

AN ACT concerning local government.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Article 1. Short Title.

Section 1-1. Short title. This Act may be cited as the  
Local Government Revenue Recapture Act.

Article 5. Local Government Revenue Recapture.

Section 5-5. Definitions. As used in this Article:

"Department" means the Department of Revenue.

"Family member" means the following, whether by whole  
blood, half-blood, or adoption:

- (1) a parent or step-parent;
- (2) a child or step-child;
- (3) a grandparent or step-grandparent;
- (4) an aunt, uncle, great-aunt, or great-uncle;
- (5) a sibling;
- (6) a spouse or domestic partner; and
- (7) the spouse or domestic partner of any person  
referenced in items (1) through (5).

"Financial information" means the information provided to  
the municipality or county by the Department under Section 11

of the Retailers' Occupation Tax Act that is reported to the Department by a business located in a given municipality or county.

"Person" means an individual, sole proprietorship, corporation, registered limited liability partnership, limited liability company, partnership, professional service corporation, or any other form of organization.

"Misallocation" means tax paid by the taxpayer and allocated to one unit of local government that should have been allocated to a different unit of local government. "Misallocation" does not include amounts overpaid by the taxpayer and therefore not owed to any unit of local government, nor amounts underpaid by the taxpayer and therefore not previously allocated to any unit of local government.

"Monitoring disbursements" means keeping track of payments from the Department by a municipality, county, or third party for the limited purpose of tracking previous misallocations.

"Third party" means a person, partnership, corporation, or other entity or individual registered to do business in Illinois who contracts with a municipality or county to review financial information related to the disbursement of local taxes by the Department to the municipality or county.

Section 5-10. Contracts with third parties. A municipality or county that receives a disbursement of tax proceeds from the Department may contract with a third party for the purpose of

ensuring that the municipality or county receives the correct disbursement from the Department and monitoring disbursements. The third party may not contact the Department on behalf of the municipality or county, but instead must work directly with the municipality or county to acquire financial information. To be eligible to receive financial information from the municipality or county, the third party must:

(1) enter into a confidentiality agreement with the municipality or county in the form and manner required by the Department prior to receiving the financial information;

(2) have an existing contract with the municipality or county at the time the third party enters into the confidentiality agreement with the municipality or county; a copy of that existing contract must be on file with the Department;

(3) abide by the same conditions as the municipality or county with respect to the furnishing of financial information under Section 11 of the Retailers' Occupation Tax Act; and

(4) be registered with the Department as required by Section 5-35 of this Act.

Section 5-15. Financial information. The third party may use the financial information it receives from the contracting municipality or county only for the purpose of providing

services to the municipality or county as specified in this Act and may not use the information for any other purpose. Electronic data submitted to third parties or by the contracting municipality or county must be accessible only to third parties who have entered into a confidentiality agreement with the municipality or county or who have an existing contract with the municipality or county.

Section 5-20. Retention, collection, disclosure, and destruction of financial information.

(a) A third party in possession of a taxpayer's financial information must permanently destroy that financial information pursuant to this Act. The financial information shall be destroyed upon the soonest of the following to occur:

(1) if the taxpayer is not referred to the Department, within 30 days after receipt of the taxpayer's financial information from either the municipality or county, unless the third party is monitoring disbursements from the Department on an ongoing basis for a municipality or county; or

(2) within 30 days after the Department receives a taxpayer audit referral from a third party referring the taxpayer to the Department for additional review.

(b) No third party in possession of financial information may sell, lease, trade, market, or otherwise utilize or profit from a taxpayer's financial information, except for a fee as

negotiated by the municipality or county. The fee may be in the form of a contingency fee for a percentage of the amount of additional distributions the municipality or county receives for no more than 3 years following the first disbursement to the municipality or county as a result of the services of the third party under this Act.

(c) No third party may permanently or temporarily collect, capture, purchase, use, receive through trade, or otherwise retain a taxpayer's financial information beyond the scope of subsection (a) of this Section.

(d) No third party in possession of confidential information may disclose, redisclose, share, or otherwise disseminate a taxpayer's financial information.

(e) A third party must dispose of the materials containing financial information in a manner that renders the financial information unreadable, unusable, and undecipherable. Proper disposal methods include, but are not limited to, the following:

(1) in the case of paper documents, burning, pulverizing, or shredding so that the information cannot practicably be read or reconstructed; and

(2) in the case of electronic media and other non-paper media containing information, destroying or erasing so that information cannot practicably be read, reconstructed, or otherwise utilized by the third party or others.

Section 5-25. Notice of intent to contract; award of contracts. A municipality or county that chooses to contract with a third party pursuant to this Act shall follow all rules set forth in the Illinois Municipal Code or the Counties Code, as applicable, concerning those contracts.

