No. 122878

IN THE
SUPREME COURT OF ILLINOIS

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,

Plaintiffs-Appellees,

v.

THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS,

Defendants-Appellants.

Appeal from the Illinois Appellate Court, First District
No. 1-15-3531
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
Nos. 11 CH 29744, 11 CH 29745, and 11 CH 34266 (Consolidated)
The Honorable Peter Flynn, Judge Presiding

BRIEF AND SUPPLEMENTARY APPENDIX OF PLAINTIFFS-APPELLEES CITY OF CHICAGO AND VILLAGE OF SKOKIE

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NATURE OF THE CASE

The City of Chicago and the Village of Skokie filed suit against the City of Kankakee and certain brokers after discovering that Kankakee, the brokers, and certain internet retailers had engaged in a scheme to enhance the tax revenue Kankakee received at the expense of plaintiffs.[1] Specifically, the retailers falsely reported that certain sales were made in Kankakee and paid sales tax on them, instead of properly reporting these transactions as purchases made outside Illinois and paying use tax on them. Because sales tax revenue and use tax revenue are distributed differently, the scheme deprived plaintiffs of tens of millions of dollars, and funneled that money to Kankakee instead. And, out of the tax revenue Kankakee wrongfully obtained, it paid rebates to the brokers, and the brokers in turn paid portions of the rebates to the retailers.

The Third Amended Complaint alleged claims for unjust enrichment against Kankakee and the brokers. Based on discovery, the Fourth Amended Complaint also identified the retailers involved in the scheme. The circuit court denied plaintiffs leave to file the Fourth Amended Complaint, and dismissed the Third Amended Complaint with prejudice, ruling that

[1] The complaint alleged that the scheme also involved the Village of Channahon. Pursuant to a Settlement Agreement and Release that has been executed, we will move for entry of an agreed order dismissing Channahon and the claim against one of the brokers, Inspired Development LLC ("Inspired"), to the extent that claim involves certain transactions pertaining to Channahon.

plaintiffs failed to state claims against the brokers or the retailers, and that the court lacked subject matter jurisdiction over plaintiffs' claims against Kankakee. Plaintiffs filed a motion to reconsider, and tendered with that motion a revised Fourth Amended Complaint they sought leave to file. The circuit court denied the motion to reconsider.

The appellate court reversed, holding that plaintiffs' Third Amended Complaint, as well as the revised Fourth Amended Complaint, state unjust-enrichment claims against Kankakee, the brokers, and the retailers, and that the circuit court has subject matter jurisdiction over the claims. Kankakee and the brokers brought to this court only the jurisdictional question. The court also allowed the retailers to file an amicus brief in support of Kankakee and the brokers, arguing against the claim for unjust enrichment.

The only questions are on the pleadings.

ISSUES PRESENTED

1. Whether the circuit court has subject matter jurisdiction over plaintiffs' claims.

2. Whether review of the appellate court's holding that plaintiffs' complaint states actionable unjust-enrichment claims has been forfeited; and whether that holding is correct.

CONSTITUTIONAL PROVISION, STATUTES, AND REGULATION INVOLVED

Article VI, section 9 of the Illinois Constitution provides: "Circuit

courts shall have original jurisdiction of all justiciable matters" except two matters, not relevant here, over which this court has exclusive jurisdiction.

The following statutes and administrative regulation are set forth in full in the supplementary appendix bound with this brief: 30 ILCS 105/6z-17, 6z-18 & 6z-20; id. 115/2; 35 ILCS 105/3, 3-10, 3-45, 6 & 9; id. 120/2, 2-10 & 3; and 86 Ill. Admin. Code § 130.610 (1971).

STATEMENT OF FACTS

Sales and use taxes

The Retailers' Occupation Tax Act ("ROTA"), 35 ILCS 120/1 to 120/14, establishes a sales tax on retail sales of merchandise in Illinois. The Use Tax Act ("UTA"), id. 105/1 to 105/22, establishes a use tax on retail purchases made outside Illinois of merchandise for use within Illinois. The "general" rate for both the sales and use taxes – applicable to all items of tangible personal property other than drugs, medical supplies, liquid fuels, and certain food and holiday items – is 6.25% of the retail price. Id. 105/3-10; id. 120/2-10. From sales tax paid at that rate, the municipality in which the sale was made receives revenue equal to 1.0% of the retail price. 30 ILCS 105/6z-18; id. 105/6z-20; 35 ILCS 120/3.[2] By contrast, from use tax paid at the 6.25%

[2] That is the portion of the revenue from the sales tax the State pays into, and distributes from, the Local Government Tax Fund. Specifically, ROTA requires the State to pay into that fund "16% of the net [sales tax] revenue realized . . . from the 6.25% general rate," 35 ILCS 120/3 – an amount that equals 1.0% of the total of the retail prices of the merchandise on which sales tax was paid at that rate (16% of 6.25% = 1.0%). And, under

rate on any purchase made outside Illinois of merchandise to be used anywhere within Illinois, Chicago received revenue equal to 0.25% of the retail price, and all other municipalities, as well as all counties, received revenue in smaller percentages, reflecting their respective populations. 30 ILCS 105/6z-17(a); id. 115/2; 35 ILCS 105/9.[3]

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the State Finance Act ("SFA"), the "portion of the money paid into the Local Government Tax Fund from the 6.25% general rate . . . on sales subject to [the sales tax], which occurred in municipalities, [is] distributed to each municipality, based on the sales which occurred in that municipality." 30 ILCS 105/6z-18.

