



Sen. Toi W. Hutchinson

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09900SB2921sam001

LRB099 18716 HLH 46348 a

1 AMENDMENT TO SENATE BILL 2921

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2921 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Uniform Penalty and Interest Act is amended  
5 by changing Sections 3-3 and 3-9 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

1 penalty for late payment, the total penalty due shall be the  
2 sum of the late filing penalty and the applicable late payment  
3 penalty. Beginning on the effective date of this amendatory Act  
4 of 1995, in the case of any type of tax return required to be  
5 filed more frequently than annually, when the failure to file  
6 the tax return on or before the date prescribed for filing  
7 (including any extensions) is shown to be nonfraudulent and has  
8 not occurred in the 2 years immediately preceding the failure  
9 to file on the prescribed due date, the penalty imposed by  
10 Section 3-3(a) shall be abated.

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

1 credit that was properly allowable on the date the return was  
2 required to be filed (penalty for late filing or nonfiling). If  
3 any unprocessable return is corrected and filed within 30 days  
4 after notice by the Department, the late filing or nonfiling  
5 penalty shall not apply. If a penalty for late filing or  
6 nonfiling is imposed in addition to a penalty for late payment,  
7 the total penalty due shall be the sum of the late filing  
8 penalty and the applicable late payment penalty. In the case of  
9 any type of tax return required to be filed more frequently  
10 than annually, when the failure to file the tax return on or  
11 before the date prescribed for filing (including any  
12 extensions) is shown to be nonfraudulent and has not occurred  
13 in the 2 years immediately preceding the failure to file on the  
14 prescribed due date, the penalty imposed by Section 3-3(a-5)  
15 shall be abated.

16 (a-10) This subsection (a-10) is applicable to returns due  
17 on and after January 1, 2001. A penalty equal to 2% of the tax  
18 required to be shown due on a return, up to a maximum amount of  
19 \$250, reduced by any tax that is paid on time or by any credit  
20 that was properly allowable on the date the return was required  
21 to be filed, shall be imposed for failure to file the tax  
22 return on or before the due date prescribed for filing  
23 determined with regard for any extension of time for filing.  
24 However, if any return is not filed within 30 days after notice  
25 of nonfiling mailed by the Department to the last known address  
26 of the taxpayer contained in Department records, an additional

1 penalty amount shall be imposed equal to the greater of \$250 or  
2 2% of the tax shown on the return. However, the additional  
3 penalty amount may not exceed \$5,000 and is determined without  
4 regard to any part of the tax that is paid on time or by any  
5 credit that was properly allowable on the date the return was  
6 required to be filed (penalty for late filing or nonfiling). If  
7 any unprocessable return is corrected and filed within 30 days  
8 after notice by the Department, the late filing or nonfiling  
9 penalty shall not apply. If a penalty for late filing or  
10 nonfiling is imposed in addition to a penalty for late payment,  
11 the total penalty due shall be the sum of the late filing  
12 penalty and the applicable late payment penalty. In the case of  
13 any type of tax return required to be filed more frequently  
14 than annually, when the failure to file the tax return on or  
15 before the date prescribed for filing (including any  
16 extensions) is shown to be nonfraudulent and has not occurred  
17 in the 2 years immediately preceding the failure to file on the  
18 prescribed due date, the penalty imposed by this subsection  
19 (a-10) shall be abated. This subsection (a-10) does not apply  
20 to transaction reporting returns required by Section 3 of the  
21 Retailers' Occupation Tax Act and Section 9 of the Use Tax Act  
22 that would not, when properly prepared and filed, result in the  
23 imposition of a tax; however, those returns are subject to the  
24 penalty set forth in subsection (a-15).

25 (a-15) A penalty of \$100 shall be imposed for failure to  
26 file a transaction reporting return required by Section 3 of

1 the Retailers' Occupation Tax Act and Section 9 of the Use Tax  
2 Act on or before the date a return is required to be filed;  
3 provided, however, that this penalty shall be imposed only if  
4 the return when properly prepared and filed would not result in  
5 the imposition of a tax. If such a transaction reporting return  
6 would result in the imposition of a tax when properly prepared  
7 and filed, then that return is subject to the provisions of  
8 subsection (a-10).

