

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
 - 2) Code Citation: 86 Ill. Adm. Code 100
 - 3) Section Number: 100.7300 Proposed Action: Amendment
 - 4) Statutory Authority: 35 ILCS 5/704A
 - 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends regulation Section 100.7300 to implement the amendments to IITA Section 704A in Public Act 100-303, which allow the Department to require electronic filing of withholding returns and W-2 information, beginning with calendar 2017 withholding.
 - 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:
 - 7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
 - 8) Does this rulemaking contain an automatic repeal date? No.
 - 9) Does this rulemaking contain incorporations by reference? No.
 - 10) Are there any other proposed rulemakings pending on this Part? Yes
- | <u>Section Number</u> | <u>Proposed Action</u> | <u>Illinois Register Citation</u> |
|-----------------------|------------------------|---------------------------------------|
| 100.2175 | New Section | 41 Ill. Reg. 14166, November 27, 2017 |
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
 - 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Fliflet
Deputy General Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson St.
Springfield, Illinois 62794

(217) 782-2844

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking applies to small businesses, small municipalities and not for profit corporations that are required to withhold Illinois income tax from their employees.
 - B) Reporting, bookkeeping or other procedures required for compliance: None.

C) Types of professional skills necessary for compliance: None.

14) Regulatory Agenda on which this rulemaking was summarized: July 2017.

The full text of the Proposed Amendment is identical to that of the text of the Emergency Amendment for this Part, and begins in the *Illinois register* on page:

Section 100.7300 Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)
EMERGENCY

- a) Quarterly returns. Except as otherwise provided in Section 100.7310 or 100.7350, every employer required to deduct and withhold tax on compensation paid in Illinois shall make a return for the first calendar quarter in which the tax is deducted and withheld and for each subsequent calendar quarter (whether or not compensation is paid in that quarter) until a final return is filed. (See IITA Sections 704(c) and 704A(b).) Each return required under this subsection must be made *in the form and manner required by the Department. (IITA Sections 704(b) and 704A(b)) With respect to taxes withheld in 2017 and subsequent calendar years, the Department may, by rule, provide that any return (including any amended return) and any W-2 Form due under this Section must be submitted on magnetic media or electronically. (IITA Section 704A(f)) The due date for submitting W-2 Forms shall be as prescribed by the Department by rule. (IITA Section 704A(f))* ~~{35 ILCS 5/704(b) and 704A(b)}~~.
- 1) For calendar years after 2009 and prior to 2017, payroll providers who withhold Illinois income tax for employers during the year and who are required to file federal withholding returns on magnetic media under 26 CFR 301.6011-2 shall file returns due under this subsection (a) with the Department using the same magnetic media used for their federal filing.
 - 2) For calendar years after 2016, all employers shall file returns due under this subsection (a) with the Department electronically or using the same magnetic media used for their federal filing, provided that, upon petition by an employer, the Department may waive this requirement if the employer demonstrates that it does not have access to the Internet.
 - 3) All other returns required under this subsection (a) may be filed with the Department at the address provided on the Form IL-941, Illinois Quarterly Withholding Income Tax Return, or its instructions.
- b) Filing and retention of copies of combined W-2
- 1) For calendar years prior to 2008
 - A) Every employer required under this Section or Section 100.7310 or 100.7350 to make a return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall retain a copy of each wage and tax statement on the combined W-2 required under Section 100.7200 to be furnished by the employer with respect to compensation paid during the calendar year. For calendar years prior to 2008, every employer shall maintain copies of the combined W-2 forms for three years from the due date of the IL-W-3 for

that period. For each calendar year after 2007, every employer shall maintain copies of the combined W-2 forms until January 31 of the fourth year following that calendar year. If the Department makes a written request for copies of the combined W-2 forms, the copies shall be forwarded to the Department within 30 days after the written request.

- B) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see Section 100.7200(d) above), a copy shall be retained for a period of four years from the date fixed for filing the employer's return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in the year for which the return is made as a final return. A statement explaining the corrections shall also be retained and, if the Department requests, a copy of the corrected W-2 shall be submitted within 30 days after the written request.
 - C) Each year, the Department will contact a sample of Illinois employers and require those employers to provide copies of their employee W-2s. Employers chosen by the Department will be required to file W-2s in the same manner they are required to file W-2s federally.
 - i) Employers with more than 250 employees in the State of Illinois will be required to provide the W-2s on magnetic tape, diskette, or cartridge meeting the specifications required by the Social Security Administration (see 26 CFR 301.6011-2).
 - ii) All other employers may provide the W-2s on magnetic media or paper.
 - D) An extension of time for providing statements requested by the Department shall be granted upon a showing of good cause.
- 2) W-2s filed electronically or on magnetic media
- A) The following persons, ~~if they are required to file copies of the W-2s on magnetic media under 26 CFR 301.6011-2~~, shall file copies of the W-2s with the Department electronically or using the same magnetic media used for their federal filing:
 - i) for calendar years after 2007 and prior to 2017, payroll providers who withhold Illinois income tax for employers during the year and who are required to file copies of the W-2s on magnetic media under 26 CFR 301.6011-2; and
 - ii) for calendar years after 2008 and prior to 2017, all employers who are required to file copies of the W-2s on magnetic media under 26 CFR 301.6011-2; and
 - iii) for calendar years after 2016, all employers and payroll providers who withhold Illinois income tax for employers, provided that, upon petition by an employer or payroll provider, the Department may waive the magnetic media filing requirement if the employer or

payroll provider demonstrates that it does not have access to the Internet.