[3] An amendment enacted after the transactions at issue in this case slightly reduced the amount of use tax revenue that is distributed to Chicago, all other municipalities, and all counties (as well as three other government entities). But, during the period relevant here, UTA required the State to "pay into the State and Local Sales Tax Reform Fund . . . 20% of the net [use tax] revenue realized . . . from the 6.25% general rate on the selling price of [all but one category of] tangible personal property" (of which there were a negligible number of purchases). 35 ILCS 105/9. And SFA, in turn, provided that "of the money paid into the State and Local Sales Tax Reform Fund: (i) . . . [Chicago] . . . receive[d] 20% . . . , (ii) 10% [was] transferred into the [RTA] Occupation and Use Tax Replacement Fund . . . , (iii) . . . the Madison County Mass Transit District . . . receive[d] [0].6% . . . , (iv) . . . the Build Illinois Fund [received] $3,150,000 monthly . . . , and (v) the remainder [was] transferred into the Local Government Distributive Fund and, except for [Chicago], which . . . receive[d] no portion of such remainder, [was] distributed . . . in the manner provided by Section 2 of the [State Revenue Sharing Act ('SRSA')]." 30 ILCS 105/6z-17(a). 20% of the use tax revenue collected at the 6.25% rate that the State has paid into the State and Local Sales Tax Reform Fund equals 1.25% of the total of the retail prices of the merchandise on which use tax was paid at that rate (20% of 6.25% = 1.25%); and Chicago's 20% share of the amounts distributed from that fund during the period at issue equals the total of 0.25% of the retail prices of the merchandise on which use tax was paid at the general rate (20% of 1.25% = 0.25%). As for the "remainder" of the State and Local Sales Tax Reform Fund – the portion that was transferred to the Local Government Distributive Fund during the period at issue, id. – SRSA provided that "the amount of [the Local Government Distributive Fund] allocable to each

ROTA requires every entity engaged in the business of selling merchandise at retail in Illinois to file periodic tax returns with the Illinois Department of Revenue ("IDOR") reporting the address at which it engaged in that business and the amount of its gross receipts on those sales, and to pay IDOR the sales tax owed on those receipts. 35 ILCS 120/3. UTA requires every retailer having a place of business in Illinois and making sales outside Illinois of merchandise to be used within Illinois to collect use tax on those transactions, id. 105/3-45, and also provides that IDOR may authorize a retailer not having a place of business in Illinois to collect use tax on the sales it has made outside Illinois of merchandise to be used within Illinois, id. 105/6. Every retailer that is either required or authorized to collect use tax must file periodic tax returns with IDOR reporting the amount of use tax it collected during that period, and pay that tax to IDOR. Id. 105/9.[4]

Plaintiffs' latest-filed complaint

On November 21, 2013, this court held in Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130 (2013), that the situs of a retail sale is not necessarily where the retailer accepted the purchase order, as IDOR

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municipality [other than Chicago] and [each] county [was] in proportion to the number of individual residents of such municipality or county to the total population of the State," and that "[f]or purposes of this Section, the number of individual residents of a county [was] reduced by the number of individuals residing therein in municipalities." Id. 115/2.

[4] A retailer that paid IDOR the correct amount of tax on a transaction, but wrongfully reported it as sales tax, rather than use tax, is not required to pay additional tax on the transaction. 35 ILCS 105/9.

regulations, until then, had provided, but is instead where "the business of selling" occurred, which is a "fact-intensive inquiry." Id. ¶ 63. Hartney applies only prospectively, id. ¶ 67 – and therefore does not affect the situs of pre-Hartney sales. Also, as the circuit court observed, "in light of Hartney . . . , IDOR . . . decided to 'discontinue' audits related to pre-Hartney 'local sourcing issues.'" A202 (citation omitted).[5]

Municipalities lack statutory authority to initiate proceedings at IDOR or to compel IDOR to initiate proceedings; and, on December 13, 2013, three weeks after Hartney was decided, plaintiffs, having no avenue for relief at IDOR, filed their Third Amended Complaint in the circuit court. A120. That complaint alleged that during the period at issue in this case, various internet retailers made sales outside Illinois of merchandise for use within Illinois, but falsely reported to IDOR that they made the sales in Kankakee. A126, A128-A131. Specifically, although IDOR regulations in effect until Hartney had specified that a retail sale takes place where the purchase order was accepted, e.g., 86 Ill. Admin. Code § 130.610 (1971), the retailers reported that sales took place in Kankakee even though they had accepted the purchase orders for those sales outside Illinois, A128-A131. In this regard, the complaint alleged that the retailers conducted no meaningful sales activity in Kankakee, A129, and that the retailers' only connections to

[5] We cite the Appendix to Brief of Defendants-Appellants as "A__," and the supplementary appendix bound with this brief as "SA__."

Kankakee were arrangements with certain brokers, A129 – defendants-appellants Inspired; MTS Consulting, LLC; Minority Development Company LLC ("Minority"); Corporate Funding Solutions ("Corporate"); and Capital Funding Solutions ("Capital"), A121 – that maintained offices in Kankakee at which the brokers performed, on behalf of the retailers, the single task of checking the credit-worthiness of purchasers, A129; see also City of Chicago v. City of Kankakee, 2017 IL App (1st) 153531, ¶ 41 ("Plaintiffs allege that the brokers set up sham offices in [Kankakee] and performed sham services for the internet retailers . . . .").[6] The complaint also alleged that the retailers, having falsely reported to IDOR that they made such sales in Kankakee, also wrongfully paid sales tax, rather than use tax, on the transactions. A125-A126, A128-A131. As a consequence, Kankakee improperly received the 1.0% municipal allotment of the sales tax revenue on the transactions, while plaintiffs received no revenue from the use tax the retailers should have paid on the transactions. A125, A128-A131. The complaint alleged that this practice wrongfully deprived Chicago of tens of millions of dollars, and also wrongfully deprived Skokie of revenue. A128.

