

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 520 Section 520.105 Amnesty Program Requirements**

**TITLE 86: REVENUE  
PART 520  
AMNESTY REGULATIONS**

**Section 520.105 Amnesty Program Requirements**

- a) The Department has no duty to notify taxpayers of liabilities that may make them eligible for participation in the Amnesty Program. Failure of the Department to notify a taxpayer of the existence or correct amount of a liability eligible for amnesty shall not preclude the taxpayer from participating in the Amnesty Program, nor shall such failure be grounds for abating the 200% Sanction for failure to pay the liability.
- b) Participation in the Amnesty Program.
  - 1) A taxpayer may participate in the Amnesty Program selectively, provided that the taxpayer completely satisfies its Eligible Liability for the tax type and tax period for which amnesty is sought. Thus, a taxpayer may participate in the Amnesty Program with respect to:
    - A) particular types of tax liability, but not others (e.g., Illinois Income Tax, but not Illinois Retailers Occupation Tax), or
    - B) particular tax periods but not others (e.g., 2003 Illinois Income Tax but not 2004 Illinois Income Tax).
  - 2) Except as otherwise expressly provided in this Section:
    - A) In the case of an Eligible Liability that has been assessed or has otherwise become subject to collection action by the Department, the taxpayer participates in the Amnesty Program by paying the Eligible Liability during the Amnesty Program Period.
    - B) In the case of an Eligible Liability that has not been assessed or otherwise become subject to collection action by the Department, the taxpayer participates in the Amnesty Program by filing the appropriate return or amended tax return to report the Eligible Liability and making payment of the Eligible Liability to the Department during the Amnesty Program Period. Unless a special form or schedule is provided by the Department for filing an original or amended return to report an Eligible Liability, the taxpayer must use the form ordinarily prescribed by the Department for that return or amended return.

- 3) Separate payments should be made for each Eligible Liability to insure proper application by the Department. A single payment that is made for multiple Eligible Liabilities must be accompanied by a clear identification of the liabilities to which the payment is to be applied, and in what amounts it is to be applied. Any portion of any payment that is not expressly designated by the taxpayer as applicable to a specifically-identified liability will be applied against liabilities of the taxpayer in accordance with 86 Ill. Adm. Code 700.500, which may result in failure of the taxpayer to pay all Eligible Liabilities it intended to pay.
- c) Form of Payment. *Payments must be made by cash, check, guaranteed remittance, or ACH debit.* (ITDAA Section 10)
- 1) The reduction of a liability that results from claiming a credit or the carryover of a credit under Article 2 or Section 601(b)(3) or (b)(4) of the IITA, from claiming a federal capital or net operating loss or Illinois net loss under IITA Section 207, or from the use of a Manufacturer's Purchase Credit under Section 3-85 of the Use Tax Act, is not a payment of tax. Therefore, if the taxpayer is entitled to an income tax credit or loss or to a Manufacturer's Purchase Credit that reduces the taxpayer's unpaid liability for a tax in a particular period to zero, the application of the credit or loss is not a payment that may qualify under amnesty.
  - 2) Payments by check that are returned due to insufficient funds in the taxpayer's account do not qualify as payments during the Amnesty Program Period.
  - 3) Payments of amounts due from individuals under the IITA may be made by credit card, provided that the taxpayer must pay any discount fee charged by the credit card issuer. (IITA Section 605)
  - 4) Other forms of payment:
    - A) The Department will treat the following items as payments qualifying under the Amnesty Program:
      - i) Offset of a verified overpayment or credit memorandum relating to sales and excise taxes, to the extent available to the taxpayer prior to the end of the Amnesty Program Period; or
      - ii) For a taxpayer under audit (including matters pending before the Informal Conference Board), an overpayment tentatively determined by the Department for a tax period in the audit may be offset against an Eligible Liability for another tax period in the same audit.
    - B) The return, amended return or other allowable amnesty filing reporting the Eligible Liability to be offset must identify each verified overpayment, credit memorandum, or overpayment tentatively determined by the Department in an audit to be used as an Amnesty Program payment by tax type, period and amount.
    - C) If a taxpayer in good faith requests an offset of a verified overpayment, credit memorandum, or audit overpayment against an Eligible Liability, and the amount that is actually allowable as an offset is less than the

amount requested by the taxpayer, the 200% Sanction shall be imposed as provided in subsection (j)(3).

