



Sen. Michael E. Hastings

Filed: 4/19/2021

10200SB1138sam001

LRB102 04968 HLH 25447 a

1 AMENDMENT TO SENATE BILL 1138

2 AMENDMENT NO. _____. Amend Senate Bill 1138 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Local Government Revenue Recapture Act is
5 amended by changing Sections 5-5, 5-10, 5-15, 5-20, 5-30,
6 5-35, 5-37, 10-15, 10-20, 10-30, 10-35, and 10-40 as follows:

7 (50 ILCS 355/5-5)

8 Sec. 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 (4.1) a niece, nephew, great-niece, or great-nephew;

- 1 (5) a sibling;
- 2 (6) a spouse or domestic partner; and
- 3 (7) the spouse or domestic partner of any person
- 4 referenced in items (1) through (5).

5 "Financial information" means the information provided to

6 the municipality or county by the Department under Section 11

7 of the Retailers' Occupation Tax Act that is reported to the

8 Department by a business located in a given municipality or

9 county.

10 "Person" means an individual, sole proprietorship,

11 corporation, registered limited liability partnership, limited

12 liability company, partnership, professional service

13 corporation, or any other form of organization.

14 "Misallocation" means tax paid by the taxpayer and

15 allocated to one unit of local government that should have

16 been allocated to a different unit of local government. This

17 includes misallocations discovered by a unit of local

18 government through the tax location verification process under

19 Section 8-11-16 of the Illinois Municipal Code and

20 misallocations discovered by the Department other than through

21 an audit of the taxpayer. "Misallocation" does not, however,

22 include any amount reported by a taxpayer in an amended return

23 or any amount discovered in an audit of the taxpayer by the

24 Department or discovered in an audit of the taxpayer by a

25 qualified practitioner under Article 10 of this Act.

26 "Misallocation" also does not include amounts overpaid by the

1 taxpayer and therefore not owed to any unit of local
2 government, nor amounts underpaid by the taxpayer and
3 therefore not previously allocated to any unit of local
4 government.

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

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

13 (Source: P.A. 101-628, eff. 6-1-20.)

14 (50 ILCS 355/5-10)

15 Sec. 5-10. Contracts with third parties. A municipality or
16 county that receives a disbursement of tax proceeds from the
17 Department may contract with a third party for the purpose of
18 ensuring that the municipality or county receives the correct
19 disbursement from the Department and monitoring disbursements.
20 The third party may not contact the Department on behalf of the
21 municipality or county, but instead must work directly with
22 the municipality or county to acquire financial information. A
23 third party may, however, directly access a municipality's or
24 county's financial information that is provided by the
25 Department by electronic means under Section 11 of the

1 Retailers' Occupation Tax Act, provided that the third party
2 meets all other conditions under this Section for the receipt
3 of financial information. To be eligible to receive financial
4 information from the municipality or county, the third party
5 must:

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

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

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

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

21 (Source: P.A. 101-628, eff. 6-1-20.)

22 (50 ILCS 355/5-15)

23 Sec. 5-15. Financial information. The third party may use
24 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
2 Act 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
6 agreement with the municipality or county or who have an
7 existing contract with the municipality or county.

8 (Source: P.A. 101-628, eff. 6-1-20.)

9 (50 ILCS 355/5-20)

10 Sec. 5-20. Retention, collection, disclosure, and
11 destruction of financial information.

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

16 (1) if the taxpayer is not referred to the Department,
17 within 30 days after receipt of the taxpayer's financial
18 information from either the municipality or county, unless
19 the third party is monitoring disbursements from the
20 Department on an ongoing basis for a municipality or
21 county, in which case, the financial information shall be
22 destroyed no later than 3 years after receipt; or

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

1 (b) No third party in possession of financial information
2 may sell, lease, trade, market, or otherwise utilize or profit
3 from a taxpayer's financial information. The ~~, except for a~~
4 ~~fee as negotiated by the~~ municipality or county may, however,
5 negotiate a fee with the third party. The fee may be in the
6 form of a contingency fee for a percentage of the amount of
7 additional distributions the municipality or county receives
8 for no more than 3 years following the first disbursement to
9 the municipality or county as a result of the services of the
10 third party under this Act.

