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LRB102 15982 HLH 30344 a

1 AMENDMENT TO SENATE BILL 1794

2 AMENDMENT NO. _____. Amend Senate Bill 1794 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Local Government Taxpayers' Bill of Rights
5 Act is amended by changing Section 30 as follows:

6 (50 ILCS 45/30)

7 Sec. 30. Statute of limitations. Units of local government
8 have an obligation to review tax returns in a timely manner and
9 issue any determination of tax due as promptly as possible so
10 that taxpayers may make timely corrections of future returns
11 and minimize any interest charges applied to tax
12 underpayments. Each unit of local government must provide
13 appropriate statutes of limitation for the determination and
14 assessment of taxes covered by this Act, provided, however,
15 that a statute of limitations may not exceed the following:

16 (1) For utility taxes, in the case of a public utility

1 serving more than 3,000,000 retail customers in Illinois,
2 no ~~No~~ notice of determination of tax due or assessment may
3 be issued more than 7 4 years after the end of the calendar
4 year for which the return for the period was filed or the
5 end of the calendar year in which the return for the period
6 was due, whichever occurs later. In the case of a public
7 utility other than a public utility serving more than
8 3,000,000 retail customers in Illinois, no notice of
9 determination of tax due or assessment may be issued more
10 than 5 years after the end of the calendar year for which
11 the return for the period was filed or the end of the
12 calendar year in which the return for the period was due,
13 whichever occurs later. An audit or review that is timely
14 performed under Section 35 of this Act or Section 8-11-2.5
15 of the Illinois Municipal Code shall toll the applicable
16 7-year or 5-year period.

17 (1.5) Except for utility taxes under paragraph (1), no
18 notice of determination of tax due or assessment may be
19 issued more than 4 years after the end of the calendar year
20 for which the return for the period was filed or the end of
21 the calendar year in which the return for the period was
22 due, whichever occurs later.

23 (2) Except for utility taxes under paragraph (1), if
24 ~~If~~ any tax return was not filed or if during any 4-year
25 period for which a notice of tax determination or
26 assessment may be issued by the unit of local government

1 the tax paid or remitted was less than 75% of the tax due
2 for that period, the statute of limitations shall be no
3 more than 6 years after the end of the calendar year in
4 which the return for the period was due or the end of the
5 calendar year in which the return for the period was
6 filed, whichever occurs later. In the event that a unit of
7 local government fails to provide a statute of
8 limitations, the maximum statutory period provided in this
9 Section applies.

10 (3) The changes to this Section made by this
11 amendatory Act of the 102nd General Assembly do not revive
12 any determination and assessment of tax due where the
13 statute of limitations has expired, but do extend the
14 current statute of limitations for the determination and
15 assessment of taxes that have not yet expired.

16 This Section does not place any limitation on a unit of
17 local government if a fraudulent tax return is filed.

18 (Source: P.A. 91-920, eff. 1-1-01.)

19 Section 10. The Illinois Municipal Code is amended by
20 changing Section 8-11-2.5 as follows:

21 (65 ILCS 5/8-11-2.5)

22 Sec. 8-11-2.5. Municipal tax review; requests for
23 information.

24 (a) If a municipality has imposed a tax under Section

1 8-11-2, then the municipality may conduct an audit of tax
2 receipts collected from the public utility that is subject to
3 the tax or that collects the tax from purchasers on behalf of
4 the municipality to determine whether the amount of tax that
5 was paid by the public utility was accurate.

