

# SB3282



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3282

Introduced 2/7/2024, by Sen. Sara Feigenholtz

### SYNOPSIS AS INTRODUCED:

35 ILCS 120/2-10.5

Amends the Retailers' Occupation Tax Act. Requires each holder of a Direct Pay Permit to review its purchase activity by January 31 and July 31 of each year to verify that the purchases made in the preceding 6-month period were sourced correctly and the correct tax rate was applied. Sets forth penalties for failure to comply with the reporting requirements. Effective immediately.

LRB103 34197 HLH 64020 b

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Retailers' Occupation Tax Act is amended by  
5 changing Section 2-10.5 as follows:

6 (35 ILCS 120/2-10.5)

7 Sec. 2-10.5. Direct payment program; purchaser's providing  
8 of permit to retailer; retailer relieved of collecting use tax  
9 and local retailers' occupation tax reimbursements from  
10 purchaser; direct payment of retailers' occupation tax and  
11 local retailers' occupation tax by purchaser.

12 (a) Beginning on July 1, 2001 there is established in this  
13 State a Direct Payment Program to be administered by the  
14 Department. The Department shall issue a Direct Pay Permit to  
15 applicants who have been approved to participate in the Direct  
16 Payment Program. Each person applying to participate in the  
17 Direct Payment Program must demonstrate (1) the applicant's  
18 ability to comply with the retailers' occupation tax laws and  
19 the use tax laws in effect in this State and that the  
20 applicant's accounting system will reflect the proper amount  
21 of tax due, (2) that the applicant has a valid business purpose  
22 for participating in the Direct Payment Program, and (3) how  
23 the applicant's participation in the Direct Payment Program

1 will benefit tax compliance. Application shall be made on  
2 forms provided by the Department and shall contain information  
3 as the Department may reasonably require. The Department shall  
4 approve or deny an applicant within 90 days after the  
5 Department's receipt of the application, unless the Department  
6 makes a written request for additional information from the  
7 applicant.

8 (b) A person who has been approved for the Direct Payment  
9 Program and who has been issued a Direct Pay Permit by the  
10 Department is relieved of paying tax to a retailer when  
11 purchasing tangible personal property for use or consumption,  
12 except as provided in subsection (d), by providing that  
13 retailer a copy of that Direct Pay Permit. A retailer who  
14 accepts a copy of a customer's Direct Pay Permit is relieved of  
15 the obligation to remit the tax imposed by this Act on the  
16 transaction. References in this Section to "the tax imposed by  
17 this Act" include any local occupation taxes administered by  
18 the Department that would be incurred on the retail sale.

19 (c) Once the holder of a Direct Pay Permit uses that Permit  
20 to relieve the Permit holder from paying tax to a particular  
21 retailer, the holder must use its Permit for all purchases,  
22 except as provided in subsection (d), from that retailer for  
23 so long as the Permit is valid.

24 (d) Direct Pay Permits are not valid and shall not be used  
25 for sales or purchases of:

26 (1) food or beverage;

1           (2) tangible personal property required to be titled  
2           or registered with an agency of government; or

3           (3) any transactions subject to the Service Occupation  
4           Tax Act or Service Use Tax Act.

5           (e) Direct Pay Permits are not assignable and are not  
6           transferable. As an illustration, a construction contractor  
7           shall not make purchases using a customer's Direct Pay Permit.

8           (f) A Direct Pay Permit is valid until it is revoked by the  
9           Department or until the holder notifies the Department in  
10          writing that the holder is withdrawing from the Direct Payment  
11          Program. A Direct Pay Permit can be revoked by the Department,  
12          after notice and hearing, if the holder violates any provision  
13          of this Act, any provision of the Illinois Use Tax Act, or any  
14          provision of any Act imposing a local retailers' occupation  
15          tax administered by the Department.

16          (g) The holder of a Direct Pay Permit who has been relieved  
17          of paying tax to a retailer on a purchase for use or  
18          consumption by representing to that retailer that it would pay  
19          all applicable taxes directly to the Department shall pay  
20          those taxes to the Department not later than the 20th day of  
21          the month following the month in which the purchase was made.  
22          Permit holders making such purchases are subject to all  
23          provisions of this Act, and the tax must be reported and paid  
24          as retailers' occupation tax in the same manner that the  
25          retailer from whom the purchases were made would have reported  
26          and paid it, including any local retailers' occupation taxes

1 applicable to that retail sale. Notwithstanding any other  
2 provision of this Act, Permit holders shall make all payments  
3 to the Department through the use of electronic funds  
4 transfer.

5 (h) Beginning on January 1, 2025, each holder of a Direct  
6 Pay Permit must review its purchase activity by January 31 and  
7 July 31 of each year to verify that the purchases made in the  
8 preceding 6-month period ending on the last day of the  
9 calendar month immediately preceding the month in which the  
10 report is due were sourced correctly and the correct tax rate  
11 was applied. If any errors are discovered, then the holder of  
12 the Direct Pay Permit shall correct the errors on returns  
13 filed on or after the date on which the error is discovered and  
14 shall file amended returns to correct past errors. Any holder  
15 of a Direct Pay Permit who fails to properly verify purchase  
16 activity and correct sourcing and tax rate errors based on the  
17 permit holder's purchase activity, as required by this Section  
18 and the rules adopted by the Department, is liable to pay to  
19 the Department, for deposit into the Tax Compliance and  
20 Administration Fund, a penalty of \$6,000 for each 6-month  
21 review period after which the permit holder does not correct  
22 sourcing and tax rate errors based on its purchase activity  
23 until the permit holder comes into compliance and corrects any  
24 sourcing or tax rate errors. The penalties imposed under this  
25 Section shall not apply if the permit holder shows that he or  
26 she acted with ordinary business care and prudence. The

1 Department may adopt rules to administer the penalties under  
2 this Section.

3 (Source: P.A. 92-484, eff. 8-23-01.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.