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

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

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

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

26 (2) in the case of electronic media and other

1 non-paper media containing information, destroying or
2 erasing so that information cannot practicably be read,
3 reconstructed, or otherwise utilized by the third party or
4 others.

5 (Source: P.A. 101-628, eff. 6-1-20.)

6 (50 ILCS 355/5-30)

7 Sec. 5-30. Posting results. Annually, the third party
8 shall provide the municipality or county with a final summary
9 of the review for publication. It is the responsibility of the
10 third party to ensure that this summary includes no personal
11 or identifying information of taxpayers and that all such
12 taxpayer information is kept confidential. If the summary
13 includes any discussion of tax revenue, it shall include only
14 aggregate amounts by tax type, and shall in no way include
15 information about an individual return or an individual
16 taxpayer, even with identifying information redacted. No
17 aggregated data may be published that includes taxpayer
18 information for 4 or fewer taxpayers. In addition, due to the
19 preliminary nature of such a summary based only on unaudited
20 financial information, no claim of specific tax savings or
21 revenue generation may be made in the summary.

22 (Source: P.A. 101-628, eff. 6-1-20.)

23 (50 ILCS 355/5-35)

24 Sec. 5-35. Third party registration.

1 (a) Beginning on January 1, 2021, no person shall engage
2 in business as a third party pursuant to this Act in this State
3 without first having registered with the Department.
4 Application for registration or renewal of registration shall
5 be made to the Department, by electronic means, in a form and
6 at the time prescribed by the Department. Each applicant for
7 registration or renewal of registration under this Section
8 shall furnish to the Department, in an electronic format
9 established by the Department, the following information:

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

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

14 (3) valid and updated contact information;

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

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

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

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

26 (B) contains findings that, after due diligence,

1 the author is of the opinion that:

2 (i) the third party's confidentiality
3 standards for storing encrypted data at rest,
4 using a cryptographic algorithm, conform to
5 Security Level 1 of the Federal Information
6 Processing Standard (FIPS) Publication 140-2, or
7 conform to similar security requirements contained
8 in any successor publication;

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

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

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

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

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

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

26 The annual registration fee payable to the Department for

1 each third party shall be \$15,000. The fee shall be deposited
2 into the Tax Compliance and Administration Fund and shall be
3 used for the cost of administering the certified audit pilot
4 project under Article 10.

5 Each applicant shall pay the fee to the Department at the
6 time of submitting its application or renewal to the
7 Department. The Department may require an applicant under this
8 Section to electronically file and pay the fee.

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

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

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

25 (3) a person, if any employee, contractual employee,
26 officer, manager, or director thereof, or any person or

1 persons owning in the aggregate more than 5% thereof, is
2 not or would not be eligible to receive a certificate of
3 registration under this Act or a license under the
4 Illinois Public Accounting Act for any reason;

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

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

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

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

18 (c) The Department shall begin accepting applications no
19 later than January 1, 2021. Upon receipt of an application and
20 registration fee in proper form from a person who is eligible
21 to register as a third party under this Act, the Department
22 shall issue, within 60 days after receipt of an application, a
23 certificate of registration to such applicant in such form as
24 prescribed by the Department. That certificate of registration
25 shall permit the applicant to whom it is issued to engage in
26 business as a third party under this Act. All certificates of

1 registration issued by the Department under this Section shall
2 be valid for a period not to exceed one year after issuance
3 unless sooner revoked or suspended as provided in this Act. No
4 certificate of registration issued under this Section is
5 transferable or assignable. A person who obtains a certificate
6 of registration as a third party who ceases to do business as
7 specified in the certificate of registration, or who never
8 commenced business, or whose certificate of registration is
9 suspended or revoked, shall immediately surrender the
10 certificate of registration to the Department.