- 5) The Department will not offset an unpaid overpayment of income tax shown on a return or refund claim filed by a taxpayer prior to the beginning of the Amnesty Program Period against an Eligible Liability. Except as otherwise provided in this Section if a taxpayer has reported an income tax overpayment for a taxable year that has not been paid or denied as of the beginning of the Amnesty Program Period, and wishes to report and pay an Eligible Liability for the same taxable year, the taxpayer must file an amended return, reporting its corrected liability taking into account all adjustments that must be made to its original return, including any adjustments reported on its refund claim and any additional adjustments creating the Eligible Liability, and pay the increase in tax reported on the amended return, as if it had already received a refund of the previously-reported overpayment. The taxpayer may preserve its claim for refund of that overpayment by writing in the explanation section of its amended return it files under the Amnesty Act, "This amended return is filed for purposes of Amnesty, and does not take into account an overpayment in the amount of [dollar amount] reported on [date]. This amended return shall be treated as a claim for refund of this amount, and as a confirmation of any outstanding claim for refund." The refund claim will be allowable to the same extent it would have been allowed had no Amnesty Program report and payment been made, and shall accrue interest without regard to the provisions in subsection (k)(5).
- d) Civil Cases Pending in State Courts. ITDAA Section 10 provides that amnesty may not be granted to a taxpayer that is *a party to any civil litigation that is pending in any circuit court or appellate court or the Supreme Court of this State* with respect to an otherwise Eligible Liability.
- 1) A payment made under the Protest Act initiates a civil suit in circuit court. Accordingly, payment of a liability under the Protest Act disqualifies the taxpayer from participation in the Amnesty Program with respect to that liability, even if the liability would otherwise be an Eligible Liability and the payment is made during the Amnesty Program Period.
  - 2) A taxpayer that is ineligible for the Amnesty Program under this Section becomes eligible if the taxpayer ceases to be a party to a civil action by dismissing the action prior to the end of the Amnesty Program Period. The action is dismissed on or before the November 8, 2010, deadline if the taxpayer has executed an agreed order stipulating to judgment in favor of the Department, and during the Amnesty Program Period has either paid the Eligible Liability that is the subject of the action, or, in a Protest Act case, agreed to a dissolution of the injunction and a court order that directs the amount of the Eligible Liability to be released to the Department. A taxpayer participating in the Amnesty Program under this subsection (d)(2) need not file a return or amended return under subsection (b) with respect to the liability that is the subject of the litigation, but must specify in its motion to dismiss the action that it is doing so in order to participate in the Amnesty Program and its payment of the Eligible Liability must be accompanied by a statement that the payment is being made under the Amnesty Program and must identify the Eligible Liability being paid.

- 3) Bankruptcy proceedings take place in federal courts, and a taxpayer in bankruptcy may be eligible to participate in the Amnesty Program.
  - 4) Because a taxpayer that is a party to civil litigation in an Illinois court is not eligible to participate in the Amnesty Program with respect to a liability in dispute in that litigation, that taxpayer will not be subject to the 200% Sanction on that liability for failure to participate in the Amnesty Program with respect to that liability. The taxpayer may still participate in the Amnesty Program with respect to other liabilities, and will be subject to the 200% Sanction for failure to do so.
- e) Matters Pending in the Department's Office of Administrative Hearings. Matters pending in the Department's Office of Administrative Hearings are not *pending in any circuit court or appellate court or the Supreme Court of this State*. (ITDAA Section 10) Therefore, a tax liability that is being contested before one of the Department's Administrative Law Judges is eligible for the Amnesty Program.
- 1) A taxpayer who wishes to participate in the Amnesty Program with respect to an Eligible Liability at issue in a matter pending in the Office of Administrative Hearings must stipulate to judgment in favor of the Department with respect to that liability on or before November 8, 2010 and pay that liability during the Amnesty Program Period.
  - 2) A taxpayer participating in the Amnesty Program under this subsection (e)(2) need not file a return or amended return under subsection (b) with respect to the liability that is the subject of the proceeding, but must specify in the stipulation that it is participating in the Amnesty Program and pay the Eligible Liability to the Department during the Amnesty Program Period.
  - 3) A taxpayer that fails to participate in the Amnesty Program with respect to the liability that is the subject of the proceeding will be subject to the 200% Sanction.
  - 4) A liability being contested in the Office of Administrative Hearings is an Established Liability, and no refund of the payment is allowed with respect to an Amnesty Issue.
- f) Matters Under Audit or Pending Before the Informal Conference Board. A tax liability under Audit (including audits under review before the Informal Conference Board) is eligible for the Amnesty Program.
- 1) After an audit has been concluded, by the issuance of an amended return or waiver of restrictions on assessment that becomes final prior to the beginning of the Amnesty Program Period, the liability determined by the Department is an Established Liability so that failure to pay the full amount of the Eligible Liability during the Amnesty Program Period will subject the taxpayer to the 200% sanction on the entire liability under subsection (j)(2) and no refund with respect to an Amnesty Issue will be allowed.
  - 2) Prior to the issuance of an amended return or waiver of restrictions on assessment after the conclusion of an audit, a taxpayer may participate in the Amnesty Program by reporting the amount of Eligible Liability that it estimates will result from the audit on an original or amended return, and paying that amount during the Amnesty Program Period. The Department will continue with

the audit (including any proceedings before the Informal Conference Board) in the same manner as if no amnesty payment had been made, except that the interest and penalties related to the amnesty payment will be abated.

3) Examples. The principles for participating in the Amnesty Program for an Eligible Liability that is currently under audit may be illustrated as follows:

A) EXAMPLE 1. As of the beginning of the Amnesty Program Period, the Department is auditing Taxpayer for occupation and use taxes due for the periods July 1, 2005, through June 30, 2007. The audit will not be completed before the end of the Amnesty Program Period. After consulting with the Department's auditor, Taxpayer estimates that it owes an additional Use Tax obligation of \$300 for each of the months of July, August and September of 2006. During the Amnesty Program Period, Taxpayer files amended returns and pays the additional \$300 in tax for each month. After the audit is completed (including any proceedings before the Informal Conference Board) in 2011, the Department determines that, taking into account the \$300 payments made during the Amnesty Program Period, Taxpayer has overpaid its Use Tax obligation for July of 2006 by \$150 and owes an additional \$50 in Use Tax for August of 2006. As provided in subsection (k), Taxpayer may receive a refund of the overpayment for July of 2006. As provided in subsection (j)(3)(A), Taxpayer will be assessed the 200% Sanction with respect to its \$50 underpayment for August of 2006. Also, if Taxpayer unsuccessfully contests any portion of the \$50 underpayment after the conclusion of the audit, or fails to pay in full the \$50 liability and the related 200% Sanction no later than the due date for payment of the demand for payment made by the Department, the 200% sanction will also be imposed on the \$300 amount paid during the Amnesty Program Period with respect to August of 2006, as provided in subsection (j)(3)(B). The abatement of penalties and interest with respect to the \$300 paid for September of 2006 is not affected by any changes or proceedings related to the liabilities for July or August of 2006. The Department will offset the \$50 in additional tax for August of 2006, plus the 200% Sanction on that amount, against the overpayment for July of 2006 and allow a refund or credit of the remaining overpayment for July of 2006, to the extent the refund or credit is not otherwise barred. Taxpayer may also claim a refund or credit for some or all of the \$50 additional tax for August of 2006, for some or all of the 200% Sanction, or for any other amount for July or August of 2006, providing the refund or credit would otherwise be allowable.