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

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

20 (2) the full amount of any tax required to be shown due  
21 on a return and which is not shown (penalty for late  
22 payment or nonpayment of additional liability), within 30  
23 days after a notice of arithmetic error, notice and demand,  
24 or a final assessment is issued by the Department. In the  
25 case of a final assessment arising following a protest and  
26 hearing, the 30-day period shall not begin until all

1 proceedings in court for review of the final assessment  
2 have terminated or the period for obtaining a review has  
3 expired without proceedings for a review having been  
4 instituted. In the case of a notice of tax liability that  
5 becomes a final assessment without a protest and hearing,  
6 the penalty provided in this paragraph (2) shall be imposed  
7 at the expiration of the period provided for the filing of  
8 a protest.

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

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

21 (2) the full amount of any tax required to be shown due  
22 on a return and which is not shown (penalty for late  
23 payment or nonpayment of additional liability), within 30  
24 days after a notice of arithmetic error, notice and demand,  
25 or a final assessment is issued by the Department. In the  
26 case of a final assessment arising following a protest and

1 hearing, the 30-day period shall not begin until all  
2 proceedings in court for review of the final assessment  
3 have terminated or the period for obtaining a review has  
4 expired without proceedings for a review having been  
5 instituted. In the case of a notice of tax liability that  
6 becomes a final assessment without a protest and hearing,  
7 the penalty provided in this paragraph (2) shall be imposed  
8 at the expiration of the period provided for the filing of  
9 a protest.

10 (b-10) This subsection (b-10) is applicable to returns due  
11 on and after January 1, 2001 and on or before December 31,  
12 2003. A penalty shall be imposed for failure to pay:

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

1 days after the due date. If notice and demand is made for  
2 the payment of any amount of tax due and if the amount due  
3 is paid within 30 days after the date of the notice and  
4 demand, then the penalty for late payment or nonpayment of  
5 admitted liability under this subsection (b-10)(1) on the  
6 amount so paid shall not accrue for the period after the  
7 date of the notice and demand.

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

25 (b-15) This subsection (b-15) is applicable to returns due  
26 on and after January 1, 2004 and on or before December 31,



1 2004. A penalty shall be imposed for failure to pay the tax  
2 shown due or required to be shown due on a return on or before  
3 the due date prescribed for payment of that tax, an amount of  
4 underpayment of estimated tax, or an amount that is reported in  
5 an amended return other than an amended return timely filed as  
6 required by subsection (b) of Section 506 of the Illinois  
7 Income Tax Act (penalty for late payment or nonpayment of  
8 admitted liability). The amount of penalty imposed under this  
9 subsection (b-15)(1) shall be 2% of any amount that is paid no  
10 later than 30 days after the due date, 10% of any amount that  
11 is paid later than 30 days after the due date and not later  
12 than 90 days after the due date, 15% of any amount that is paid  
13 later than 90 days after the due date and not later than 180  
14 days after the due date, and 20% of any amount that is paid  
15 later than 180 days after the due date. If notice and demand is  
16 made for the payment of any amount of tax due and if the amount  
17 due is paid within 30 days after the date of this notice and  
18 demand, then the penalty for late payment or nonpayment of  
19 admitted liability under this subsection (b-15)(1) on the  
20 amount so paid shall not accrue for the period after the date  
21 of the notice and demand.

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

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

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

7 (2) A penalty shall be imposed for failure to pay the  
8 tax shown due or required to be shown due on a return on or  
9 before the due date prescribed for payment of that tax or  
10 an amount that is reported in an amended return other than  
11 an amended return timely filed as required by subsection  
12 (b) of Section 506 of the Illinois Income Tax Act (penalty  
13 for late payment or nonpayment of tax). The amount of  
14 penalty imposed under this paragraph (2) shall be 2% of any  
15 amount that is paid no later than 30 days after the due  
16 date, 10% of any amount that is paid later than 30 days  
17 after the due date and prior to the date the Department has  
18 initiated an audit or investigation of the taxpayer, and  
19 15% 20% of any amount that is paid after the date the  
20 Department has initiated an audit or investigation of the  
21 taxpayer; provided that the penalty under this paragraph  
22 (2) shall be abated reduced to 15% if, prior to the  
23 initiation of the audit or investigation, the taxpayer paid  
24 to the Department at least 95% of the total tax liability  
25 for the filing period, which includes any additional  
26 liability resulting from the audit or investigation. No