6 (b) Not more than once annually for a public utility
7 servng 200,000 or more customers in Illinois, and not more
8 than once every 2 years for a public utility servng fewer than
9 200,000 customers in Illinois, a municipality that has imposed
10 a tax under this Act may, subject to the limitations and
11 protections stated in ~~Section 16-122 of the Public Utilities~~
12 ~~Act and in~~ the Local Government Taxpayers' Bill of Rights Act,
13 make a written request via email to an email address provided
14 by the utility for any information from a utility in the format
15 maintained by the public utility in the ordinary course of its
16 business that the municipality reasonably requires in order to
17 perform an audit under subsection (a). The information that
18 may be requested by the municipality includes, without
19 limitation:

20 (1) in an electronic format used by the public utility
21 in the ordinary course of its business, the
22 premises-specific and other information database used by
23 the public utility to determine the amount of tax due to
24 the municipality; provided, however, that a public utility
25 that is an electric utility may not provide
26 customer-specific information ~~, if the municipality has~~

1 ~~requested customer specific billing, usage, and load shape~~
2 ~~data from a public utility that is an electric utility and~~
3 ~~has not provided the electric utility with the verifiable~~
4 ~~authorization required by Section 16-122 of the Public~~
5 ~~Utilities Act, then the electric utility shall remove from~~
6 ~~the database all customer specific billing, usage, and~~
7 ~~load shape data before providing it to the municipality;~~
8 ~~and~~

9 (2) information related to each premises address that
10 the public utility's records indicate:

11 (A) is located in the municipality;

12 (B) is located in an adjacent unincorporated
13 municipality identified by the requesting
14 municipality; or

15 (C) is located in one of a list of zip codes
16 provided by the requesting municipality that include
17 areas within the requesting municipality's boundaries;
18 and

19 (3) for each address identified in paragraph (2):

20 (A) the premises address and zip code;

21 (B) classification of the premises as designated
22 by the public utility (e.g., residential, commercial,
23 industrial);

24 (C) first date of service; and

25 (D) for each month of service in the current year
26 (up to one month prior to the date of the request by

1 the municipality) and for the previous 10 calendar
2 years:

3 (i) the amount of the utility service used,
4 measured in gross therms, kilowatts, minutes, or
5 other units of measurement;

6 (ii) total taxable charges;

7 (iii) the total tax collected and remitted;

8 (iv) the municipal jurisdiction for tax
9 collection and remittance; and

10 (v) whether the customer is exempt from
11 municipal tax. in a format used by the public
12 ~~utility in the ordinary course of its business,~~
13 ~~summary data, as needed by the municipality, to~~
14 ~~determine the unit consumption of utility services~~
15 ~~by providing the gross therms, kilowatts, minutes,~~
16 ~~or other units of measurement being taxed within~~
17 ~~the municipal jurisdiction and the gross revenues~~
18 ~~collected and the associated taxes assessed.~~

19 (c) Each public utility must provide the information
20 requested under subsection (b) within 90 days after the date
21 of the request.+

22 ~~(1) 60 days after the date of the request if the~~
23 ~~population of the requesting municipality is 500,000 or~~
24 ~~less; or~~

25 ~~(2) 90 days after the date of the request if the~~
26 ~~population of the requesting municipality exceeds 500,000.~~

1 The time in which a public utility must provide the
2 information requested under subsection (b) may be extended by
3 an agreement between the municipality and the public utility.
4 If the public utility fails to respond to the request for
5 information with complete information within the timeline
6 established by this Section, the public utility shall be
7 liable to the municipality for a penalty of \$1,000 for each day
8 it fails to produce the requested information. Those penalties
9 shall be assessed by the municipality, but may be reduced or
10 vacated by the municipality or a court of competent
11 jurisdiction upon demonstration that the public utility's
12 failure to provide the requested information within the
13 timeline established by this Section resulted from good cause.
14 For the purposes of this Section, for the period ending on
15 December 31 of the year ending 3 years from the effective date
16 of this amendatory Act of the 102nd General Assembly, a
17 utility that did not have records retention beyond 4 years
18 shall not be penalized for records it does not have in its
19 possession due to the change in the statute of limitations
20 effectuated by the enactment of this amendatory Act of the
21 102nd General Assembly. For utilities with fewer than
22 3,000,000 retail customers in Illinois, the maximum total
23 penalty pursuant to this Section (c) shall not exceed \$50,000.
24 ~~If a public utility receives, during a single month,~~
25 ~~information requests from more than 2 municipalities, or the~~
26 ~~aggregate population of the requesting municipalities is~~