B) EXAMPLE 2: During an audit of Taxpayer's corporate income tax returns, the Department issued a Notice of Proposed Deficiency to Taxpayer, proposing deficiencies of \$500 with respect to its 2005 liability and \$800 with respect to 2006. Taxpayer timely requested review of both deficiencies by the Informal Conference Board under 35 Ill. Adm. Code 215.115, and the review had not been completed as of the beginning of the Amnesty Program Period. Taxpayer decides to participate in the Amnesty Program by paying the entire \$500 for 2005 in full, but only pays \$600 for 2006 during the Amnesty Program Period. After the Department receives the payment for 2005, penalties and interest related to the 2005

deficiency will be abated. The Informal Conference Board review and the remaining audit processes for 2006 will continue. If, at the conclusion of the audit, the Department determines that the 2006 deficiency was the \$600 paid by Taxpayer during the Amnesty Program Period, penalties and interest related to 2006 will be abated. If the Department determines that the 2006 deficiency was greater than the \$600 paid by Taxpayer, the 200% Sanction will be imposed only on the additional deficiency, unless Taxpayer unsuccessfully contests the additional liability, as provided in subsection (j)(3)(B). If the Department determines that the 2006 deficiency was less than the \$600 paid by Taxpayer, a refund or credit will be granted, providing the refund or credit would otherwise be allowable.

- g) Criminal Investigation or Case. ITDAA Section 10 provides that amnesty may not be granted to taxpayers that are a party to *any criminal investigation for nonpayment, delinquency or fraud in relation to any State tax imposed by any law of the State of Illinois* with respect to an otherwise Eligible Liability. A taxpayer who is a party to a pending investigation or case is ineligible to participate in the Amnesty Program with respect to the specific taxes and tax periods under investigation or contained in the complaint, information, or indictment, and will not be subject to the 200% Sanction for failure to participate in the Amnesty Program with respect to that liability.
- h) Eligible Liabilities. Under ITDAA Section 10, the Amnesty Program applies to *any tax, except for the motor fuel use tax imposed under 35 ILCS 505/13a, imposed by reason of or pursuant to authorization by any law of the State of Illinois and collected by the Department*. Each liability that comes within this definition and meets the other criteria for a taxpayer to participate in the Amnesty Program is generally divisible into two parts: the Eligible Liability that must be paid during the Amnesty Program and the penalty and interest that may be abated under the Amnesty Program. An exception to this rule is the reimbursement of collection expenses incurred by the Department, when those expenses are not deemed by statute to be part of the related tax liabilities. The obligation to pay these expenses is not a penalty that may be abated by participation in the Amnesty Program, nor does failure to pay one of these expenses during the Amnesty Program Period disqualify the taxpayer from the benefits of amnesty. The following examples are illustrative of items that may be characterized as Eligible Liabilities or as penalties or interest that may be abated, or as expenses that are neither Eligible Liabilities nor penalties:
- 1) A taxpayer who has paid all of the tax due for a period, but has not yet paid all of the penalty and interest associated with the liability, may not participate in the Amnesty Program with respect to the penalty or interest. This rule applies regardless of the reason the tax has been paid, but not the penalty or interest, including instances when the taxpayer filed a return and paid its tax late, and so incurred late filing and late payment penalties, or because amounts paid by or collected from the taxpayer were applied against tax before being applied against penalty and interest pursuant to UPIA Section 700.500. A taxpayer may not seek to retroactively reapply payments previously made to the Department for the purpose of creating Eligible Liabilities eligible for the Amnesty Program or increasing the amount of penalties and interest that will be abated as the result of the taxpayer's participation in the Amnesty Program.
  - 2) Over-collections of Use Tax that are required to be remitted to the Department by reason of Section 2-40 of the Retailers' Occupation Tax Act [35 ILCS 120/2-40]

are tax liabilities that may be Eligible Liabilities rather than penalties that may be abated if the related Eligible Liability is paid during the Amnesty Program Period.

