

1 AN ACT concerning local government.

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

4 Article 1. Short Title.

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

7 Article 5. Local Government Revenue Recapture.

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

9 "Department" means the Department of Revenue.

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

12 (1) a parent or step-parent;

13 (2) a child or step-child;

14 (3) a grandparent or step-grandparent;

15 (4) an aunt, uncle, great-aunt, or great-uncle;

16 (5) a sibling;

17 (6) a spouse or domestic partner; and

18 (7) the spouse or domestic partner of any person
19 referenced in items (1) through (5).

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

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

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

8 "Misallocation" means tax paid by the taxpayer and
9 allocated to one unit of local government that should have been
10 allocated to a different unit of local government.

11 "Misallocation" does not include amounts overpaid by the
12 taxpayer and therefore not owed to any unit of local
13 government, nor amounts underpaid by the taxpayer and therefore
14 not previously allocated to any unit of local government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Section 5-35. Third party registration.

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

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

6 (1) the name and address of the applicant;

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

10 (3) valid and updated contact information;

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

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

18 (6) an annual certification of process letter that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Section 5-37. Insurance policy requirement. A third party
19 is required to file and maintain in force an insurance policy
20 issued by an insurance company authorized to transact fidelity
21 and surety business in the State of Illinois. The insurance
22 policy shall be for coverage of potential legal claims,
23 including, by not limited to, penalties set forth under Section
24 5-60, embezzlement, dishonesty, fraud, omissions or errors, or
25 other financial wrongdoing in the course of providing services.

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

14 Section 5-40. Revocation or suspension of certification.

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

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

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

9 Section 5-50. Audit referrals; restrictions.

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

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

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

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

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

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

15 Section 5-60. Penalties.

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

19 (b) Any third party who violates Section 5-20 is subject to
20 a civil penalty of not more than \$10,000 for each taxpayer with
21 respect to whom financial information is improperly disclosed,
22 profited from, or disposed of in violation of that Section. The
23 Attorney General may impose a civil penalty not to exceed
24 \$50,000 for each instance of improper disposal of materials
25 containing financial information. The Attorney General may

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

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

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

17 (1) against a third party that, by gross negligence,
18 violates a provision of this Act, liquidated damages of
19 \$5,000 or actual damages, whichever is greater;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 "Department" means the Department of Revenue.

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

25 (1) a parent or step-parent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Section 10-35. Notification by qualified practitioner.

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

1 shall be submitted in the form and manner required by the
2 Department and shall include the taxpayer's name, federal
3 employer identification number or social security number,
4 Department account identification number, mailing address, and
5 business location, and the specific occupation and use taxes
6 and period proposed to be covered by the engagement for the
7 certified audit. In addition, the notice shall include the
8 name, address, identification number, contact person, and
9 telephone number of the engaged firm. An engagement for a
10 qualified practitioner to perform a certified audit under this
11 Act shall not be authorized by the Department unless the
12 taxpayer received notice from the Department under
13 subparagraph (b) of paragraph (3) of subsection (c) of Section
14 10-30.

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

1 10-30 and the Department determined an audit referral is not
2 actionable; (iv) the Department or a qualified practitioner has
3 previously conducted an audit under Section 10-30 of this Act;
4 or (v) for just cause.

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

17 Section 10-40. Audit performance and review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Article 900. Amendatory Provisions.

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

15 (35 ILCS 120/11) (from Ch. 120, par. 450)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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