1 ~~100,000 customers or more, the public utility is entitled to~~
2 ~~an additional 30 days to respond to those requests.~~

3 (d) If an audit by the municipality or its agents finds an
4 error by the public utility in the amount of taxes paid by the
5 public utility, then the municipality must notify the public
6 utility of the error. Any such notice must be issued pursuant
7 to Section 30 of the Local Government Taxpayers' Bill of
8 Rights Act or a lesser period of time from the date the tax was
9 due that may be specified in the municipal ordinance imposing
10 the tax. Upon such a notice, any audit shall be conducted
11 pursuant to Section 35 of the Local Government Taxpayers' Bill
12 of Rights Act subject to the timelines set forth in this
13 subsection (d). The public utility must submit a written
14 response within 60 days after the date the notice was
15 postmarked stating that it has corrected the error or stating
16 the reason that the error is inapplicable or inaccurate. The
17 municipality then has 60 days after the receipt of the public
18 utility's response to review and contest the conclusion of the
19 public utility. If the parties are unable to agree on the
20 disposition of the audit findings within 120 days after the
21 notification of the error to the public utility, then either
22 party may submit the matter for appeal as outlined in Section
23 40 of the Local Government Taxpayers' Bill of Rights Act. If
24 the appeals process does not produce a satisfactory result,
25 then either party may pursue the alleged error in a court of
26 competent jurisdiction. If the municipality prevails and

1 receives at least 50% of the relief requested in court against
2 a public utility with 3,000,000 or more retail customers in
3 Illinois, the public utility is liable for the attorney's fees
4 and costs of the municipality.

5 (d-5) If a public utility is liable for any error or errors
6 in past tax payments cumulatively in excess of \$5,000 that
7 were unknown to the municipality prior to an audit from the
8 municipality, the public utility shall reimburse the
9 municipality for the reasonable cost of the audit in addition
10 to any interest and penalties imposed. Unless otherwise
11 determined by a court of competent jurisdiction, the
12 reasonable cost of the audit shall be 35% of the sum of the
13 taxes, interest, and penalties for which the public utility is
14 liable.

15 (e) (Blank). No public utility is liable for any error in
16 past collections and payments that was unknown by it prior to
17 the audit process unless (i) the error was due to negligence by
18 the public utility in the collection or processing of required
19 data and (ii) the municipality had not failed to respond in
20 writing on an accurate and timely basis to any written request
21 of the public utility to review and correct information used
22 by the public utility to collect the municipality's tax if a
23 diligent review of such information by the municipality
24 reasonably could have been expected to discover such error.
25 If, however, an error in past collections or payments resulted
26 in a customer, who should not have owed a tax to any

1 ~~municipality, having paid a tax to a municipality, then the~~
2 ~~customer may, to the extent allowed by Section 9-252 of the~~
3 ~~Public Utilities Act, recover the tax from the public utility,~~
4 ~~and any amount so paid by the public utility may be deducted by~~
5 ~~that public utility from any taxes then or thereafter owed by~~
6 ~~the public utility to that municipality.~~

7 (e-5) The public utility shall be liable to the
8 municipality for all unpaid taxes due during the statutory
9 period set forth in Section 30 of the Local Government
10 Taxpayers' Bill of Rights Act, including taxes that the public
11 utility failed to properly bill to the customer. To the extent
12 that a public utility's errors in past tax collections and
13 payments relate to premises located in an area of the
14 municipality that was annexed on or after the effective date
15 of this amendatory Act of the 102nd General Assembly, however,
16 the public utility shall only be liable for such errors
17 beginning 60 days after the date that the municipality
18 provided the public utility notice of the annexation, provided
19 that the public utility provides municipalities with an email
20 address to send annexation notices and the municipality
21 notified the utility within 60 days after the annexation. A
22 copy of the annexation ordinance and the map provided to the
23 recorder of the county under this Act sent to the email address
24 provided by the public utility shall be deemed sufficient
25 notice, but other forms of notice may also be sufficient. Upon
26 mutual agreement, a utility and municipality may use a web