- 3) The vendor's discount from tax allowed in Section 3 of the Retailers' Occupation Tax for the expenses of collecting and remitting is forfeited when the tax is not timely paid. Any lost discount is a tax liability that may be an Eligible Liability rather than a penalty that may be abated if the related Eligible Liability is paid during the Amnesty Program Period.
  - 4) A collection agency fee that is added to a taxpayer's tax liability under Section 2505-400(a) of the Civil Administrative Code [20 ILCS 2505/2505-400] is not a penalty, but is a tax liability that may be an Eligible Liability. If an Eligible Liability has been referred to a collection agency and the fee is owed to the collection agency, the fee related to the Eligible Liability must be paid during the Amnesty Program Period in order for the taxpayer to qualify for abatement of penalties and interest. No collection agency fee is due on amounts paid directly to the Department under the Amnesty Program. However, if a taxpayer makes any payment of any portion of an Eligible Liability to a collection agency, the fee due the collection agency will be added to and included in the Eligible Liability that must be paid during the Amnesty Program Period for the taxpayer to qualify for amnesty.
  - 5) The recording fees that must be paid by a taxpayer before a lien for unpaid taxes may be released under Section 1105(a) of the Illinois Income Tax Act [35 ILCS 5/1105] or under Section 5a, 5b or 5c of the Retailers' Occupation Tax Act [35 ILCS 120/5a, 5b or 5c] are not added to the tax liability of the taxpayer, and are neither tax liabilities nor penalties. A taxpayer's obligation to pay these fees is not abated by participation in the Amnesty Program, nor is failure to pay one of these fees grounds for denying the abatement of penalties and interest under the Amnesty Program.
  - 6) Responsible officer penalties imposed pursuant to Section 3-7 of the Uniform Penalty and Interest Act for failure to collect, account for and pay over trust taxes are penalties imposed on the responsible officer, even though the penalty includes unpaid tax, and therefore cannot be Eligible Liabilities of the responsible officer. However, a responsible officer's employer may participate in the Amnesty Program. If the underlying trust tax liability of the employer is paid under the Amnesty Program, the related penalties and interest, and therefore the responsible officer penalty, will be abated.
- i) Eligible Periods. Only taxes due for a Taxable Period ending after June 30, 2002 and prior to July 1, 2009 are eligible for amnesty. The following examples are illustrative:
- 1) The usual Taxable Period for Retailers' Occupation Tax purposes is the calendar month. A taxpayer reporting and paying Retailers' Occupation Tax on a monthly basis may participate in the Amnesty Program with respect to a liability based on taxable receipts received after June 30, 2002, and prior to July 1, 2009.
    - A) One exception to this general rule is the case of a taxpayer authorized to pay and who does pay Retailers' Occupation Tax liability on an annual or quarterly basis. The Taxable Period for annual taxpayers of Retailers'

Occupation Tax is the calendar year during which gross receipts from retail sales were received. Consequently, annual taxpayers of Retailers' Occupation Tax may participate in the Amnesty Program with respect to a liability based on receipts received on and before December 31, 2008, but not with respect to a liability based on receipts received on and after January 1, 2009. Liabilities for receipts received by an annual taxpayer at any time during the 2002 taxable year are eligible for amnesty. The Taxable Period for quarterly taxpayers is the quarterly period in which gross receipts from retail sales were received.

- B) Another exception to this general rule is the case of a taxpayer required to file and pay occupation or use tax liabilities from the sale or use of an aircraft, watercraft, motor vehicle or trailer on a separate transaction reporting return. Each liability required to be reported on a separate transaction reporting return is a separate liability for purposes of the ITDAA, and the Taxable Period for that liability is the date of delivery.
- 2) The Taxable Period for Illinois Income Tax purposes is the taxable year. Taxpayers whose taxable year is the calendar year may participate in the Amnesty Program with respect to a liability based on income earned or received on and before December 31, 2008, but not with respect to a liability based on income earned or received on and after January 1, 2009. Taxpayers whose taxable year is a fiscal year may participate in the Amnesty Program for taxable years ending after June 30, 2002, and prior to July 1, 2009.
- j) Payment of All Taxes Due for a Taxable Period. ITDAA Section 10 provides that *failure to pay all taxes due to the State for a taxable period shall invalidate any amnesty granted under this Act*. In order to participate in the Amnesty Program a taxpayer must pay the entire Eligible Liability for a tax type and tax period, irrespective of whether that liability is known to the Department or the taxpayer, or whether the Department has assessed it.
    - 1) The requirement that the Eligible Liability be paid in full precludes a taxpayer from receiving abatement of penalties and interest by entering into an installment payment agreement with the Department under which the Eligible Liability will not be paid until after the end of the Amnesty Program Period. A taxpayer who has been making installment payments under an agreement with the Department may participate in the Amnesty Program by paying during Amnesty Program Period any Eligible Liability that remains unpaid, but will not be subject to 200% Sanction if the Eligible Liability is not paid in full during the Amnesty Program Period unless the taxpayer fails to pay the liability in full compliance with the installment payment agreement.
    - 2) A taxpayer may participate in the Amnesty Program with respect to an Established Liability only by paying during the Amnesty Program Period the full amount of the Established Liability that is actually due. If a taxpayer pays only a portion of an Established Liability during the Amnesty Program Period, and it is subsequently determined that the taxpayer has not paid the full amount of the Eligible Liability, abatement of penalties and interest for that tax period will be revoked and the 200% Sanction will apply to the entire Eligible Liability.