Section 5-30. Posting results. Annually, the third party shall provide the municipality or county with a final summary of the review for publication. It is the responsibility of the third party to ensure that this summary includes no personal or identifying information of taxpayers and that all such taxpayer information is kept confidential. If the summary includes any discussion of tax revenue, it shall include only aggregate amounts by tax type, and shall in no way include information about an individual return or an individual taxpayer, even with identifying information redacted. In addition, due to the preliminary nature of such a summary based only on unaudited financial information, no claim of specific tax savings or revenue generation may be made in the summary.

Section 5-35. Third party registration.

(a) Beginning on January 1, 2021, no person shall engage in business as a third party pursuant to this Act in this State without first having registered with the Department. Application for registration or renewal of registration shall

be made to the Department, by electronic means, in a form and at the time prescribed by the Department. Each applicant for registration or renewal of registration under this Section shall furnish to the Department, in an electronic format established by the Department, the following information:

(1) the name and address of the applicant;

(2) the address of the location at which the applicant proposes to engage in business as a third party in this State;

(3) valid and updated contact information;

(4) attestation of good standing to do business in Illinois;

(5) a copy of each contract it has entered into with a municipality or county; if an applicant has a contract with a municipality or county prior to the effective date of this Act, a copy of all existing contracts must be provided;

(6) an annual certification of process letter that:

(A) is signed by an attorney or certified public accountant licensed and authorized to practice in the State of Illinois;

(B) contains findings that, after due diligence, the author is of the opinion that:

(i) the third party's confidentiality standards for storing encrypted data at rest, using a cryptographic algorithm, conform to the

Federal Information Processing Standard (FIPS)  
Publication 140-2;

(ii) the third party uses multi-factor authentication;

(iii) the third party uses HTTPS with at least TLS 1.2 or its successor to protect the data files while in transit between a browser and server;

(iv) the third party adheres to best practices as recommended by the Open Web Application Security Project (OWASP);

(v) the third party has a firewall which protects against unauthorized use of the data; and

(vi) the third party shall maintain a physical location in this State at all times; if, at any time, the third party fails to have a physical location in this State, the third party's registration shall be revoked; and

(7) such other additional information as the Department may require by rule.

The annual registration fee payable to the Department for each third party shall be \$15,000. The fee shall be deposited into the Tax Compliance and Administration Fund and shall be used for the cost of administering the certified audit pilot project under Article 10.

Each applicant shall pay the fee to the Department at the time of submitting its application or renewal to the



Department. The Department may require an applicant under this Section to electronically file and pay the fee.

(b) The following are ineligible to register as a third party under this Act:

(1) a person who has been convicted of a felony related to financial crimes under any federal or State law, if the Department, after investigation and a hearing if requested by the applicant, determines that the person has not been sufficiently rehabilitated to warrant the public trust, including an individual or any employee, officer, manager, member, partner, or director of an entity that has been convicted as provided in this paragraph (1);

(2) a person, if any employee, contractual employee, officer, manager, or director thereof, or any person or persons owning in the aggregate more than 5% thereof, is employed by or appointed or elected to the corporate authorities of any municipality or county in this State;

(3) a person, if any employee, contractual employee, officer, manager, or director thereof, or any person or persons owning in the aggregate more than 5% thereof, is not or would not be eligible to receive a certificate of registration under this Act or a license under the Illinois Public Accounting Act for any reason;

(4) a person who is a family member of any person who is employed by or appointed or elected to the corporate authorities of any municipality or county in the State;

(5) a person who is a qualified practitioner, as defined by Section 10-15 of this Act;

(6) a third party owned, in whole or in part, by any entity that competes directly or indirectly with any taxpayer whose financial information they are seeking or receiving; and

(7) a third party owning in whole or in part, directly or indirectly, any entity that competes, directly or indirectly, with any taxpayer whose financial information they are seeking or receiving.

(c) The Department shall begin accepting applications no later than January 1, 2021. Upon receipt of an application and registration fee in proper form from a person who is eligible to register as a third party under this Act, the Department shall issue, within 60 days after receipt of an application, a certificate of registration to such applicant in such form as prescribed by the Department. That certificate of registration shall permit the applicant to whom it is issued to engage in business as a third party under this Act. All certificates of registration issued by the Department under this Section shall be valid for a period not to exceed one year after issuance unless sooner revoked or suspended as provided in this Act. No certificate of registration issued under this Section is transferable or assignable. A person who obtains a certificate of registration as a third party who ceases to do business as specified in the certificate of registration, or who never

commenced business, or whose certificate of registration is suspended or revoked, shall immediately surrender the certificate of registration to the Department.

(d) Any person aggrieved by any decision of the Department under this Section may, within 60 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give written notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing and then issue its final administrative decision in the matter to that person within 60 days after the date of the hearing. In the absence of a protest and request for a hearing within 60 days, the Department's decision shall become final without any further determination being made or notice given.