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[6] Defendants make unsupported factual assertions that are inconsistent with the complaint's allegations concerning the activities of the retailers and the brokers, Brief and Appendix of Defendants-Appellants 9-10 [hereafter "Kankakee Br."]; and the retailers, as *amici*, do so as well, Amicus Brief of Internet Retailers in Support of the Appellants 3 [hereafter "Amicus Br."]. That is improper. All well-pled facts are taken as true in deciding whether a complaint states a claim on which relief may be granted. E.g., Anderson Electric, Inc. v. Ledbetter Erection Corp., 115 Ill. 2d 146, 147-48 (1986).

The Third Amended Complaint further alleged that Kankakee created an incentive for the retailers to falsely report that sales they made outside Illinois were made in Kankakee, and to wrongfully pay sales tax, rather than use tax, on such transactions. A123, A125-A128. Specifically, the complaint alleged that the brokers, on behalf of the retailers, entered into agreements for Kankakee to rebate to the brokers significant percentages of the sales tax revenue Kankakee received on sales the retailers reported to IDOR they made in Kankakee, and that the brokers, in turn, transferred significant percentages of those rebates to the retailers. Id.; see also City of Chicago, 2017 IL App (1st) 153531, ¶ 41 ("[P]laintiffs allege . . . a scheme in which the brokers received a portion of the sales tax [revenue] through the rebate agreement[s] paid by [Kankakee] in connection with the agreement[s] to deliberately missource retail sales"; that "the brokers participated in this scheme"; and that "the rebate payments [were also made to] the retailers.").

Count I of the Third Amended Complaint alleged that the difference between the amount of sales tax revenue Kankakee improperly received on the sales, and the much smaller amount of use tax revenue to which Kankakee was entitled on those transactions, unjustly enriched Kankakee, and that the rebates the brokers received from Kankakee on the transactions unjustly enriched the brokers. A128-A132. In addition, count I sought a declaratory judgment against Kankakee and brokers, as well as an order imposing constructive trusts on them for the amount of the use tax revenue

plaintiffs would have received if the retailers had properly paid use tax, rather than sales tax, and an order requiring Kankakee and the brokers to pay restitution or damages to plaintiffs in that amount. A131-A132.[7]

Fourth Amended Complaint

The Third Amended Complaint stated that because only limited discovery had been conducted, plaintiffs lacked sufficient information to name as defendants any of the retailers that made the subject sales. A130. On April 30, 2015, after obtaining such information, plaintiffs tendered to the circuit court, and moved for leave to file, a Fourth Amended Complaint naming eleven internet retailers as defendants. A149-A154 (motion); A156-A185 (complaint). That complaint alleged that the sales tax rebates these retailers received on the subject transactions unjustly enriched the retailers (count III), and sought a declaratory judgment (count IV), as well as an order imposing constructive trusts on the retailers in the amount of the use tax revenue plaintiffs would have received if the retailers had properly paid use tax, rather than sales tax, and an order requiring the retailers to pay restitution or damages to plaintiffs in that amount. A175-A176. The Fourth Amended Complaint reiterated the prior claims against Kankakee and the brokers with respect to sales made by the retailers – for declaratory judgment

[7] Count II of the Third Amended Complaint sought relief from Kankakee and the brokers with respect to transactions involving businesses other than the retailers – specifically, "operating companies" and "procurement subsidiaries." A132-A136.

(count I) and unjust enrichment (count II). A175-A176.[8] The Fourth Amended Complaint sought relief for sales up to November 21, 2013, A168-A169, the day this court decided Hartney.[9]

On October 9, 2015, the circuit court denied plaintiffs leave to file the Fourth Amended Complaint. A203. That order also dismissed plaintiffs' claims with prejudice, A203, and certified under Ill. Sup. Ct. R. 304(a) that "there [was] no just reason to delay enforcement or appeal from th[e] order," A204. On November 5, 2015, plaintiffs filed a motion to reconsider, SA3-SA19, and for leave to file a revised Fourth Amended Complaint, which plaintiffs tendered to the court with the motion, SA20-SA40. The motion addressed the grounds on which the court had dismissed the Third Amended Complaint and denied leave to file the Fourth Amended Complaint.[10] To

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[8] The Fourth Amended Complaint also sought to add several operating companies and procurement subsidiaries, A160-A161, as well as one broker (Ryan LLC), A157-A158, and dropped three brokers (Minority, Corporate, and Capital), as defendants, A157-A158. Counts V through VIII of the Fourth Amended Complaint pertained solely to transactions involving the operating companies and procurement subsidiaries. A176-A184. Plaintiffs have resolved some of those claims and have decided not to pursue the rest.

[9] The circuit court explained that "[d]efendants here reacted to Hartne[y] . . . by discontinuing the activities of which . . . Plaintiffs complain." A190; see also SA16 ("Due to Hartney, Plaintiffs no longer seek injunctive relief.").

[10] The circuit court's October 9, 2015 order identified the counts of the Fourth Amended Complaint the court said were "dismissed." A195, A198. But that order denied plaintiffs' motion to file the Fourth Amended Complaint. A203. The dismissal thus applies to the Third Amended Complaint.

address the court's concern that plaintiffs had not stated a claim for declaratory judgment because "the conduct that [p]laintiffs are complaining about ended a year ago," A194, plaintiffs explained that the revised Fourth Amended Complaint omitted the declaratory judgment counts, SA16.