- 3) Except in the case of an Established Liability, the taxpayer should make a good faith estimate of the Eligible Liability, report that amount on an original or amended return as required under subsection (b)(2)(B), and pay the reported amount in full. A taxpayer that fails to pay the reported amount of Eligible Liability in full during the Amnesty Program Period does not qualify for amnesty.
- A) If the taxpayer later determines that its Amnesty Program payment was less than the total Eligible Liability, and voluntarily reports and pays the additional amount due, the 200% Sanction will be assessed only with respect to the additional amount of tax due.
  - B) If the Department later determines that a payment made during the Amnesty Program Period is insufficient to completely satisfy the Eligible Liability, and the applicable statute of limitations has not yet expired, the Department will assess the additional liability and issue a demand for payment to the taxpayer for the remaining taxes due, following the procedures applicable to that liability. If the taxpayer does not contest the assessment and pays the additional tax due no later than the due date shown on the demand for payment, the Department will assess the 200% Sanction only with respect to the portion of the Eligible Liability that was not paid during the Amnesty Program Period. A taxpayer who unsuccessfully contests any portion of the additional liability (whether by protesting the notice of deficiency or notice of tax liability by filing an action under the Protest Act, by paying the liability and filing a claim for refund, or by any other means) or who fails to pay any portion of the additional liability by the due date on the demand for payment will be liable for 200% Sanction as if no payment had been made during the Amnesty Program Period. For purposes of this subsection, requesting review by the Informal Conference Board is not contesting an additional liability. Also, a taxpayer may contest the imposition or the amount of interest or penalty due with respect to a tax liability, without becoming subject to the 200% Sanction for contesting the tax liability. However, failure to pay any assessed amount of interest or penalty within 30 days after receiving a notice and demand for payment of that amount will subject the taxpayer to the 200% Sanction as if no payment had been made during the Amnesty Program Period.
  - C) Subsections (j)(3)(A) and (B) do not apply to an underpayment of an Established Liability, which must be paid in full, except in the case where the underpayment is caused solely by the disallowance of some or all of an offset requested by the taxpayer in good faith under subsection (c)(4).
  - D) If the payment made during the Amnesty Program Period is less than the Eligible Liability because the taxpayer failed to report and pay a liability resulting from a Federal Change that was not final as of the end of the Amnesty Program Period, the 200% Sanction does not apply. However, if the taxpayer fails to timely report and pay the liability as required under IITA Section 506(b), or to pay any related interest and penalties no later than 30 days after receiving a notice and demand from the Department for payment of those amounts, the abatement of penalties and interest originally allowed under the Amnesty Program for that income tax liability

will be forfeited and the abated amounts will be deemed assessed and payable.

- 4) The following examples are illustrative:
- A) **EXAMPLE 1:** In October 2010, a taxpayer files an amended Retailers' Occupation Tax return for May of 2008, reporting an additional tax of \$5,000 and paying that amount. After November 8, 2010, the taxpayer discovers an additional \$1,000 in Retailers' Occupation Tax liability for May, 2008 that was omitted from its Amnesty Program payment. The taxpayer can avoid the 200% Sanction on the \$5,000 in tax liability already paid by voluntarily filing an amended return, and paying the additional \$1,000 with the amended return, and paying the 200% Sanction on the \$1,000 no later than 30 days after the Department has issued a notice and demand for payment of the penalty and interest.
  - B) **EXAMPLE 2:** In November 2010, the Department is conducting an audit of the taxpayer's calendar year 2002 Illinois income tax return. The taxpayer is considering whether to participate in the Amnesty Program and asks the auditor to complete the audit prior to the November 8, 2010 amnesty deadline. The auditor advises the taxpayer that the audit cannot be completed prior to November 8, 2010. The taxpayer makes a good faith estimate that \$3,000 in Income Tax liability will be owed at the end of the audit. The taxpayer pays the \$3,000 with an amended return during the Amnesty Program Period. After November 8, 2010, the auditor determines that an additional \$500 in Income Tax liability attributable to tax year 2002 is due. The Department sends a notice of deficiency to the taxpayer for the additional \$500 in income tax, plus the 200% Sanction. The taxpayer can avoid paying the 200% Sanction on the \$3,000 amount of Income Tax liability paid during the Amnesty Program Period attributable to tax year 2002 by allowing the deficiency to be assessed and by paying the additional \$500 tax, plus the 200% Sanction on the \$500, by the due date of the notice and demand issued by the Department after the assessment. The taxpayer may also protest the imposition or amount of any penalty or interest shown in the notice of deficiency, or contest the penalty and interest by paying the amounts and filing a claim for refund, without incurring the 200% Sanction on the \$3,000 paid during the Amnesty Program Period. If, however, the taxpayer files a protest of the \$500 deficiency or pays the \$500 deficiency and contests it under the Protest Act, and any portion of the deficiency is upheld, the 200% Sanction will apply to the \$3,000 paid during the Amnesty Program as well as to the amount of deficiency upheld.
  - C) **EXAMPLE 3:** In May 2010, a taxpayer was issued a notice of assessment in the amount of \$10,000 plus penalty and interest for Retailers' Occupation Tax incurred in January 2008. The taxpayer conceded only one-half of the Established Liability, but has never requested an administrative hearing on the disputed portion and the assessment has, therefore, become final. The taxpayer requests amnesty on the \$5,000 agreed portion of the assessment and attempts to participate in the Amnesty Program by making a \$5,000 payment on November 8, 2010. Because the \$10,000 Established Liability was not paid in full, the

taxpayer will be subject to the 200% Sanction on the entire Retailers' Occupation Tax liability attributable to January 2008.

