**Section 2525.50 Overpayments Concerning the Annual Privilege and Retaliatory Taxes**

a) If the requirements of this Part are met, overpayments will be recorded on the current balance of the privilege or retaliatory tax account maintained by the Department upon the filing of an annual privilege or retaliatory tax return showing overpayments, or pursuant to the filing of an amended privilege or retaliatory tax return in accordance with Section 2525.70 of this Part. All recorded overpayments are subject to subsequent auditing and adjustment by the Department pursuant to subsection (b) of this Section.

b) Upon notice to the company, the Department shall adjust all overpayments recorded pursuant to this Section if upon verification and audit the recorded overpayment is incorrect and/or not the result of a mistake of fact, error in calculation, or an erroneous interpretation of a statute of this or any other state. The company may contest the Department's stated adjustment in writing which includes the following information:

1) The company's name and FEIN#;

2) The company's reason(s) why the stated adjustment is incorrect; and

3) A contact person for the company.

c) If after the filing of a written response pursuant to subsection (b) of this Section the company and the Department can not resolve the matter, the company may request a hearing pursuant to Section 2525.110 of this Part for the purpose of determining the correct amount of the adjustment.

d) In addition to subsection (a) of this Section an overpayment will be recorded on the current balance of the privilege or retaliatory tax account maintained by the Department as a result of an audit by the Department which indicates that there has been an overpayment.

e) All overpayments recorded pursuant to subsection (a) of this Section must result from the following:

1) A mistake of fact including, but not limited to:

A) Applying a previous year's corporate and/or replacement income tax overpayment in the current year's tax return; and

B) Using premium written in the state of incorporation to determine the state of incorporation's basis for retaliatory tax purposes; or

2) An error in calculation including, but not limited to:

A) An incorrect decimal assignment; and

B) An erroneous sum, result or total arising out of a mathematical function, operation or equation; or

3) An erroneous interpretation of a statute of this or any other state, including, but not limited to:

A) A misapplication of a statute;

B) A misunderstanding of an equivocal term or phrase used in a statute.

However, an erroneous interpretation of a statute of this or any other state does not include a finding of unconstitutionality of the statute in question. Additionally, a mistake in fact shall not include the assertion that a statute is unconstitutional on its face.

f) Overpayment pursuant to this Section will automatically be used to offset future retaliatory or privilege tax liabilities. Alternatively, cash refunds can be received pursuant to Section 2525.80 of this Part or the overpayment may be transferred pursuant to Section 2525.90 of this Part upon written notification to the Department as set forth in those Sections. However, the transferred overpayment may only be used to offset future retaliatory and privilege taxes.

g) Upon written notice to the company at its last known address any overpayment that has not been used and has not been transferred will be removed from the Department's records after 7 years and be considered unclaimed monies under the Uniform Disposition of Unclaimed Property Act [765 ILCS 1025].

(Source: Amended at 24 Ill. Reg. 10235, effective July 1, 2000)