As for the unjust-enrichment claims against the brokers in the Third Amended Complaint and against the retailers in the Fourth Amended Complaint, the court had ruled that the complaints failed to state claims for relief because "[a]ny 'enrichment' of [the brokers and the retailers] was by [Kankakee], not by Plaintiffs," A197, and that plaintiffs "do not articulate [any] actionable wrong" by a broker or retailer, A195. Plaintiffs' motion to reconsider explained that an unjust-enrichment claim can be brought to recover a benefit given to the defendant by a third party, rather than by the plaintiff, SA8 (citing HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc., 131 Ill. 2d 145, 161-62 (1989)), and also that an unjust-enrichment claim does not require wrongful conduct by any defendant, SA6 (citing Partipilo v. Hallman, 156 Ill. App. 3d 806, 810 (1st Dist. 1987)). Plaintiffs further explained that, regardless, the complaint had alleged wrongful conduct by the retailers – specifically, that they falsely reported to IDOR they made sales within Kankakee that they actually made outside Illinois, and wrongfully paid sales tax, rather than use tax, on those transactions. SA7; see also A130 (Third Amended Complaint, ¶¶ 44-46); A173-A174 (Fourth Amended Complaint, ¶¶ 63, 67).

Finally, as for the circuit court's ruling that IDOR, rather than the court, had subject matter jurisdiction over plaintiffs' claims against Kankakee, A198-A203, plaintiffs explained that IDOR had neither exclusive nor primary jurisdiction to adjudicate the claims, SA10-SA15. Specifically, IDOR lacked exclusive jurisdiction because the courts have original jurisdiction of all justiciable matters if not divested of such jurisdiction by statute, and no statute divested the courts of jurisdiction to adjudicate claims to enforce the sales tax or the use tax. SA10. And IDOR lacked primary jurisdiction because primary jurisdiction depends on special expertise, and IDOR has no special expertise with respect to any issue in this case, including whether the challenged sales occurred outside Illinois or instead in Kankakee, SA12 (citing Village of Itasca v. Village of Lisle, 352 Ill. App. 3d 847, 854-55 (2d Dist. 2004)), and how to determine plaintiffs' recovery, which can easily be calculated from three statutes, SA4 n.1, SA13.

On November 13, 2015, plaintiffs presented their motion to reconsider in open court. SA41-SA68 (transcript). The court stated, among other things:

> Now, the motion to reconsider says on Page 12 [SA14] that if Plaintiffs prevail, the calculation of their damages would be simple and according to statute. . . . [T]he calculation may be simple with comparison to quantum mechanics, [but it is not] simple compared to the ordinary business of courts. You've got . . . an algorithm which IDOR is vested by statute in the authority to create and apply. And it's just not that easy.
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> * * *
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> [W]e don't know what [any municipality's] share of the state use tax is until IDOR tells us. That's not something I can figure out on

> the back of an envelope.
>
> And I can't award 20 percent of something unless I know what the something is. The only way I think I can find that out is through IDOR. Maybe I'm right; maybe I'm wrong, but that's my take on it.

SA50-SA52. The circuit court did not mention the internet site that plaintiffs identified in their motion to reconsider, SA4 n.1, which is now http://www.tax.illinois.gov/LocalGovernment/Disbursements/IncomeUse/index.htm. On that site, charts created by IDOR show, for each calendar month beginning January 2006, the population of the State (set forth on each chart after the last municipality listed) and of every Illinois municipality and county. Using those charts and three statutory provisions – section 9 of UTA, section 6z-17(a) of SFA, and section 2 of SRSA – one can calculate the precise amount of use tax revenue that any municipality is owed on any purchase on which use tax should have been paid during any calendar month.[11] No other factors are

[11] Again, of the local share of the use tax revenue (1.25% of the retail price of the item), Chicago's 20% equals 0.25% of the retail price of the item (20% of 1.25% = 0.25%). See note 3 supra. In addition, the RTA Occupation and Use Tax Replacement Fund is entitled to 10%, and the Madison County Mass Transportation District is entitled to 0.6%, of the local share. See note 3 supra. With Chicago's 20%, that totals 30.6% of the local share (20% + 10% + 0.6% = 30.6%). The remaining 69.4% of the local share is divided among all other municipalities and all counties, with the percentage each municipality receives being the fraction, mandated by SRSA and SFA, in which the numerator is the population of that municipality for the calendar month in which use tax on that purchase should have been paid, and the denominator is the difference between the State's population and Chicago's population for that same calendar month. See note 3 supra.

pertinent to that calculation.[12]

The circuit court entered an order stating: "Plaintiffs' Motion is denied for the reasons set forth in this Court's October 9, 2015 Order and the Court's clarification stated in open court and on the record today." A205.

Plaintiffs' appeal

The appellate court reversed, holding that plaintiffs' Third Amended Complaint and the revised Fourth Amended Complaint state unjust-enrichment claims against Kankakee, the brokers, and the retailers, City of Chicago, 2017 IL App (1st) ¶¶ 35-42, 44, and that the circuit court has subject-matter jurisdiction to adjudicate the claims, id. ¶¶ 22-34, 44.

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[12] Kankakee and the brokers assert that "[a]s a result of th[e] [statutory] distribution formula, it is impossible to say as a general matter what percentage of use-tax revenues a given municipality receives[;] [t]hat depends on" four factors – "the amount collected by IDOR's Audit Bureau in the previous fiscal year, the size of the [Local Government Distributive] Fund in a given month, the amounts of the relevant appropriations, and the relative populations of the municipalities themselves." Kankakee Br. 8. Although that assertion is accurate for future years, it is not accurate for any year in the past, since, for every year in the past, the annual values of all pertinent factors are known. And, because all the transactions at issue in this case occurred in past years, the amount of use tax revenue that any municipality is owed on those transactions can be calculated precisely. Moreover, concerning the third factor listed by Kankakee and the brokers – "the amounts of the relevant appropriations," id. – the use tax revenue to which Chicago and all other municipalities and all counties were entitled under section 6z-17(a) of SFA, see note 3 supra, was not reduced below the percentages specified in that section by any appropriation applicable to the period during which the transactions at issue in this case occurred. Also, none of transactions at issue was ever subject to the first factor listed by Kankakee and the brokers – "the amount collected by IDOR's Audit Bureau in the previous fiscal year," Kankakee Br. 8 – since all of those transactions occurred before the amendment mentioned in note 3 supra, see 30 ILCS 105/6z-17(a),(b); P.A. 98-1098 (eff. August 26, 2014).