- D) EXAMPLE 4: Company A operates a retail mail order and internet business that makes sales to Illinois residents. Company A does not collect or remit Illinois Use Tax on such sales. Company A's failure to participate in the Amnesty Program would subject it to the 200% sanction on uncollected Illinois Use Tax if it is subsequently determined that Company A was obligated to collect and pay over Illinois Use Tax on its sales to Illinois residents.
- E) EXAMPLE 5: A retailer does not participate in the Amnesty Program. The Department audits the retailer for all tax periods in 2007. In completing the audit, the Department has determined that the retailer was overpaid Retailers' Occupation Tax for some tax periods within the audit period while others were underpaid. The Department will assess the 200% Sanction on the underpaid tax periods even if the taxpayer has a net overpayment for the periods under audit. Each tax type for each tax period qualifies for amnesty separately, and failure to participate for any Eligible Liability for any tax type or period incurs the 200% Sanction. The retailer was allowed to participate in the Amnesty Program only on a month-by-month basis, and could have avoided paying any interest or penalties on the deficient months only by making timely amnesty payments for each deficient month.
- F) EXAMPLE 6: During the Amnesty Program Period, Taxpayer files an amended Illinois income tax return reporting an Estimated Federal Change Liability of \$10,000 it believes it will owe once an IRS audit of its 2007 federal income tax return is completed. When the IRS audit is completed in 2011, the changes determined by the IRS increase Taxpayer's Illinois income tax liability by an additional \$1,000. If Taxpayer timely reports the \$1,000 under IITA Section 506(b) and pays the tax and any related interest and penalties resulting from the federal change no later than 30 days after the Department has issued a notice and demand for payment, any interest and penalties abated as a result of the Taxpayer's participation in the Amnesty Program will remain abated. If, however, Taxpayer fails to timely report and pay the \$1,000 or fails to pay any related interest or penalties within 30 days after the Department issues a notice and demand for payment, any Amnesty Program abatement interest and penalties related to Taxpayer's 2007 income tax liability will be forfeited, and those amounts will be deemed assessed and immediately collectible by the Department. In this example, all penalties and interest are related to federal changes, so the 200% Sanction will not apply to the penalties and interest related to the \$1,000 additional liability or to the penalties and interest abated with respect to the amnesty payment, if the abatement is subsequently forfeited. If Taxpayer believes the interest or penalties in the notice and demand are incorrect for any reason, it may pay those amounts within 30 days after the issuance of the notice and demand and file a refund claim in order to contest those amounts without forfeiting the original abatement of interest or penalties.

- G) EXAMPLE 7: If, in addition to the \$10,000 Estimated Federal Change Liability paid during the Amnesty Program Period in Example 6, Taxpayer also reports and pays a \$500 liability that is not related to a federal change, and fails to pay the \$1,000 additional liability determined in 2011 or any related interest and penalties within 30 days after the Department issues a notice and demand for payment, the 200% Sanction will apply to any interest or penalty related to that \$500 liability. Also, if the additional liability determined in 2011 includes any amount that is not related to a federal change, the 200% Sanction will apply to that amount. However, the 200% Sanction will not apply to the \$10,000 Estimated Federal Change Liability paid during the Amnesty Program Period or to any federal change liability determined after the Amnesty Program Period.
- H) EXAMPLE 8: An individual files his original income tax return for 2008 during the Amnesty Program Period, and pays the full amount of tax reported on the return. The Department determines that the individual erroneously transcribed the amount of Illinois income tax withholding reported on his Form W-2, and issues a notice and demand for payment of the resulting underpayment, plus interest and penalty for late payment computed on the underpayment. If the individual pays the entire amount shown on the notice and demand by the due date for payment shown in the notice and demand, no penalty or interest will be imposed on the amount paid with the return. If the individual fails to pay the entire amount shown due in the notice and demand by the due date, the 200% Sanction will apply to both the amount paid with the return and to the underpayment.
- k) Overpayments of Eligible Liabilities. *Participation in the Amnesty Program shall not preclude a taxpayer from claiming a refund for an overpayment of an Established Liability based on an issue that is not an Amnesty Issue, an overpayment of an Eligible Liability that is not an Established Liability, or an overpayment of an Estimated Federal Change Liability.* (ITDAA Section 10)
- 1) Amnesty Issues. An issue is an Amnesty Issue unless it is *unrelated to the issues for which the taxpayer claimed amnesty.* (ITDAA Section 10) An Amnesty Issue is therefore every issue of law that must be resolved in determining the amount of an Eligible Liability paid during the Amnesty Program and all facts relevant to those issues, as in existence as of the time the amnesty payment is made.
- A) The amount and nature of any item of income, gross receipt or other positive item included in the tax base in computing the amount paid by the taxpayer under the Amnesty Program is an Amnesty Issue, except to the extent that item is properly reduced after taking into account only facts not in existence as of the time the amnesty payment is made.
- B) The taxpayer's entitlement to any deduction, exclusion, credit or other item reducing the amount of tax paid by the taxpayer under the Amnesty Program, and the amount of that item, is an Amnesty Issue, except to the extent that item is properly allowable or altered after taking into account only facts not in existence as of the time the amnesty payment is made.