- B) For calendar years prior to 2014, the copies of W-2s shall be filed no later than March 31 of the year following the year of the withholding, unless a later due date is prescribed under federal law for filing the copies of the W-2s, in which case filing of copies with the Department ~~is shall be~~ due on the same date. For calendar years after 2013 and prior to 2017, the copies of W-2s shall be filed no later than February 15 of the year following the year of the withholding. For calendar years after 2016, the copies of W-2s shall be filed no later than January 31 of the year following the year of the withholding.
 - C) For all calendar years, if the IRS has granted an extension of time to file a federal information return that would otherwise be due from the employer on the due date for filing under this subsection (b)(2) because of natural disaster under IRC section 7508A, an employer who files copies of its W-2s on or before the extended due date of the federal information return is deemed to have reasonable cause for the late filing. (See IITA Sections 704(f) and 704A(f).)
- 3) For calendar years after 2007, with respect to copies of W-2s other than those ~~required to be filed~~ electronically or on magnetic media ~~under subsection (b)(2)~~:
- A) Every employer required under this Section or Section 100.7310 or 100.7350 to make a return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall retain a copy of each wage and tax statement on the combined W-2 required under Section 100.7200 to be furnished by the employer with respect to compensation paid during the calendar year. Every employer shall maintain copies of the combined W-2 forms until January 31 of the fourth year following that calendar year. If the Department makes a written request for copies of the combined W-2 forms, the copies shall be forwarded to the Department within 30 days after the written request.
 - B) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see Section 100.7200(d)), a copy shall be retained for a period of four years from the date fixed for filing the employer's return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in the year for which the return is made as a final return. A statement explaining the corrections shall also be retained and, if the Department requests, a copy of the corrected W-2 shall be submitted within 30 days after the written request.
 - C) Each year, the Department will contact a sample of Illinois employers and require those employers to provide copies of their employee W-2s.
 - D) An extension of time for providing statements requested by the Department shall be granted upon a showing of good cause.

- c) Payments of amounts withheld prior to January 1, 2008. Except as otherwise provided in Section 100.7310 or 100.7350, with respect to amounts withheld or required to be withheld prior to January 1, 2008:
- 1) Quarter-monthly tax payments. Every employer required to file a quarterly return under subsection (a) shall also file a quarter-monthly tax payment form if the amount of tax deducted and withheld during any quarter-monthly period plus the amount previously withheld and not remitted to the Department exceeds \$1,000. An employer need not file a quarter-monthly form if no quarter-monthly payment is due. Certain taxpayers with tax liabilities exceeding statutory thresholds are required to pay their tax liabilities by electronic funds transfer. 86 Ill. Adm. Code 750 sets forth the rules of the Department concerning payment of taxes by electronic funds transfer, as well as the statutory payment thresholds.
 - 2) Monthly tax payments. Every employer required to file a quarterly return under subsection (a) shall also file a monthly tax payment form if the amount of tax deducted and withheld during any calendar month plus the amount previously withheld and not remitted to this Department exceeds \$500 including amounts previously withheld and not remitted to the Department, but does not exceed \$1,000. An employer need not file a monthly form if no monthly payment is due. No monthly form is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form need be filed for that month.
- d) Payments of amounts withheld on or after January 1, 2008. Except as provided in Section 100.7310 or 100.7350, with respect to amounts withheld or required to be withheld on or after January 1, 2008:
- 1) Semi-weekly tax payments
 - A) An employer who withheld or was required to withhold more than \$12,000 during the look-back period for a calendar year must make semi-weekly payments for the entire calendar year.
 - B) An employer who withholds or is required to withhold more than \$12,000 in any quarter of a calendar year is required to make semi-weekly payments of amounts withheld or required to be withheld during each remaining quarter of that calendar year and for the subsequent calendar year. (See IITA Section 704A(c)(1).)
 - 2) Monthly tax payments. An employer who is not required to make semi-weekly payments shall make monthly payments of taxes withheld or required to be withheld. (See IITA Section 704A(c)(3).)

(Source: Amended by emergency rulemaking at 41 Ill. Reg. _____, effective _____, for a maximum of 150 days)