(e) All final decisions by the Department under this Section are subject to judicial review under the provisions of the Administrative Review Law.

Section 5-37. Insurance policy requirement. A third party is required to file and maintain in force an insurance policy issued by an insurance company authorized to transact fidelity and surety business in the State of Illinois. The insurance policy shall be for coverage of potential legal claims, including, by not limited to, penalties set forth under Section 5-60, embezzlement, dishonesty, fraud, omissions or errors, or other financial wrongdoing in the course of providing services.

The policy shall be in the form prescribed by the Department in the sum of \$500,000. The policy shall be continuous in form and run concurrently with the original and each renewal certification period unless terminated by the insurance company. An insurance company may terminate a policy and avoid further liability by filing a 60-day notice of termination with the Department and at the same time sending the same notice to the licensee. A license shall be canceled on the termination date of the policy unless a new policy is filed with the Department and becomes effective at the termination date of the prior policy. If a policy has been canceled under this Section, the third party must file a new application and will be considered a new applicant if it obtains a new policy.

Section 5-40. Revocation or suspension of certification.

(a) A contracting municipality or county shall refuse to provide any information, including financial information, to any third party who violates this Act or rules adopted pursuant to this Act or the Retailers' Occupation Tax Act or rules adopted pursuant to the Retailers' Occupation Tax Act.

(b) The Department may, after notice and a hearing, revoke or suspend the certificate of registration of any third party for a violation of any provision of this Act, for noncompliance with any provision contained in this Act, or because the Department determines that the third party is ineligible for a certificate of registration for any one or more of the reasons

provided for in Section 5-35 of this Act. The decision whether to suspend or revoke and, if a suspension is in order, the duration of the suspension shall be made by taking into account factors that include but are not limited to, the registrant's previous history of compliance with the Act as of its creation, the number, seriousness, and duration of the violations, and the registrant's cooperation in discontinuing and correcting violations.

Section 5-50. Audit referrals; restrictions.

(a) Upon entering into a contract with a municipality or county, a third party shall be prohibited from communicating directly or indirectly in any manner with a taxpayer known or believed to be operating within that municipality or county about any matters directly or indirectly related to, or covered by, the contract.

(b) If, based on a review of the financial information provided by the Department to a municipality or a county, or provided by a municipality or county to a registered third party, a municipality, county, or third party discovers that local retailers' or service occupation tax may have been underpaid, then it may refer the matter to the Department for a limited-scope audit in accordance with Article 10 of this Act.

(c) With respect to taxes administered by the Department, units of local government and third parties are not authorized to (i) access, review, or compel the production of taxpayers'

actual tax returns or (ii) access, review, or compel the production of taxpayers' books and records.

(d) With respect to taxes administered by the Department, units of local government and third parties are prohibited from (i) engaging in an audit of any taxpayer, (ii) assessing tax against any taxpayer, (iii) engaging in collection actions against any taxpayer for the tax, or (iv) engaging in any other action related to such taxes that is assigned by law to the Department.

(e) A local government shall not share any financial information received with another local government or another third party. Further, a local government may not share the findings of a third party with another local government or another third party.

Section 5-60. Penalties.

(a) Any third party who violates any provision of this Act shall be subject to the penalties set forth in Section 11 of the Retailers' Occupation Tax Act.

(b) Any third party who violates Section 5-20 is subject to a civil penalty of not more than \$10,000 for each taxpayer with respect to whom financial information is improperly disclosed, profited from, or disposed of in violation of that Section. The Attorney General may impose a civil penalty not to exceed \$50,000 for each instance of improper disposal of materials containing financial information. The Attorney General may

impose a civil penalty after notice to the person accused of violating Section 5-20 and an opportunity for that person to be heard in the matter. The Attorney General may file a civil action in the circuit court to recover any penalty imposed for a violation of Section 5-20. In addition to the authority to impose a civil penalty under this Section, the Attorney General may bring an action in the circuit court to remedy a violation of this Section, seeking any appropriate relief.

(c) Neither the State nor any municipality or county shall be held liable for the mishandling of information by a third party, including information from the Department or any other financial information of taxpayers.

(d) Any taxpayer aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in federal district court against a third party. A taxpayer may recover for each violation:

(1) against a third party that, by gross negligence, violates a provision of this Act, liquidated damages of \$5,000 or actual damages, whichever is greater;

(2) against a third party that intentionally or recklessly violates a provision of this Act, liquidated damages of \$10,000 or actual damages, whichever is greater;

(3) reasonable attorney's fees and costs, including expert witness fees and other litigation expenses; and

(4) other relief, including an injunction, as the State or federal court may deem appropriate.

Article 10. Local Government Revenue Recapture Certified Audit  
Pilot Program.

Section 10-5. Findings. The General Assembly finds that:

(1) Voluntary compliance is the cornerstone of an effective tax system.