- C) An overpayment of tax does not result from an Amnesty Issue to the extent the overpayment results from the taxpayer's payment during the Amnesty Program Period of the amount of a liability shown in a statement issued by the Department that failed to take into account either a payment made by the taxpayer prior to the issuance of the statement or an amount collected by the Department by garnishment, levy, offset or other collection action.
- D) An overpayment of tax does not result from an Amnesty Issue to the extent the overpayment results from a clerical or transcription error made by the taxpayer on a return or amended return filed as part of the Amnesty Program or in completing the check or other method of payment of an Eligible Liability during the Amnesty Program Period.
- E) In order to qualify for a refund or credit of an overpayment, a taxpayer must provide clear and convincing evidence that the overpayment did not result from an Amnesty Issue.
- F) Examples. The principles for determining whether an item is an Amnesty Issue may be illustrated as follows:
  - i) **EXAMPLE 1:** On its Illinois income tax return for calendar 2008, Taxpayer claimed \$2,000 in enterprise zone investment credits under IITA Section 203(f) that were earned in 2007 and carried forward to 2008 because Taxpayer had credits in excess of its liability for 2007. Taxpayer determines that, because of an error in computing its 2008 sales factor, it has underpaid its 2008 Illinois income tax liability by \$1,000, and it pays that amount under the Amnesty Program. Taxpayer subsequently determines that it had failed to claim a subtraction for interest on federal obligations for 2007. Taking the subtraction reduces its pre-credit liability by \$400 and increases its allowable enterprise zone investment credit carryover to 2008 by \$400. No refund for 2008 is allowed, because the reduction in base income for 2007 is based on facts that were in existence as of the time the amnesty payment is made.
  - ii) **EXAMPLE 2:** If, in Example 1, Taxpayer is an individual whose 2007 base income is reduced by a carryback to 2007 of a federal net operating loss incurred in calendar 2010, the refund from carrying forward the additional credit results from the fact of the 2010 loss, which was not in existence as of the time the amnesty payment is made, and the 2008 refund is allowable.
  - iii) **EXAMPLE 3:** If Taxpayer in Example 1 receives a Schedule K-1-P from a partnership in 2011, reporting that Taxpayer was entitled to a credit for 2008 or for 2007 and the credit may be carried forward to 2008, and the credit had not previously been reported to Taxpayer, Taxpayer may claim a refund based on that credit.
  - iv) **EXAMPLE 4:** On its Retailers' Occupation Tax return for January 2009, Taxpayer reports \$1,000,000 in taxable gross receipts.

During the Amnesty Program Period, Taxpayer pays an Established Liability equal to the tax on an additional \$50,000 in taxable receipts that had been included in an amended return filed after the conclusion of an audit. Taxpayer subsequently discovers that its records contain a resale certificate for a sale of \$20,000 in January 2009, which it had erroneously reported as taxable. No refund is allowed in this instance, whether the \$20,000 in receipts were included in the original return or only in the amended return, because the facts in existence as of the time the amnesty payment is made indicated that the receipts were not taxable.

- v) EXAMPLE 5: If, subsequent to the end of the Amnesty Program Period, one of the customers of the Taxpayer in Example 3 presents a resale certificate for a purchase made during January 2009 for which Taxpayer had collected Use Tax because no resale certificate had been provided at that time, Taxpayer may refund the Use Tax to the customer and claim a refund for its Retailers' Occupation Tax. The reduction in Taxpayer's liability results from a fact that was not in existence as of the time the amnesty payment is made.
  - vi) EXAMPLE 6: On September 15, 2010, the Department issues a statement to Taxpayer indicating that it has an outstanding tax liability of \$2,000. On September 20, 2010, the Department collects \$300 of the liability by offsetting against it an overpayment of a different tax. If Taxpayer pays the entire \$2,000 shown in the statement during the Amnesty Program Period, the resulting \$300 overpayment of the liability is not the result of an Amnesty Issue.
  - vii) EXAMPLE 7: During the Amnesty Program Period, Taxpayer files a return reporting an Eligible Liability. Due to an arithmetic error made in completing the return, Taxpayer reports an Eligible Liability of \$2,530 rather than \$2,350. The \$180 overpayment resulting from this error is not the result of an Amnesty Issue. Similarly, if the return reported a \$2,350 liability, but Taxpayer paid \$2,530 with the return, the \$180 overpayment is not the result of an Amnesty Issue.
- 2) Estimated Federal Change Liabilities. A taxpayer may file a claim for refund of the overpayment that results from the finalization of a Federal Change that was not final as of the end of the Amnesty Program Period, even if the taxpayer participated in the Amnesty Program based on an Estimated Federal Change Liability and the facts related to the determination of its federal change were in existence before the end of the Amnesty Program Period.
- 3) If a taxpayer participates in the Amnesty Program with respect to an Eligible Liability that is under audit during the Amnesty Program Period, the refund or credit allowable for the taxable period may not exceed the amount determined by the audit, except to the extent the refund results from an issue that is not an Amnesty Issue or from the finalization of a federal change after the Amnesty Program Period. For example:

- A) EXAMPLE 1: Taxpayer's income tax return for the calendar year 2005 is under audit during the Amnesty Program Period, but no Established Liability has been created. Taxpayer participates in the Amnesty Program for 2005. After the audit is concluded, the Department determines that Taxpayer has overpaid its 2005 liability by \$300. Taxpayer may receive a refund of that \$300, but no additional refund is allowable unless the additional refund results from issue that is not an Amnesty Issue or from the finalization of a federal change after the Amnesty Period.
  - B) EXAMPLE 2: If Taxpayer in Example 1 also participates in the Amnesty Program for 2006, a year that is not under audit during the Amnesty Program Period and for which there is no Established Liability, Taxpayer's participation in the Amnesty Program for 2005 does not limit Taxpayer's right to a refund for 2006.
- 4) No refunds are allowed for any tax liability and period with respect to which the taxpayer participated in amnesty other than as allowed under this subsection (k).
  - 5) No interest is payable by the Department on any refund or credit allowed for a tax and period for which the taxpayer participated in the Amnesty Program. (See UPIA Section 3-2(h).) However, interest will be allowed on any refund or credit based on a refund claim that was outstanding as of the beginning of the Amnesty Program Period, as described in subsection (c)(5).
- l) Statutes of Limitation and Other Filing Periods. Participation in the Amnesty Program does not toll or extend any applicable statute of limitations or other time period for the filing of refund claims, protests with the Department, or actions in circuit court under the Protest Act. The Taxpayers' Bill of Rights does not toll or extend any applicable statute of limitations. A statute of limitations or other time period that expires during or after the Amnesty Program Period cannot be revived, even if the taxpayer has failed to satisfy all the requirements of the Amnesty Program. The Department's procedures for obtaining waivers of statutes of limitations for taxpayers under audit shall continue to apply.
    - 1) The following examples are illustrative:
      - A) Corporation A reported federal taxable income of \$1,000,000 on its calendar 2006 federal and Illinois income tax returns. During November 2010, Corporation A is undergoing a federal income tax audit of its 2006 federal income tax return, which it expects will result in an increase in its federal taxable income to as much as \$1,500,000. In order to participate in the Amnesty Program, Corporation A files an amended Illinois income tax return on November 8, 2010 that reports federal taxable income of \$1,500,000, and pays the Estimated Federal Change Liability resulting from the increase in its federal taxable income.
      - B) If, as a result of the federal audit, its federal taxable income is determined to be \$1,300,000, Corporation A will be allowed to file a refund claim under subsection (k) for the amount it paid under the Amnesty Program in excess of the tax liability computed using \$1,300,000 in federal taxable income. However, because participation in the Amnesty Program does not toll or extend the statute of limitations for filing the refund claim, the

claim must be denied unless it was filed within one year after the date of the Amnesty Program payment under IITA Section 911(a)(2) or the Corporation A and the Department have entered into an agreement under IITA Section 911(c) extending the period for filing a refund claim. Although the statute of limitations for filing a refund claim is reopened under IITA Section 911(b) as a result of the conclusion of the federal audit, IITA Section 911(b)(1) provides that the claim is limited to the overpayment that results from the federal change. In this case, the federal change is an increase in federal taxable income of \$300,000, and the overpayment attributable to that increase is zero. The difference between the \$1,500,000 in federal taxable income reported on the amended return filed in the Amnesty Program and the \$1,300,000 finally determined is not a federal change that reopens the limitations period for filing a refund claim because, for federal income tax purposes, the \$1,500,000 was never reported or finally determined to be Corporation A's federal taxable income.

- C) If, as a result of the federal audit, its federal taxable income is determined to be \$900,000, Corporation A will be entitled to file a refund claim for the overpayment that results from the \$100,000 reduction in its federal taxable income from the \$1,000,000 amount reported on its original federal income tax return, provided that its claim is filed within the period set by IITA Section 911(b). The difference between the \$1,500,000 in federal taxable income reported on the amended return filed in the Amnesty Program and the \$1,000,000 reported on its original federal income tax return is not a federal change that reopens the limitations period for filing a refund claim, and the overpayment resulting from that \$500,000 difference must be claimed within one year after the payment date unless Corporation A and the Department have entered into an agreement extending the limitations period.
- 2) A taxpayer who reports and pays an Estimated Federal Change Liability under the IITA may claim a refund of any excess of the Estimated Federal Change Liability over the liability resulting from the final federal change by writing in the explanation section of its amended return it files under the Amnesty Act, "This amended return reports an Estimated Federal Change Liability for purposes of Amnesty, and is a claim for refund of any excess of the Estimated Federal Change Liability over the liability resulting from the final federal change." When the federal change becomes final under IITA Section 506(a), the taxpayer should then file another amended return, reporting the difference between the final federal change and the Estimated Federal Change Liability, and paying any increased liability reported or requesting a refund of any decreased liability.
- 3) A taxpayer who reports and pays an Estimated Federal Change Liability under the IITA and fails to follow the procedures in subsection (I)(2) should file a claim for refund no later than one year after making the amnesty payment in order to protect its rights to any refund resulting from the finalized federal change. If the federal change has not become final by the time the claim is filed, the taxpayer should include in the explanation section language stating, "This amended return modifies an amended return filed during the Amnesty Program Period to report an Estimated Federal Change Liability, and is a claim for refund of any excess of

the Estimated Federal Change Liability over the liability resulting from the federal change, which has not yet become final."

m) Reasonable Cause.

- 1) Nothing in the ITDAA or this Section is intended to change the meaning of "reasonable cause" as that term is used in the Uniform Penalty and Interest Act [35 ILCS 735/3-8]. Taxpayers needing clarification of "reasonable cause" should consult 86 Ill. Adm. Code 700.400.
- 2) A taxpayer who would be entitled to abatement of a penalty due to "reasonable cause" for its delinquency remains entitled to abatement of that penalty even if it failed to participate in the Amnesty Program with respect to any unpaid liability associated with that penalty.
- 3) A taxpayer who has "reasonable cause" for its failure to participate in the Amnesty Program with respect to an Eligible Liability will remain subject to any penalties otherwise applicable to that liability, but not to the doubled rates for the penalties that would otherwise apply. "Reasonable cause" abatement under Section 3-8 of the Uniform Penalty and Interest Act does not apply to interest, so any underpayment interest on the Eligible Liability will accrue at doubled rates even if the taxpayer had reasonable cause for failing to participate in the amnesty. The inability of a taxpayer in bankruptcy to obtain permission from the federal courts to participate in the Amnesty Program shall constitute reasonable cause for not participating. Failure of the Department to notify a taxpayer of its eligibility to participate in the Amnesty program or of the correct amount of its Eligible Liability does not constitute reasonable cause for the taxpayer's failure to participate in the Amnesty Program.