11 (d) Any person aggrieved by any decision of the Department
12 under this Section may, within 60 days after notice of the
13 decision, protest and request a hearing. Upon receiving a
14 request for a hearing, the Department shall give written
15 notice to the person requesting the hearing of the time and
16 place fixed for the hearing and shall hold a hearing and then
17 issue its final administrative decision in the matter to that
18 person within 60 days after the date of the hearing or at a
19 later date upon agreement of all of the parties. In the absence
20 of a protest and request for a hearing within 60 days, the
21 Department's decision shall become final without any further
22 determination being made or notice given.

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

26 (Source: P.A. 101-628, eff. 6-1-20.)

1 (50 ILCS 355/5-37)

2 Sec. 5-37. Insurance policy requirement. A third party is
3 required to file and maintain in force an insurance policy
4 issued by an insurance company authorized to transact fidelity
5 and surety business in the State of Illinois. The insurance
6 policy shall be for coverage of potential legal claims,
7 including, but ~~by~~ not limited to, penalties set forth under
8 Section 5-60, embezzlement, dishonesty, fraud, omissions or
9 errors, or other financial wrongdoing in the course of
10 providing services. The policy shall be ~~in the form prescribed~~
11 ~~by the Department~~ in the sum of \$500,000. The policy shall be
12 continuous in form and run concurrently with the original and
13 each renewal certification period unless terminated by the
14 insurance company. An insurance company may terminate a policy
15 and avoid further liability by filing a 60-day notice of
16 termination with the Department and at the same time sending
17 the same notice to the licensee. A licensee that receives a
18 notice of termination must promptly notify each municipality
19 and county with whom it has a contract under this Act of the
20 notice of termination. A license shall be canceled on the
21 termination date of the policy unless a new policy is filed
22 with the Department and becomes effective at the termination
23 date of the prior policy. If a policy has been canceled under
24 this Section, the third party must file a new application and
25 will be considered a new applicant if it obtains a new policy.

1 (Source: P.A. 101-628, eff. 6-1-20.)

2 (50 ILCS 355/10-15)

3 Sec. 10-15. Definitions. As used in this Article:

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

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

18 "Department" means the Department of Revenue.

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

21 (1) a parent or step-parent;

22 (2) a child or step-child;

23 (3) a grandparent or step-grandparent;

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

25 (4.1) a niece, nephew, great-niece, or great-nephew;

- 1 (5) a sibling;
- 2 (6) a spouse or domestic partner; and
- 3 (7) the spouse or domestic partner of any person
- 4 referenced in items (1) through (5).

5 "Misallocation" means tax paid by the taxpayer and

6 allocated to one unit of local government that should have

7 been allocated to a different unit of local government. This

8 includes misallocations discovered by a unit of local

9 government through the tax location verification process under

10 Section 8-11-16 of the Illinois Municipal Code and

11 misallocations discovered by the Department other than through

12 an audit of the taxpayer. "Misallocation" does not, however,

13 include any amount reported by a taxpayer in an amended return

14 or any amount discovered in an audit of the taxpayer by the

15 Department or discovered in an audit of the taxpayer by a

16 qualified practitioner under Article 10 of this Act.

17 "Misallocation" also does not include amounts overpaid by the

18 taxpayer and therefore not owed to any unit of local

19 government, nor amounts underpaid by the taxpayer and

20 therefore not previously allocated to any unit of local

21 government.

22 "Participating taxpayer" means any person subject to the

23 revenue laws administered by the Department who is the subject

24 of a tax compliance referral by a municipality, county, or

25 third party, who enters into an engagement with a qualified

26 practitioner for a limited-scope tax compliance review under

1 this Act, and who is approved by the Department under the local
2 government revenue recapture certified audit pilot project.

3 "Qualified practitioner" means a certified public
4 accountant who is licensed or registered to perform
5 accountancy activities in Illinois under Section 8.05 of the
6 Illinois Public Accounting Act and who has met all
7 requirements for the local government revenue recapture
8 certified audit training course, achieved the required score
9 on the certification test as approved by the Department, and
10 been certified by the Department. "Qualified practitioner"
11 does not include a third party, as defined by Section 5-5 of
12 this Act, or any employee, contractual employee, officer,
13 manager, or director thereof, any person or persons owning in
14 the aggregate more than 5% of such third party, or a person who
15 is a family member of any person who is employed by or is an
16 appointed or elected member of any corporate authorities, as
17 defined in the Illinois Municipal Code.