(2) Despite attempts by the General Assembly, State taxes are not simple.

(3) Even the most diligent taxpayers, through mistake or inadvertence, may not pay all taxes due.

(4) The Department lacks the resources to audit the compliance of all taxpayers.

(5) Illinois certified public accountants provide valuable advice and assistance to Illinois taxpayers on State tax issues.

(6) A pilot program establishing a partnership between taxpayers, Illinois certified public accountants, and the Department will provide guidance to taxpayers and enhance voluntary compliance.

(7) A pilot project to establish a certified audit program to address underpayment of local occupation and use taxes would address concerns raised by units of local government.

Section 10-10. Purpose. The purpose of this Article is to



create a certified audit program under a 5-year pilot project that begins on January 1, 2021 and that is limited in scope to specifically address concerns related to the proper reporting and payment of local occupation and use taxes that are collected and distributed to municipalities and counties by the Department.

Section 10-15. Definitions. As used in this Article:

"Audit" means an agreed-upon procedures engagement in accordance with Statements on Standards for the Attestation Engagements (AICPA Professional Standards, AT-C Section 315 (Compliance Attest)).

"Certification program" means an instructional curriculum, examination, and process for certification, recertification, and revocation of certification of certified public accountants that is administered by the Department with the assistance of the Illinois CPA Society and that is officially approved by the Department to ensure that a certified public accountant possesses the necessary skills and abilities to successfully perform an attestation engagement for a limited-scope tax compliance review in a certified audit project under this Act.

"Department" means the Department of Revenue.

"Family member" means the following, whether by whole blood, half-blood, or adoption:

- (1) a parent or step-parent;

- (2) a child or step-child;
- (3) a grandparent or step-grandparent;
- (4) an aunt, uncle, great-aunt, or great-uncle;
- (5) a sibling;
- (6) a spouse or domestic partner; and
- (7) the spouse or domestic partner of any person referenced in items (1) through (5).

"Misallocation" means tax paid by the taxpayer and allocated to one unit of local government that should have been allocated to a different unit of local government. "Misallocation" does not include amounts overpaid by the taxpayer and therefore not owed to any unit of local government, nor amounts underpaid by the taxpayer and therefore not previously allocated to any unit of local government.

"Participating taxpayer" means any person subject to the revenue laws administered by the Department who is the subject of a tax compliance referral by a municipality, county, or third party, who enters into an engagement with a qualified practitioner for a limited-scope tax compliance review under this Act, and who is approved by the Department under the local government revenue recapture certified audit pilot project.

"Qualified practitioner" means a certified public accountant who is licensed or registered to perform accountancy activities in Illinois under Section 8.05 of the Illinois Public Accounting Act and who has met all requirements for the local government revenue recapture certified audit training

course, achieved the required score on the certification test as approved by the Department, and been certified by the Department. "Qualified practitioner" does not include a third party, as defined by Section 5-5 of this Act, or any employee, contractual employee, officer, manager, or director thereof, any person or persons owning in the aggregate more than 5% of such third party, or a person who is a family member of any person who is employed by or is an appointed or elected member of any corporate authorities, as defined in the Illinois Municipal Code.

Section 10-20. Local government revenue recapture certified audit project.

(a) The Department shall initiate a certified audit pilot project to further enhance tax compliance reviews performed by qualified practitioners and to encourage taxpayers to hire qualified practitioners at their own expense to review and report on certain aspects of their sales tax and use tax compliance in cases where the Department has notified the taxpayer that it has received a tax compliance referral from a municipality, county, or third party under this Act. The nature of the certified audit work performed by qualified practitioners shall be agreed-upon procedures of a Compliance Attestation in which the Department is the specified user of the resulting report. Qualified practitioners are prohibited from using information obtained from audit manuals, training

materials, or any other materials provided by the Department under this Act for any purpose other than to perform the tax compliance reviews under the certified audit pilot program under this Act.

The tax compliance reviews shall be limited in scope and may include only: (i) whether the taxpayer is reporting receipts in the proper jurisdiction; (ii) whether asset purchases by the taxpayer were taxed properly; (iii) an evaluation of sales reported as exempt from tax; (iv) whether the proper tax rate was charged; (v) whether the tax was properly reported as retailers' occupation tax or use tax; and (vi) any other factor that impacts the Department's allocation of sales and use tax revenues to the jurisdiction in which the taxpayer reports sales or use tax.

(b) As an incentive for taxpayers to incur the costs of a certified audit, the Department shall abate penalties due on any tax liabilities revealed by a certified audit, except that this authority to abate penalties shall not apply to any liability for taxes that were collected by the participating taxpayer but not remitted to the Department, nor shall the Department have the authority to abate fraud penalties.