Kankakee and the brokers then filed a petition for leave to appeal, presenting only the jurisdictional question. This court allowed the retailers to file an amicus brief on the merits.

ARGUMENT

Plaintiffs allege they have been deprived of tax revenue to which the law entitles them. Specifically, eleven internet retailers made sales outside Illinois of merchandise to be used within Illinois, but falsely reported to IDOR that they made the sales in Kankakee, and wrongfully paid sales tax, rather than use tax, on the transactions. This scheme enabled Kankakee to improperly receive the 1.0% municipal allotment of the revenue from the sales tax the internet retailers wrongfully paid on each such transaction, while plaintiffs, which were entitled to allotments of the revenue from the use tax the internet retailers should have paid on the transaction, received no such revenue. Plaintiffs also allege that the brokers, on behalf of the retailers, entered into agreements with Kankakee for rebates to the brokers of significant percentages of the sales tax revenue Kankakee improperly received, and that the brokers, in turn, transferred significant percentages of their gain to the retailers. And, plaintiffs further allege, the difference between the amount of sales tax revenue Kankakee improperly received, and the much smaller amount of use tax revenue to which Kankakee was entitled, unjustly enriched Kankakee, and that the rebates the retailers and the brokers received from Kankakee unjustly enriched the retailers and the

brokers. Plaintiffs' Third Amended Complaint sought an order imposing constructive trusts on Kankakee and the brokers in the amount of the use tax revenue plaintiffs would have received if the retailers had properly paid use tax, rather than sales tax, and an order requiring Kankakee and the brokers to pay restitution or damages to plaintiffs in that amount. Plaintiffs thereafter sought the same relief from the retailers in the Fourth Amended Complaint that plaintiffs sought to file.

The appellate court held that plaintiffs' Third Amended Complaint and the revised Fourth Amended Complaint state unjust-enrichment claims against Kankakee, the brokers, and the retailers, City of Chicago, 2017 IL App (1st) 153531, ¶¶ 35-42, 44, and that the circuit court has subject matter jurisdiction over the claims, id. ¶¶ 22-34, 44. Kankakee and the brokers asked this court to review the appellate court's ruling that the circuit court has subject matter jurisdiction, but not the appellate court's ruling that plaintiffs state unjust-enrichment claims against them. And Kankakee's and the brokers' opening brief addresses only the jurisdictional issue. The retailers, as *amici*, challenge only the appellate court's ruling that plaintiffs' complaint states a claim against them.

Section 2-615 of the Code of Civil Procedure allows dismissal of a complaint that fails to state a claim on which relief may be granted, 735 ILCS 5/2-615 (2014), while section 2-619 allows dismissal of a claim that is barred by affirmative matter, including where the court lacks subject matter

jurisdiction, id. 5/2-619(a)(1). All well-pled facts in the complaint are taken as true for purposes of a motion to dismiss. E.g., Anderson Electric, 115 Ill. 2d at 147-48. An order dismissing a complaint on either ground is reviewed *de novo*. E.g., Citizens Opposing Pollution v. ExxonMobil Coal, U.S.A., 2012 IL 111286, ¶ 22. A court may grant a plaintiff leave to amend its complaint on "just and reasonable terms" "[a]t any time before final judgment." 735 ILCS 5/2-616(a). An order resolving a motion to amend a complaint is reviewed for abuse of discretion. E.g., Lee v. Chicago Transit Authority, 152 Ill. 2d 432, 467 (1993). "Failure to include an issue in a petition for leave to appeal results in forfeiture of that issue for review." 1350 Lake Shore Associates v. Healey, 223 Ill. 2d 607, 629 (2006) (citing People v. Carter, 208 Ill. 2d 309, 318 (2003)).

Under these standards, the appellate court's judgment should be affirmed. We explain in Part I that the circuit court has subject matter jurisdiction over plaintiffs' claims. In Part II, we explain that the retailers' contention that plaintiffs fail to state unjust-enrichment claims is forfeited, and, regardless, that it is wrong.

I. THE CIRCUIT COURT HAS SUBJECT MATTER JURISDICTION OF PLAINTIFFS' CLAIMS.

A. Plaintiffs' Claims Are Within The Original Jurisdiction Conferred On The Circuit Courts By The Constitution.

"Circuit courts shall have original jurisdiction of all justiciable matters," except two matters, not relevant here, over which this court has

exclusive jurisdiction. Ill. Const. art. VI, § 9. "While the legislature generally cannot deprive the courts of this jurisdiction, an exception arises in administrative actions" – "[b]ecause [the legislature] establishes administrative agencies and empowers them, [it] may vest exclusive jurisdiction in [an] administrative agency." E.g., People v. NL Industries, 152 Ill. 2d 82, 96-97 (1992); accord, e.g., Employers Mutual Cos. v. Skilling, 163 Ill. 2d 284, 287 (1994). In Skilling, this court held that to divest the circuit courts of original jurisdiction, the legislature "must do so explicitly." 163 Ill. 2d at 287. There, an employer's workers' compensation carrier filed suit claiming that because its insurance policy with the employer provided coverage only for injuries that occurred in Wisconsin, it had no obligation to either defend an action for injuries that occurred in Illinois or pay benefits for those injuries. See id. at 285-86. The employee moved to dismiss on the ground that the circuit court lacked jurisdiction under section 18 of the Workers' Compensation Act, which specifies that "[a]ll questions arising under this Act . . . shall . . . be determined by the [Industrial] Commission." Id. at 286 (quoting 820 ILCS 305/18). This court rejected that argument, concluding that section 18 does not contain "exclusionary language," and thus was "insufficient to divest the circuit courts of jurisdiction" to adjudicate workers' compensation cases. Id. at 287. Instead, the circuit courts and the Industrial Commission had "concurrent jurisdiction." Id.