18 (Source: P.A. 101-628, eff. 6-1-20; revised 8-20-20.)

19 (50 ILCS 355/10-20)

20 Sec. 10-20. Local government revenue recapture certified
21 audit project.

22 (a) The Department shall initiate a certified audit pilot
23 project to further enhance tax compliance reviews performed by
24 qualified practitioners and to encourage taxpayers to hire
25 qualified practitioners at their own expense to review and

1 report on certain aspects of their sales tax and use tax
2 compliance in cases where the Department has notified the
3 taxpayer that it has received a tax compliance referral from a
4 municipality, county, or third party under this Act. The
5 nature of the certified audit work performed by qualified
6 practitioners shall be agreed-upon procedures of a Compliance
7 Attestation in which the Department is the specified user of
8 the resulting report. Qualified practitioners are prohibited
9 from using information obtained from audit manuals, training
10 materials, or any other materials provided by the Department
11 under this Act for any purpose other than to perform the tax
12 compliance reviews under the certified audit pilot program
13 under this Act.

14 The tax compliance reviews shall be limited in scope and
15 may include only: (i) whether the taxpayer is reporting
16 receipts in the proper jurisdiction; (ii) whether tangible
17 personal property ~~asset~~ purchases that were used or consumed
18 by the taxpayer were taxed properly; (iii) an evaluation of
19 sales reported as exempt from tax; (iv) whether the proper tax
20 rate was charged; (v) whether the tax was properly reported as
21 retailers' occupation tax or use tax; and (vi) any other
22 factor that impacts the Department's allocation of sales and
23 use tax revenues to the jurisdiction in which the taxpayer
24 reports sales or use tax.

25 (b) As an incentive for taxpayers to incur the costs of a
26 certified audit, the Department shall abate penalties due on

1 any tax liabilities revealed by a certified audit, except that
2 this authority to abate penalties shall not apply to any
3 liability for taxes that were collected by the participating
4 taxpayer but not remitted to the Department, nor shall the
5 Department have the authority to abate fraud penalties.

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

11 (c-5) The Department shall charge a fee of \$2,500 to each
12 participant in the certification program under this Article.

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

17 (Source: P.A. 101-628, eff. 6-1-20.)

18 (50 ILCS 355/10-30)

19 Sec. 10-30. Local government revenue recapture audit
20 referral.

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

24 (b) If, based on a review of the financial information
25 provided by the Department to a municipality or county, or

1 provided by a municipality or county to a registered third
2 party, the municipality or county discovers that a taxpayer
3 may have underpaid local retailers' or service occupation
4 taxes, then it may refer the matter to the Department for audit
5 consideration. The tax compliance referral may be made only by
6 the municipality, county, or third party and shall be made in
7 the form and manner required by the Department, including any
8 requirement that the referral be submitted electronically. The
9 tax compliance referral shall, at a minimum, include proof of
10 registration as a third party, a copy of a contract between the
11 third party and the county or municipality, the taxpayer's
12 name, Department account identification number, mailing
13 address, and business location, and the specific reason for
14 the tax compliance referral, including as much detail as
15 possible.

16 (c) The Department shall complete its evaluation of all
17 audit referrals under this Act within 90 ~~60~~ days after receipt
18 of the referral and shall handle all audit referrals as
19 follows:

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

25 (2) if the Department determines that the referral is
26 not actionable, then the Department shall notify the local

1 government that it has evaluated the referral and has
2 determined that no action is deemed necessary and provide
3 the local government with an explanation for that
4 decision, including, but not limited to an explanation
5 that (i) the Department has previously conducted an audit;
6 (ii) the Department is in the process of conducting an
7 investigation or other examination of the taxpayer's
8 records; (iii) the taxpayer has already been referred to
9 the Department and the Department determined an audit
10 referral is not actionable; (iv) the Department or a
11 qualified practitioner has previously conducted an audit
12 after referral under this Section 10-30; or (v) for just
13 cause;

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

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

22 (B) if the taxpayer is not under audit by the
23 Department ~~or scheduled for audit by the Department~~
24 and the Department decides under subparagraph (A) not
25 to schedule the taxpayer for audit by the Department,
26 then the Department shall notify the taxpayer that the

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

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

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

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

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

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

25 (e) Within 90 days after notice by the Department, the
26 taxpayer must respond by stating in writing whether it will or

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

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

14 (Source: P.A. 101-628, eff. 6-1-20.)