1 portal in lieu of email to receive notice of annexations and
2 boundary changes. After December 31, 2022, all public
3 utilities that serve more than 1,000,000 retail customers in
4 Illinois shall provide a secure web portal for municipalities
5 to use, and thereafter the web portals shall be used by all
6 municipalities to notify the public utilities of annexations.
7 The web portal must provide the community with an electronic
8 record of all communications and attached documents that the
9 community has submitted through the portal.

10 (f) All premises-specific ~~account-specific~~ information
11 provided by a public utility under this Section may be used
12 only for the purpose of an audit of taxes conducted under this
13 Section and the enforcement of any related tax claim. All such
14 information must be held in strict confidence by the
15 municipality and its agents and may not be disclosed to the
16 public under the Freedom of Information Act or under any other
17 similar statutes allowing for or requiring public disclosure.

18 (g) The provisions of this Section shall not be construed
19 as diminishing or replacing any civil remedy available to a
20 municipality, taxpayer, or tax collector.

21 (g-5) As used in this Section:

22 "Customer-specific information" means the name, phone
23 number, email address, and banking information of a customer,
24 but specifically excludes the customer's tax-exempt status.

25 "Premises-specific information" means any information,
26 including billing, usage, and load shape data, associated with

1 a premises address but not with customer-specific information.

2 (h) This Section does not apply to any municipality having
3 a population greater than 1,000,000.

4 (Source: P.A. 96-1422, eff. 8-3-10.)

5 Section 15. The Public Utilities Act is amended by
6 changing Section 16-122 and by adding Section 9-224.1 as
7 follows:

8 (220 ILCS 5/9-224.1 new)

9 Sec. 9-224.1. Audit compliance; municipal fines. For the
10 purpose of determining any rate or charge, the Commission
11 shall not consider the following costs as an expense of any
12 public utility company that serves more than 3,000,000 retail
13 customers in Illinois, including any allocation of those costs
14 to the public utility from an affiliate or corporate parent:
15 (i) any court costs, attorney's fees, or other fees incurred
16 under subsection (d) of Section 8-11-2.5 of the Illinois
17 Municipal Code; or (ii) any penalties or interest imposed by a
18 municipality under Section 8-11-2.5 of the Illinois Municipal
19 Code.

20 (220 ILCS 5/16-122)

21 Sec. 16-122. Customer information.

22 (a) Upon the request of a retail customer, or a person who
23 presents verifiable authorization and is acting as the

1 customer's agent, and payment of a reasonable fee, electric
2 utilities shall provide to the customer or its authorized
3 agent the customer's billing and usage data.

4 (b) Upon request from any alternative retail electric
5 supplier and payment of a reasonable fee, an electric utility
6 serving retail customers in its service area shall make
7 available generic information concerning the usage, load shape
8 curve or other general characteristics of customers by rate
9 classification. Provided however, no customer specific
10 billing, usage or load shape data shall be provided under this
11 subsection unless authorization to provide such information is
12 provided by the customer pursuant to subsection (a) of this
13 Section.

14 (c) Upon request from a unit of local government and
15 payment of a reasonable fee, an electric utility shall make
16 available information concerning the usage, load shape curves,
17 and other characteristics of customers by customer
18 classification and location within the boundaries of the unit
19 of local government, however, no customer specific billing,
20 usage, or load shape data shall be provided under this
21 subsection unless authorization to provide that information is
22 provided by the customer or the unit of local government is
23 requesting the information for the purposes of an audit under
24 Section 8-11-2.5 of the Illinois Municipal Code.

25 (d) All such customer information shall be made available
26 in a timely fashion in an electronic format, if available.

1 (Source: P.A. 92-585, eff. 6-26-02.)".