1 claim for credit or refund is allowed for any penalty paid  
2 prior to the effective date of this amendatory Act of the  
3 99th General Assembly based on the changes made by this  
4 amendatory Act of the 99th General Assembly. ~~the entire~~  
5 ~~amount due is paid not later than 30 days after the~~  
6 ~~Department has provided the taxpayer with an amended return~~  
7 ~~(following completion of an occupation, use, or excise tax~~  
8 ~~audit) or a form for waiver of restrictions on assessment~~  
9 ~~(following completion of an income tax audit); provided~~  
10 ~~further that the reduction to 15% shall be rescinded if the~~  
11 ~~taxpayer makes any claim for refund or credit of the tax,~~  
12 ~~penalties, or interest determined to be due upon audit,~~  
13 ~~except in the case of a claim filed pursuant to subsection~~  
14 ~~(b) of Section 506 of the Illinois Income Tax Act or to~~  
15 ~~claim a carryover of a loss or credit, the availability of~~  
16 ~~which was not determined in the audit. For purposes of this~~  
17 ~~paragraph (2), any overpayment reported on an original~~  
18 ~~return that has been allowed as a refund or credit to the~~  
19 ~~taxpayer shall be deemed to have not been paid on or before~~  
20 ~~the due date for payment and any amount paid under protest~~  
21 ~~pursuant to the provisions of the State Officers and~~  
22 ~~Employees Money Disposition Act shall be deemed to have~~  
23 ~~been paid after the Department has initiated an audit and~~  
24 ~~more than 30 days after the Department has provided the~~  
25 ~~taxpayer with an amended return (following completion of an~~  
26 ~~occupation, use, or excise tax audit) or a form for waiver~~

1 ~~of restrictions on assessment (following completion of an~~  
2 ~~income tax audit).~~

3 (3) The penalty imposed under this subsection (b-20)  
4 shall be deemed assessed at the time the tax upon which the  
5 penalty is computed is assessed, ~~except that, if the~~  
6 ~~reduction of the penalty imposed under paragraph (2) of~~  
7 ~~this subsection (b-20) to 15% is rescinded because a claim~~  
8 ~~for refund or credit has been filed, the increase in~~  
9 ~~penalty shall be deemed assessed at the time the claim for~~  
10 ~~refund or credit is filed.~~

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

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

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

26 (e-5) This subsection (e-5) is applicable to returns due on

1 and after January 1, 2001. If both a subsection (b-10) (1)  
2 penalty and a subsection (b-10) (2) penalty are assessed against  
3 the same return, the subsection (b-10) (2) penalty shall be  
4 assessed against only the additional tax found to be due.

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

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

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

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

25 (j) If a taxpayer has a tax liability for the taxable  
26 period ending after June 30, 2002 and prior to July 1, 2009

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

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

11 (35 ILCS 735/3-9) (from Ch. 120, par. 2603-9)

12 Sec. 3-9. Application of provisions.

13 (a) The provisions of this Act shall apply to the rates of  
14 interest for periods on and after the effective date of this  
15 Act. Interest for periods prior to the effective date of this  
16 Act shall be computed at the rates in effect prior to that  
17 date.

18 (b) Except as otherwise provided in subsection (b-20) of  
19 Section 3-3, penalties ~~Penalties~~ shall be imposed at the rate  
20 and in the manner in effect at the time the tax liability  
21 became due.

22 (c) Interest shall not be paid on claims filed after the  
23 effective date of this Act except such interest which is paid  
24 in accordance with this Act.

25 (d) Payments received from a taxpayer shall be applied

1 against the outstanding liability of the taxpayer, or to an  
2 agreed portion of the outstanding liability, in the following  
3 order: the principal amount of the tax, then penalty, and then  
4 interest.

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

6 Section 99. Effective date. This Act takes effect January  
7 1, 2017.".