15 (50 ILCS 355/10-35)

16 Sec. 10-35. Notification by qualified practitioner.

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

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

1 ~~to Section 10-30 and the Department determined an audit~~
2 ~~referral is not actionable; (iv) the Department or a qualified~~
3 ~~practitioner has previously conducted an audit under Section~~
4 ~~10-30 of this Act; 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
11 cause. The qualified practitioner shall initiate action to
12 advise the Department that amendment or modification of the
13 plan and procedures is necessary if the qualified
14 practitioner's inspection reveals that the taxpayer's
15 circumstances or exposure to the revenue laws is substantially
16 different from those described in the engagement notice.

17 (Source: P.A. 101-628, eff. 6-1-20.)

18 (50 ILCS 355/10-40)

19 Sec. 10-40. Audit performance and review.

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

1 the agreed-upon procedures and shall provide any required
2 disclosures.

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

25 (c) Any ~~A notice of proposed~~ assessment issued by the
26 Department under this Act is subject to the statute of

1 limitations for assessments under the Retailers' Occupation
2 Tax Act, the Use Tax Act, the Service Occupation Tax Act, the
3 Service Use Tax Act, and any local retailers' or service
4 occupation tax, as appropriate, and local taxes collected on
5 assessments issued shall be allocated to units of local
6 government for the full period of the statute of limitations
7 in accordance with those Acts and any applicable local
8 retailers' or service occupation tax Act. The Department shall
9 provide notice in writing to the municipality or county and
10 the third party, if applicable, of any audit findings,
11 determinations, or collections once finalized, but limited to
12 the amount of additional liability, if any, for distribution
13 to the municipality or county as part of the municipality's or
14 county's share of the State Retailers' Occupation Tax or
15 Service Occupation Tax or under the municipality's or county's
16 locally-imposed retailer's or service occupation tax.

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

1 If a reallocation of tax from one unit of local government
2 to another occurs as a result of an amended return filed by a
3 taxpayer or an audit of a taxpayer, the Department shall make
4 the reallocation for the full period of the statute of
5 limitations under the Retailer's Occupation Tax Act, the Use
6 Tax Act, the Service Occupation Tax Act, the Service Use Tax
7 Act, and any applicable local retailer's or service occupation
8 tax Act.

9 With respect to misallocations discovered under this Act,
10 the Department shall increase or decrease the amount allocated
11 to a unit of local government by an amount necessary to offset
12 any misallocation of previous disbursements. The offset amount
13 shall be the amount erroneously disbursed within the previous
14 6 months from the time a misallocation is discovered.

15 (d) Under no circumstances may a person, including a
16 municipality or county or third party, other than the person
17 audited and his or her attorney, have any right to participate
18 in an appeal or other proceeding regarding the audit,
19 participate in settlement negotiations, challenge the validity
20 of any settlement between the Department and any person, or
21 review any materials, other than financial information as
22 otherwise provided in this Act, that are subject to the
23 confidentiality provisions of the underlying tax Act. In
24 addition, the Department's determination of whether to audit a
25 taxpayer or the result of the audit creates no justiciable
26 cause of action, and any adjudication related to this program

1 is limited to the taxpayer's rights in an administrative
2 hearing held by the Department, an administrative hearing held
3 by the Illinois Independent Tax Tribunal, or related to
4 payments made under protest as provided in Section 2a.1 of the
5 State Officers and Employees Money Disposition Act, as
6 appropriate.

7 (Source: P.A. 101-628, eff. 6-1-20.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.".