(c) The certified audit pilot project shall apply only to taxpayers who have been notified that an audit referral has been received by the Department under this Act and only to occupation and use taxes administered and collected by the Department.

(d) The certified audit pilot project shall begin with audit referrals received on and after January 1, 2021. Upon obtaining proper certification, qualified practitioners may initiate certified audits beginning January 1, 2021.

Section 10-25. Practitioner responsibilities. Any practitioner responsible for planning, directing, or conducting a certified audit or reporting on a participating taxpayer's tax compliance shall be a qualified practitioner. For purposes of this Section, a qualified practitioner is responsible for:

(1) planning a certified audit when performing work that involves determining the objectives, scope, and methodology of the certified audit, when establishing criteria to evaluate matters subject to the review as part of the certified audit, when gathering information used in planning the certified audit, or when coordinating the certified audit with the Department;

(2) directing a certified audit when the work involves supervising the efforts or reviewing the work of others to determine whether it is properly accomplished and complete;

(3) conducting a certified audit when performing tests and procedures or field audit work necessary to accomplish the audit objectives in accordance with applicable professional standards;

(4) reporting on a participating taxpayer's tax compliance in a certified audit when determining report contents and substance or reviewing reports for technical content and substance prior to issuance; and

(5) answering questions by Department review staff, answering questions raised by the Informal Conference Board, and testifying in any administrative or court proceeding regarding the audit or report.

Section 10-30. Local government revenue recapture audit referral.

(a) A third party shall not refer a taxpayer to the Department for audit consideration unless the third party is registered with the Department pursuant to Section 5-35.

(b) If, based on a review of the financial information provided by the Department to a municipality or county, or provided by a municipality or county to a registered third party, the municipality or county discovers that a taxpayer may have underpaid local retailers' or service occupation taxes, then it may refer the matter to the Department for audit consideration. The tax compliance referral may be made only by the municipality, county, or third party and shall be made in the form and manner required by the Department, including any requirement that the referral be submitted electronically. The tax compliance referral shall, at a minimum, include proof of registration as a third party, a copy of a contract between the

third party and the county or municipality, the taxpayer's name, Department account identification number, mailing address, and business location, and the specific reason for the tax compliance referral, including as much detail as possible.

(c) The Department shall complete its evaluation of all audit referrals under this Act within 60 days after receipt of the referral and shall handle all audit referrals as follows:

(1) the Department shall evaluate the referral to determine whether it is sufficient to warrant further action based on the information provided in the referral, any other information the Department possesses, and audit selection procedures of the Department;

(2) if the Department determines that the referral is not actionable, then the Department shall notify the local government that it has evaluated the referral and has determined that no action is deemed necessary and provide the local government with an explanation for that decision;

(3) if the Department determines that the referral is actionable, then it shall determine whether the taxpayer is currently under audit or scheduled for audit;

(A) if the taxpayer is not currently under audit or scheduled for audit, the Department shall determine whether it will schedule the taxpayer for audit; and

(B) if the taxpayer is not under audit by the Department or scheduled for audit by the Department and the Department decides to schedule the taxpayer for

audit, then the Department shall notify the taxpayer that the Department has received an actionable audit referral on the taxpayer and issue a notice to the taxpayer as provided under subsection (d) of this Section.

(d) The notice to the taxpayer required by subparagraph (B) of paragraph (3) of subsection (c) shall include, but not be limited to, the following:

(1) that the taxpayer must either: (A) engage a qualified practitioner, at the taxpayer's expense, to complete a certified audit, limited in scope to the taxpayer's Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax liability, and the taxpayer's liability for any local retailers' or service occupation tax administered by the Department; or (B) be subject to audit by the Department;

(2) that, as an incentive, for taxpayers who agree to the limited-scope certified audit, the Department shall abate penalties as provided in Section 10-20; and

(3) A statement that reads: "[INSERT THE NAME OF THE ELECTED CHIEF EXECUTIVE OF THE CORPORATE AUTHORITY] has contracted with [INSERT THIRD PARTY] to review your Retailers' Occupation Tax, Use Tax, Service Occupation Tax, Service Use Tax, and any local retailers' or service occupation taxes reported to the Illinois Department of Revenue ("Department"). [INSERT THE NAME OF THE ELECTED



CHIEF EXECUTIVE OF THE CORPORATE AUTHORITY] and [INSERT THE THIRD PARTY] have selected and referred your business to the Department for a certified audit of your Retailers' Occupation Tax, Use Tax, Service Occupation Tax, Service Use Tax, and any local retailers' or service occupation taxes reported to the Department pursuant to the Local Government Revenue Recapture Act. The purpose of the audit is to verify that your business reported and submitted the proper Retailers' Occupation Tax, Use Tax, Service Occupation Tax, Service Use Tax, and any local retailers' or service occupation taxes administered by the Department. The Department is required to disclose your confidential financial information to [INSERT THE NAME OF THE ELECTED CHIEF EXECUTIVE OF THE CORPORATE AUTHORITY] and [INSERT THE THIRD PARTY]. Additional information can be accessed from the Department's website and publications for a basic overview of your rights as a Taxpayer. If you have questions regarding your business's referral to the Department for audit, please contact [CORPORATE AUTHORITY'S] mayor, village president, or any other person serving as [CORPORATE AUTHORITY'S] chief executive officer or chief financial officer. [INSERT THIRD PARTY] is prohibited from discussing this matter with you directly or indirectly in any manner regardless of who initiates the contact. If [INSERT THIRD PARTY] contacts you, please contact the Department."

