

1 AN ACT in relation to taxation.

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 1002 as follows:

6 (35 ILCS 5/1002) (from Ch. 120, par. 10-1002)  
7 Sec. 1002. Failure to Pay Tax.

8 (a) Negligence. If any part of a deficiency is due to  
9 negligence or intentional disregard of rules and regulations  
10 (but without intent to defraud) there shall be added to the  
11 tax as a penalty the amount prescribed by Section 3-5 of the  
12 Uniform Penalty and Interest Act.

13 (b) Fraud. If any part of a deficiency is due to fraud,  
14 there shall be added to the tax as a penalty the amount  
15 prescribed by Section 3-6 of the Uniform Penalty and Interest  
16 Act.

17 (c) Nonwillful failure to pay withholding tax. If any  
18 employer, without intent to evade or defeat any tax imposed  
19 by this Act or the payment thereof, shall fail to make a  
20 return and pay a tax withheld by him at the time required by  
21 or under the provisions of this Act, such employer shall be  
22 liable for such taxes and shall pay the same together with  
23 the interest and the penalty provided by Sections 3-2 and  
24 3-3, respectively, of the Uniform Penalty and Interest Act  
25 and such interest and penalty shall not be charged to or  
26 collected from the employee by the employer.

27 (d) Willful failure to collect and pay over tax. Any  
28 person required to collect, truthfully account for, and pay  
29 over the tax imposed by this Act who willfully fails to  
30 collect such tax or truthfully account for and pay over such  
31 tax or willfully attempts in any manner to evade or defeat

1 the tax or the payment thereof, shall, in addition to other  
2 penalties provided by law, be liable for the penalty imposed  
3 by Section 3-7 of the Uniform Penalty and Interest Act.

4 (e) Penalties assessable.

5 (1) In general. Except as provided in paragraphs  
6 (2), (3) and (4), the penalties provided by this Act  
7 shall be paid upon notice and demand and shall be  
8 assessed, collected, and paid in the same manner as taxes  
9 and any reference in this Act to the tax imposed by this  
10 Act shall be deemed also to refer to penalties provided  
11 by this Act.

12 (2) Procedure for assessing certain penalties. For  
13 the purposes of Article 9 any penalty under Section  
14 804(a) or Section 1001 shall be deemed assessed upon the  
15 filing of the return for the taxable year.

16 (3) Procedure for assessing the penalty for failure  
17 to file withholding returns or annual transmittal forms  
18 for wage and tax statements. The penalty imposed by  
19 Section 1004 will be asserted by the Department's  
20 issuance of a notice of deficiency. If taxpayer files a  
21 timely protest, the procedures of Section 908 will be  
22 followed. If taxpayer does not file a timely protest,  
23 the notice of deficiency will constitute an assessment  
24 pursuant to subsection (c) of Section 904.

25 (4) Assessment of penalty under subsection (a) of  
26 Section 1005. The penalty imposed under subsection (a) of  
27 Section 1005 for underpayment of any tax due after  
28 December 31, 2003, shall be deemed assessed upon the  
29 assessment of the tax to which the penalty relates and  
30 shall be collected and paid on notice and demand in the  
31 same manner as the tax; provided that, in the case of an  
32 underpayment of tax penalty that is imposed only after  
33 the expiration of the 30-day period allowed in  
34 subdivision (b-10)(2) of Section 3-3 of the Uniform

1           Penalty and Interest Act, the penalty shall be deemed  
2           assessed upon expiration of that 30-day period.

3           (f) Determination of deficiency. For purposes of  
4 subsections (a) and (b), the amount shown as the tax by the  
5 taxpayer upon his return shall be taken into account in  
6 determining the amount of the deficiency only if such return  
7 was filed on or before the last day prescribed by law for the  
8 filing of such return, including any extensions of the time  
9 for such filing.

10          (Source: P.A. 89-379, eff. 1-1-96.)

11           Section 99. Effective date. This Act takes effect upon  
12 becoming law.