Thereafter, in Village of Itasca, Itasca sued Lisle and a retailer that,

Itasca alleged, falsely reported having made sales in Lisle that it actually made in Itasca, and received rebates from Lisle of substantial portions of the sales tax revenue Lisle improperly received on those transactions. 352 Ill. App. 3d at 850. Itasca sought, among other relief, recovery from Lisle of the ill-gotten sales tax revenue. Id. Lisle and the retailer moved to dismiss, contending that the circuit court lacked jurisdiction under section 2505-25 of the Department of Revenue Law, which provides that IDOR "has the power to administer and enforce all the rights, powers, and duties contained in [ROTA] to collect all revenues thereunder." Id. at 852 (quoting 20 ILCS 2505/2505-25). The appellate court rejected that argument, concluding that this language – like the statutory language at issue in Skilling – is not "exclusionary," id. (quoting Skilling, 163 Ill. 3d at 287); thus the circuit court and IDOR had "concurrent jurisdiction," id. at 853.

Similarly, in State ex rel. Beeler, Schad and Diamond, P.C. v. Ritz Camera Centers, Inc., 377 Ill. App. 3d 990 (1st Dist. 2007), the plaintiff brought an action alleging that various businesses, including internet retailers, maintained "out of state operations" through which they "made sales to Illinois consumers"; that the businesses did not pay use tax on those sales; that the businesses created records representing they did not owe such tax; and that the records "were knowingly false," and thereby violated the Illinois Whistleblower Reward and Protection Act. Id. at 994. The businesses challenged the circuit court's jurisdiction, contending that IDOR

"has exclusive authority to assess and collect use tax." Id. at 1006. The appellate court disagreed, noting that "explicit exclusionary language must be expressed to confer exclusive jurisdiction upon an administrative agency." Id. at 1007 (citing Skilling and Village of Itasca). Thus, IDOR "lack[ed] exclusive authority in addressing tax issues," id. at 1008; instead, the courts and IDOR had "concurrent jurisdiction," id. at 1007.

No statute contains "exclusionary language" divesting the circuit courts of original jurisdiction to adjudicate claims involving sales tax or use tax. To the contrary, Village of Itasca and Beeler recognize the courts' concurrent jurisdiction with IDOR to adjudicate such claims. Indeed, the existence of this judicial remedy for deprivations of tax revenue resulting from missourced tax payments may well have contributed to IDOR's decision, in the wake of this court's decision in Hartney, to discontinue audits related to pre-Hartney local sourcing issues. A202 (citation omitted). Plaintiffs filed their Third Amended Complaint three weeks after Hartney was decided.

Nearly three years later, this court decided J&J Ventures Gaming, LLC v. Wild, Inc., 2016 IL 119870, on which Kankakee and the brokers rely heavily to argue that IDOR has exclusive jurisdiction to adjudicate claims involving use tax. That reliance is misplaced. J&J involved the Video Gaming Act, which legalized gambling on video gaming terminals at establishments licensed by the Illinois Gaming Board ("Board"), and requires the establishments to enter into written use agreements, meeting specified

minimum standards, with terminal operators that likewise must be licensed by the Board. 2016 IL 119870, ¶¶ 3-4. Despite that statute, an unlicensed terminal operator entered into agreements with ten unlicensed establishments, providing, among other things, that upon obtaining licenses and beginning operations, they would split the after-tax profits evenly. Id. ¶¶ 5, 10. After a number of reassignments of the agreements, id. ¶ 7, 10, 11, J&J and Action Gaming sued the ten establishments, seeking, among other relief, declarations that J&J held the exclusive right to operate the terminals at the ten establishments. Id. ¶ 12. Although the Board has authority to conduct administrative hearings, and its final decisions are subject to judicial review under the Administrative Review Law ("ARL"), id. ¶ 30, no party sought an administrative hearing before the Board concerning the validity or enforceability of any of the agreements.

The J&J court began its consideration of the circuit court's jurisdiction to decide which, if any, of the various agreements was valid and enforceable by acknowledging both Skilling's statement that "'if the legislative enactment does divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, it must do so explicitly,'" 2016 IL 119870, ¶ 24 (quoting Skilling, 163 Ill. 2d at 287)), and Skilling's reliance on NL Industries "for the proposition that the absence of language explicitly excluding the circuit courts from exercising jurisdiction means that the legislature did not intend to divest the courts of jurisdiction," 2016 IL

119870, ¶ 24 (citing Skilling, 163 Ill. 2d at 287)). J&J further stated that under NL Industries, the courts should also consider the statute as a whole. Id. The court then examined many provisions of the Video Gaming Act, see id. ¶¶ 26-30, 40, including those authorizing the Board to conduct administrative hearings, id. ¶ 30, and specifying that the Board's final decisions are subject to judicial review under the ARL, id., as well as provisions conferring exclusive authority on the Board to enforce the terms of valid contracts for the placement and operation of video gaming terminals, id. ¶¶ 30, 40. J&J determined that permitting the circuit courts to exercise original jurisdiction on the question whether such a contract is valid "would lead to an anomalous result" because a "court could not enforce the terms of that contract." Id. ¶ 40. J&J concluded that the Board had "exclusive, original jurisdiction to determine th[e] validity" of the location agreements, not just their enforceability. Id. ¶ 42.