(e) Within 90 days after notice by the Department, the taxpayer must respond by stating in writing whether it will or will not arrange for the performance of a certified audit under this Act. If the taxpayer states that it will arrange for the performance of a certified audit, then it must do so within 60 days after responding to the Department or within 90 days after notice by the Department, whichever comes first. If the taxpayer states that it will not arrange for the performance of a certified audit or if the taxpayer does not arrange for the performance of a certified audit within 180 days after notice by the Department, then the Department may schedule the taxpayer for audit by the Department.

(f) The certified audit must not be a contingent-fee engagement and must be completed in accordance with this Article 10.

Section 10-35. Notification by qualified practitioner.

(a) A qualified practitioner hired by a taxpayer who elects to perform a certified audit under Section 10-30 shall notify the Department of an engagement to perform a certified audit and shall provide the Department with the information the Department deems necessary to identify the taxpayer, to confirm that the taxpayer is not already under audit by the Department, and to establish the basic nature of the taxpayer's business and the taxpayer's potential exposure to Illinois occupation and use tax laws. The information provided in the notification

shall be submitted in the form and manner required by the Department and shall include the taxpayer's name, federal employer identification number or social security number, Department account identification number, mailing address, and business location, and the specific occupation and use taxes and period proposed to be covered by the engagement for the certified audit. In addition, the notice shall include the name, address, identification number, contact person, and telephone number of the engaged firm. An engagement for a qualified practitioner to perform a certified audit under this Act shall not be authorized by the Department unless the taxpayer received notice from the Department under subparagraph (b) of paragraph (3) of subsection (c) of Section 10-30.

(b) If the taxpayer has received notice of an audit referral from the Department and has not been issued a written notice of intent to conduct an audit, the taxpayer shall be a participating taxpayer and the Department shall so advise the qualified practitioner in writing within 10 days after receipt of the engagement notice. However, the Department may exclude a taxpayer from a certified audit or may limit the taxes or periods subject to the certified audit on the basis that: (i) the Department has previously conducted an audit; (ii) the Department is in the process of conducting an investigation or other examination of the taxpayer's records; (iii) the taxpayer has already been referred to the Department pursuant to Section

10-30 and the Department determined an audit referral is not actionable; (iv) the Department or a qualified practitioner has previously conducted an audit under Section 10-30 of this Act; or (v) for just cause.

(c) Within 30 days after receipt of the notice of qualification from the Department under subsection (b), the qualified practitioner shall contact the Department and submit, for review and agreement by the Department, a proposed audit plan and procedures. The Department may extend the time for submission of the plan and procedures for reasonable cause. The qualified practitioner shall initiate action to advise the Department that amendment or modification of the plan and procedures is necessary if the qualified practitioner's inspection reveals that the taxpayer's circumstances or exposure to the revenue laws is substantially different from those described in the engagement notice.

Section 10-40. Audit performance and review.

(a) Upon the Department's designation of the agreed-upon procedures to be followed by a practitioner in a certified audit, the qualified practitioner shall perform the engagement and shall timely submit a completed report to the Department in the form and manner required by the Department and professional standards. The report shall affirm completion of the agreed-upon procedures and shall provide any required disclosures.

(b) The Department shall review the report of the certified audit and shall accept it when it is determined to be complete by the qualified practitioner. Once the report is accepted by the Department, the Department shall issue a notice of proposed assessment reflecting the determination of any additional liability reflected in the report and shall provide the taxpayer with all the normal payment, protest, and appeal rights with respect to the liability, including the right to a review by the Informal Conference Board. In cases in which the report indicates an overpayment has been made, the taxpayer shall submit a properly executed claim for credit or refund to the Department. Otherwise, the certified audit report is a final and conclusive determination with respect to the tax and period covered. No additional assessment may be made by the Department for the specific taxes and period referenced in the report, except upon a showing of fraud or material misrepresentation. This determination shall not prevent the Department from collecting liabilities not covered by the report or from conducting an audit or investigation and making an assessment for additional tax, penalty, or interest for any tax or period not covered by the report.

