the tax return on or  
4 before the date prescribed for filing (including any  
5 extensions) is shown to be nonfraudulent and has not occurred  
6 in the 2 years immediately preceding the failure to file on the  
7 prescribed due date, the penalty imposed by Section 3-3(a-5)  
8 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 required  
14 to be filed, shall be imposed for failure to file the tax  
15 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 address  
19 of the taxpayer contained in Department records, an additional  
20 penalty amount shall be imposed equal to the greater of \$250 or  
21 2% of the tax shown on the return. However, the additional  
22 penalty amount may not exceed \$5,000 and is determined without  
23 regard to any part of the tax that is paid on time or by any  
24 credit that was properly allowable on the date the return was  
25 required to be filed (penalty for late filing or nonfiling). If  
26 any unprocessable return is corrected and filed within 30 days

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

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

1 subsection (a-10).

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

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

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

1 a protest.

2 (b-5) This subsection is applicable to returns due on and  
3 after January 1, 1998 and on or before December 31, 2000. A  
4 penalty of 20% 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 or  
13 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 demand,  
18 or a final assessment is issued by the Department. In the  
19 case of a final assessment arising following a protest and  
20 hearing, the 30-day period shall not begin until all  
21 proceedings in court for review of the final assessment  
22 have terminated or the period for obtaining a review has  
23 expired without proceedings for a review having been  
24 instituted. In the case of a notice of tax liability that  
25 becomes a final assessment without a protest and hearing,  
26 the penalty provided in this paragraph (2) shall be imposed

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

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

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



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

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

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

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

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

26 (2) A penalty shall be imposed for failure to pay the

1 tax shown due or required to be shown due on a return on or  
2 before the due date prescribed for payment of that tax or  
3 an amount that is reported in an amended return other than  
4 an amended return timely filed as required by subsection  
5 (b) of Section 506 of the Illinois Income Tax Act (penalty  
6 for late payment or nonpayment of tax). The amount of  
7 penalty imposed under this paragraph (2) shall be 2% of any  
8 amount that is paid no later than 30 days after the due  
9 date, 10% of any amount that is paid later than 30 days  
10 after the due date and prior to the date the Department has  
11 initiated an audit or investigation of the taxpayer, and  
12 15% ~~20%~~ of any amount that is paid after the date the  
13 Department has initiated an audit or investigation of the  
14 taxpayer; provided that the penalty shall be rescinded if  
15 the taxpayer paid to the Department at least 95% of the  
16 final liability resulting from an audit or investigation  
17 prior to the initiation of the audit or investigation  
18 ~~reduced to 15% if the entire amount due is paid not later~~  
19 ~~than 30 days after the Department has provided the taxpayer~~  
20 ~~with an amended return (following completion of an~~  
21 ~~occupation, use, or excise tax audit) or a form for waiver~~  
22 ~~of restrictions on assessment (following completion of an~~  
23 ~~income tax audit); provided further that the reduction to~~  
24 ~~15% shall be rescinded if the taxpayer makes any claim for~~  
25 ~~refund or credit of the tax, penalties, or interest~~  
26 ~~determined to be due upon audit, except in the case of a~~

1 ~~claim filed pursuant to subsection (b) of Section 506 of~~  
2 ~~the Illinois Income Tax Act or to claim a carryover of a~~  
3 ~~loss or credit, the availability of which was not~~  
4 ~~determined in the audit.~~ For purposes of this paragraph  
5 (2), any overpayment reported on an original return that  
6 has been allowed as a refund or credit to the taxpayer  
7 shall be deemed to have not been paid on or before the due  
8 date for payment and any amount paid under protest pursuant  
9 to the provisions of the State Officers and Employees Money  
10 Disposition Act shall be deemed to have been paid after the  
11 Department has initiated an audit and more than 30 days  
12 after the Department has provided the taxpayer with an  
13 amended return (following completion of an occupation,  
14 use, or excise tax audit) or a form for waiver of  
15 restrictions on assessment (following completion of an  
16 income tax audit).

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

25 (c) For purposes of the late payment penalties, the basis  
26 of the penalty shall be the tax shown or required to be shown

1 on a return, whichever is applicable, reduced by any part of  
2 the tax which is paid on time and by any credit which was  
3 properly allowable on the date the return was required to be  
4 filed.

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

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

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

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

23 (g) The time within which to file a return or pay an amount  
24 of tax due without imposition of a penalty does not extend the  
25 time within which to file a protest to a notice of tax  
26 liability or a notice of deficiency.

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

5 (i) If a taxpayer has a tax liability for the taxable  
6 period ending after June 30, 1983 and prior to July 1, 2002  
7 that is eligible for amnesty under the Tax Delinquency Amnesty  
8 Act and the taxpayer fails to satisfy the tax liability during  
9 the amnesty period provided for in that Act for that taxable  
10 period, then the penalty imposed by the Department under this  
11 Section shall be imposed in an amount that is 200% of the  
12 amount that would otherwise be imposed under this Section.

13 (j) If a taxpayer has a tax liability for the taxable  
14 period ending after June 30, 2002 and prior to July 1, 2009  
15 that is eligible for amnesty under the Tax Delinquency Amnesty  
16 Act, except for any tax liability reported pursuant to Section  
17 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that  
18 is not final, and the taxpayer fails to satisfy the tax  
19 liability during the amnesty period provided for in that Act  
20 for that taxable period, then the penalty imposed by the  
21 Department under this Section shall be imposed in an amount  
22 that is 200% of the amount that would otherwise be imposed  
23 under this Section.

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