Our position that the circuit court has subject matter jurisdiction over our claims is fully consistent with J&J. That decision rested in part on the "anomalous result" of recognizing circuit court jurisdiction in circumstances where "a court could not enforce the terms of . . . contract[s]" like those under review there. 2016 IL 119870, ¶ 40. This case presents no such anomaly. The circuit court is fully able to provide a remedy for unjust enrichment, and to enforce a ruling that Kankakee, the brokers, and the retailers were unjustly enriched. E.g., Village of Itasca, 352 Ill. App. 3d at 855 (determining

the location at which sales were accepted for tax revenue purposes is within the conventional competence of the courts). Moreover, under J&J, the inquiry is still to determine legislative intent. 2016 IL 119870, ¶¶ 24-25. In the years since Village of Itasca and Beeler, the General Assembly has not acted to eliminate circuit court jurisdiction over claims involving the location at which sales were accepted for purposes of determining which municipality is entitled to tax revenue from those sales. And "where the legislature chooses not to amend a statute after a judicial construction, it is presumed that the legislature has acquiesced in the court's statement of the legislative intent." E.g., Ready v. United/Goedecke Services, Inc., 232 Ill. 2d 369, 380 (2008); accord, e.g., Wakulich v. Mraz, 203 Ill. 2d 223, 233 (2003); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 457-59 (1997) (applying this principle to prior judicial construction by appellate court). Finally, under J&J, in determining whether the General Assembly has deprived circuit courts of jurisdiction, a court properly considers "the consequences of construing the statute one way or another." 2016 IL 119870, ¶ 25. Here, the failure to recognize circuit court jurisdiction would create an anomaly different from the one in J&J – plaintiffs would lose their only means of redress in light of IDOR's decision not to audit pre-Hartney local sourcing issues, and the absence of statutory authority for municipalities to initiate proceedings at IDOR or to compel IDOR to initiate proceedings.

Indeed, for just that reason, reading J&J to oust circuit court

jurisdiction would leave us without any forum for relief from the deprivation of use tax revenue resulting from the retailers having falsely reported to IDOR that sales they made outside Illinois were made in Kankakee, and having wrongfully paid sales tax, rather than use tax, on those sales. A result in this case that would leave us without any remedy should be avoided. Cf. People ex rel. Fahner v. American Telephone and Telegraph Co., 86 Ill. 2d 479, 486 (1981) ("[A]n action for declaratory judgment can be maintained in revenue cases where the procedure for assessing and collecting taxes is specifically provided by statute only in situations where the party bringing the action does not have an adequate remedy at law" with the agency and, thereafter, on judicial review.); Illinois Bell Telephone Co. v. Allphin, 60 Ill. 2d 350, 359 (1975) (overruling exceptions, applicable in prior revenue cases, to the rule requiring exhaustion of administrative remedies, but holding that, in light of plaintiff's reliance on those exceptions, "[f]undamental fairness . . . dictates . . . that the merits of this case be decided on the basis" of the exceptions); see also GTE Automatic Electric, Inc. v. Allphin, 68 Ill. 2d 326, 333-34 (1977) (same as Illinois Bell); Sta-Ru Corp. v. Mahin, 64 Ill. 2d 330, 334 (1976) (same).

Moreover, this court's decision in Zahn v. North American Power & Gas, LLC, 2016 IL 120526, two months after J&J, confirms our reading of J&J. There, the court rejected a contention that the Illinois Commerce Commission has exclusive jurisdiction over a certain kind of claim. Id. ¶ 25.

"If the legislature intends for exclusive original jurisdiction to lie with the agency rather than with the circuit courts when it has enacted . . . a comprehensive statutory scheme, it must make that intention explicit. It has not done so here." Id. ¶ 15. The court also addressed the argument that courts "should consider the overall statutory framework." Id. ¶ 16. The court determined that "[t]here is support for this approach," citing J&J, then explained that "[a]pplication of that approach" would not change the result. Id.

Thus, Zahn recognizes that in determining whether the legislature intended to divest the circuit courts of original jurisdiction, and to vest it instead exclusively in an administrative agency, the most important factor is whether the relevant statute contains explicit language of exclusion. That makes sense because the presence of such language is dispositive, and, without it, courts must attempt to glean the legislature's intent by implication. No tax statute contains exclusionary language. And, going beyond that, consideration of the tax statutes as a whole leads to the same result. Thus, the circuit court had jurisdiction over our claims.[13]

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[13] Despite ruling for plaintiffs, the appellate court stated that "the jurisdictional analysis employed in Village of Itasca and [Beeler] is no longer persuasive authority" because both decisions "relied on the rule in Skilling that required an explicit divestment of circuit court jurisdiction," and "J&J Ventures and Zahn explain that the absence of an explicit divestment of circuit court jurisdiction in a statute does not mean that the legislature did not intend to divest the circuit court of subject-matter jurisdiction." City of Chicago, 2017 IL App (1st) 153531, ¶ 32 n.11. But, while J&J relied on the Video Gaming Act as a whole, it did not overrule Skilling; and Zahn reaffirms