(c) A notice of proposed assessment issued by the Department under this Act is subject to the statute of limitations for assessments under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, and any local retailers' or service

occupation tax, as appropriate, and local taxes collected on assessments issued shall be allocated to units of local government for the full period of the statute of limitations in accordance with those Acts and any applicable local retailers' or service occupation tax Act. The Department shall provide notice in writing to the municipality or county and the third party, if applicable, of any audit findings, determinations, or collections once finalized.

Claims for credit or refund filed by taxpayers under this Act are subject to the statute of limitations under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, and any local retailers' or service occupation tax Act, as appropriate, and any credit or refund of local taxes allowed to the taxpayer shall be de-allocated from units of local government for the full period of the statute of limitations in accordance with those Acts and any applicable local retailers' or service occupation tax Act.

With respect to misallocations discovered under this Act, the Department shall increase or decrease the amount allocated to a unit of local government by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the previous 6 months from the time a misallocation is discovered.

(d) Under no circumstances may a person, including a municipality or county or third party, other than the person

audited and his or her attorney, have any right to participate in an appeal or other proceeding regarding the audit, participate in settlement negotiations, challenge the validity of any settlement between the Department and any person, or review any materials, other than financial information as otherwise provided in this Act, that are subject to the confidentiality provisions of the underlying tax Act. In addition, the Department's determination of whether to audit a taxpayer or the result of the audit creates no justiciable cause of action, and any adjudication related to this program is limited to the taxpayer's rights in an administrative hearing held by the Department, an administrative hearing held by the Illinois Independent Tax Tribunal, or related to payments made under protest as provided in Section 2a.1 of the State Officers and Employees Money Disposition Act, as appropriate.

Section 10-45. Rules. To implement the certified audit project, the Department shall have authority to adopt rules, including, but not limited to:

(1) rules concerning the availability of the certification program required for participation in the project;

(2) rules concerning the requirements and basis for establishing just cause for approval or rejection of participation by taxpayers;

(3) rules setting forth procedures for assessment, collection, and payment of liabilities or refund of overpayments and provisions for taxpayers to obtain informal and formal review of certified audit results;

(4) rules concerning the nature, frequency, and basis for the Department's review of certified audits conducted by qualified practitioners, including the requirements for documentation, work-paper retention and access, and reporting; and

(5) rules setting forth requirements for conducting certified audits and for review of agreed-upon procedures.

Article 900. Amendatory Provisions.

Section 900-5. The Retailers' Occupation Tax Act is amended by changing Section 11 as follows:

(35 ILCS 120/11) (from Ch. 120, par. 450)

Sec. 11. All information received by the Department from returns filed under this Act, or from any investigation conducted under this Act, shall be confidential, except for official purposes, and any person, including a third party as defined in the Local Government Revenue Recapture Act, who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, including the Local Government Revenue



Recapture Act, shall be guilty of a Class B misdemeanor with a fine not to exceed \$7,500.

Nothing in this Act prevents the Director of Revenue from publishing or making available to the public the names and addresses of persons filing returns under this Act, or reasonable statistics concerning the operation of the tax by grouping the contents of returns so the information in any individual return is not disclosed.

Nothing in this Act prevents the Director of Revenue from divulging to the United States Government or the government of any other state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in administering this Act, provided that such other governmental agency agrees to divulge requested tax information to the Department.

The Department's furnishing of information derived from a taxpayer's return or from an investigation conducted under this Act to the surety on a taxpayer's bond that has been furnished to the Department under this Act, either to provide notice to such surety of its potential liability under the bond or, in order to support the Department's demand for payment from such surety under the bond, is an official purpose within the meaning of this Section.

The furnishing upon request of information obtained by the Department from returns filed under this Act or investigations conducted under this Act to the Illinois Liquor Control

Commission for official use is deemed to be an official purpose within the meaning of this Section.

Notice to a surety of potential liability shall not be given unless the taxpayer has first been notified, not less than 10 days prior thereto, of the Department's intent to so notify the surety.

The furnishing upon request of the Auditor General, or his authorized agents, for official use, of returns filed and information related thereto under this Act is deemed to be an official purpose within the meaning of this Section.

Where an appeal or a protest has been filed on behalf of a taxpayer, the furnishing upon request of the attorney for the taxpayer of returns filed by the taxpayer and information related thereto under this Act is deemed to be an official purpose within the meaning of this Section.

The furnishing of financial information to a municipality or county, upon request of the chief executive officer thereof, is an official purpose within the meaning of this Section, provided the municipality or county agrees in writing to the requirements of this Section. Information provided to municipalities and counties under this paragraph shall be limited to: (1) the business name; (2) the business address; (3) the standard classification number assigned to the business; (4) net revenue distributed to the requesting municipality or county that is directly related to the requesting municipality's or county's local share of the

proceeds under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act distributed from the Local Government Tax Fund, and, if applicable, any locally imposed retailers' occupation tax or service occupation tax; and (5) a listing of all businesses within the requesting municipality or county by account identification number and address. On and after July 1, 2015, the furnishing of financial information to municipalities and counties under this paragraph may be by electronic means. If the Department may furnish financial information to a municipality or county under this paragraph, then the chief executive officer of the municipality or county may, in turn, provide that financial information to a third party pursuant to the Local Government Revenue Recapture Act. However, the third party shall agree in writing to the requirements of this Section and meet the requirements of the Local Government Revenue Recapture Act.

Information so provided shall be subject to all confidentiality provisions of this Section. The written agreement shall provide for reciprocity, limitations on access, disclosure, and procedures for requesting information. For the purposes of furnishing financial information to a municipality or county under this Section, "chief executive officer" means the mayor of a city, the village board president of a village, the mayor or president of an incorporated town, the county executive of a county that has adopted the county

executive form of government, the president of the board of commissioners of Cook County, or the chairperson of the county board or board of county commissioners of any other county.

The Department may make available to the Board of Trustees of any Metro East Mass Transit District information contained on transaction reporting returns required to be filed under Section 3 of this Act that report sales made within the boundary of the taxing authority of that Metro East Mass Transit District, as provided in Section 5.01 of the Local Mass Transit District Act. The disclosure shall be made pursuant to a written agreement between the Department and the Board of Trustees of a Metro East Mass Transit District, which is an official purpose within the meaning of this Section. The written agreement between the Department and the Board of Trustees of a Metro East Mass Transit District shall provide for reciprocity, limitations on access, disclosure, and procedures for requesting information. Information so provided shall be subject to all confidentiality provisions of this Section.

The Director may make available to any State agency, including the Illinois Supreme Court, which licenses persons to engage in any occupation, information that a person licensed by such agency has failed to file returns under this Act or pay the tax, penalty and interest shown therein, or has failed to pay any final assessment of tax, penalty or interest due under this Act. The Director may make available to any State agency,

including the Illinois Supreme Court, information regarding whether a bidder, contractor, or an affiliate of a bidder or contractor has failed to collect and remit Illinois Use tax on sales into Illinois, or any tax under this Act or pay the tax, penalty, and interest shown therein, or has failed to pay any final assessment of tax, penalty, or interest due under this Act, for the limited purpose of enforcing bidder and contractor certifications. The Director may make available to units of local government and school districts that require bidder and contractor certifications, as set forth in Sections 50-11 and 50-12 of the Illinois Procurement Code, information regarding whether a bidder, contractor, or an affiliate of a bidder or contractor has failed to collect and remit Illinois Use tax on sales into Illinois, file returns under this Act, or pay the tax, penalty, and interest shown therein, or has failed to pay any final assessment of tax, penalty, or interest due under this Act, for the limited purpose of enforcing bidder and contractor certifications. For purposes of this Section, the term "affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. For purposes of this Section, an entity controls another entity if it owns, directly or individually, more than 10% of the voting securities of that entity. As used in this Section, the term "voting security" means a security that (1) confers upon

the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (2) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

The Director may make available to any State agency, including the Illinois Supreme Court, units of local government, and school districts, information regarding whether a bidder or contractor is an affiliate of a person who is not collecting and remitting Illinois Use taxes for the limited purpose of enforcing bidder and contractor certifications.

The Director may also make available to the Secretary of State information that a limited liability company, which has filed articles of organization with the Secretary of State, or corporation which has been issued a certificate of incorporation by the Secretary of State has failed to file returns under this Act or pay the tax, penalty and interest shown therein, or has failed to pay any final assessment of tax, penalty or interest due under this Act. An assessment is final when all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

The Director shall make available for public inspection in the Department's principal office and for publication, at cost, administrative decisions issued on or after January 1, 1995.

These decisions are to be made available in a manner so that the following taxpayer information is not disclosed:

(1) The names, addresses, and identification numbers of the taxpayer, related entities, and employees.

(2) At the sole discretion of the Director, trade secrets or other confidential information identified as such by the taxpayer, no later than 30 days after receipt of an administrative decision, by such means as the Department shall provide by rule.

The Director shall determine the appropriate extent of the deletions allowed in paragraph (2). In the event the taxpayer does not submit deletions, the Director shall make only the deletions specified in paragraph (1).

The Director shall make available for public inspection and publication an administrative decision within 180 days after the issuance of the administrative decision. The term "administrative decision" has the same meaning as defined in Section 3-101 of Article III of the Code of Civil Procedure. Costs collected under this Section shall be paid into the Tax Compliance and Administration Fund.

Nothing contained in this Act shall prevent the Director from divulging information to any person pursuant to a request or authorization made by the taxpayer or by an authorized representative of the taxpayer.

(Source: P.A. 98-1058, eff. 1-1-15; 99-517, eff. 6-30-16.)