Kankakee and the brokers do not rely on the related doctrine of primary jurisdiction, and with good reason. That doctrine applies only "when a court has either original or concurrent jurisdiction," Skilling, 163 Ill. 2d at 288; accord, e.g., Segers v. Industrial Commission, 191 Ill. 2d 421, 427 (2000), and thus provides no support for an argument that the circuit court lacks subject matter jurisdiction. Indeed, that doctrine "is not technically a question of jurisdiction at all but rather a question of judicial self-restraint and relations between the courts and administrative agencies," Segers, 191 Ill. 2d at 428, reflecting considerations of "timing, not of judicial competence to hear a case," id. at 427. Under that doctrine, a circuit court with jurisdiction over a case should refer a matter to an administrative agency "when [the agency] has a specialized or technical expertise that would help resolve the controversy, or when there is a need for uniform administrative standards." E.g., Skilling, 163 Ill. 2d at 288-89; Kellerman v. MCI Telecommunications Corp., 112 Ill. 2d 428, 445 (1986). "[C]ourts should not relinquish their authority over a matter to the agency" where neither of those circumstances is present, Kellerman, 112 Ill. 2d at 445, such as where the legal and factual issues are "'within the conventional competence of the courts,'" id. at 446 (citation omitted). Significantly, even where the agency

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that the legislature "must make [its] intention explicit." 2016 IL 120526, ¶ 15. Thus, circuit court jurisdiction would have existed in Village of Itasca and Beeler under the rationales of J&J and Zahn, just as it did under Skilling.

has primary jurisdiction, "the action should never be dismissed from the court but may only be stayed." NL Industries, 152 Ill. 2d at 96.

IDOR does not have primary jurisdiction here. The factual issue whether the retailers accepted purchase orders outside Illinois, or instead in Kankakee, is within the conventional competence of the courts, as Village of Itasca and Beeler make clear. In Village of Itasca, the issue was whether the retailer made the challenged sales in Itasca, or instead in Lisle, and the appellate court ruled that to resolve that issue, "[t]he [circuit] court need only make a straightforward determination of the place [the] sales were accepted," which "do[es] not invoke expertise beyond the conventional competence of a court." 352 Ill. App. 3d at 855. And in Beeler, the court concluded that Village of Itasca's reason for rejecting primary jurisdiction – that "the trial court was only required to make a finding of fact whether the defendant was misrepresenting th[e] site" of sales "for sales tax purposes," 377 Ill. App. 3d at 1007 – was likewise "applicable to use tax" claims, id. at 1008. In the revised Fourth Amended Complaint we tendered to the circuit court, we alleged that credit checks were the only activities the brokers or retailers performed in Kankakee in connection with the subject transactions, and that credit checks did not constitute the acceptance of sales. SA29-SA31. Thus, there is jurisdiction of our claims in the circuit court, and no basis to defer to IDOR.

B. The Argument That The Circuit Court Lacks Original Jurisdiction Of Our Claims Is Incorrect.

According to Kankakee and the brokers, J&J "holds that a circuit court is stripped of original jurisdiction where the legislature constructs a comprehensive administrative framework governing rights that did not exist at common law." Kankakee Br. 2. That is not correct; under J&J, a comprehensive administrative framework is not sufficient to deprive the courts of original jurisdiction – the enactment must also demonstrate the legislature's "intent to vest exclusive jurisdiction in an administrative agency." 2016 IL 119870, ¶ 24; see also Zahn, 2016 IL 120526, ¶ 15 ("If the legislature intends for exclusive original jurisdiction to lie with the agency rather than with the circuit courts when it has enacted . . . a comprehensive statutory scheme, it must make that intention explicit."). And, as pertinent here, Illinois tax statutes do not establish, even implicitly, that the legislature intended IDOR to have exclusive jurisdiction to decide whether local governments are entitled to relief on claims of missourced taxes.

Kankakee and the brokers also assert that "[t]his case concerns whether Illinois' cities and courts [sic] can use the state courts to audit compliance with state taxes, or whether that power is vested exclusively in [IDOR]." Kankakee Br. 1; see also id. at 14 (this "suit is for all practical purposes a tax audit"); id. at 15 ("Plaintiffs propose to use the state's courts to conduct a full-scale audit"); id. at 24 ("Plaintiffs, by any plausible measure, seek to audit . . . taxpayers"). These assertions are manifestly incorrect – we

seek merely to have the circuit court confirm that the retailers made the subject sales outside Illinois but falsely reported to IDOR they made the sales in Kankakee, and wrongfully paid sales tax, rather than use tax, on them. That is a simple, discrete task, within the conventional competence of the courts. E.g., Village of Itasca, 352 Ill. App. 3d at 855.

Similarly, Kankakee and the brokers assert that our unjust-enrichment claims seek a tax "assessment," Kankakee Br. 4, and "attempt to re-collect . . . state sales and use taxes," id. at 2; see also id. at 15-17, 20 – functions that IDOR has exclusive jurisdiction to perform, id. at 2, 4, 16, 17, 20. But this case does not involve either "assessment" or "collection" of taxes. Those are terms of art under the tax statutes. Taxes are "assessed" on, and "collected" from, taxpayers; and Kankakee and the brokers were not the taxpayers on the transactions at issue here. As for the retailers, while they did pay IDOR the tax on the subject transactions, we do not seek to have any tax assessed on, or to have any tax collected from, them, either. Indeed, that they paid tax on the subject transactions means that, under UTA, they cannot be required to pay additional tax, despite their having wrongfully paid sales tax, rather than use tax, on the transactions. See 35 ILCS 105/9.

Kankakee and the brokers also assert that we "propose to use the state's courts to conduct a full-scale . . . redistribution of state taxes," Kankakee Br. 15. That is not correct – and not only because the money the State distributes is tax revenues, not taxes. IDOR disbursed sales tax

revenue monthly to Kankakee pursuant to section 6z-18 of SFA, see note 2 supra, based on the retailers' false reports to IDOR that they made the sales on the subject transactions in Kankakee. Kankakee then paid a portion of that sales tax revenue as rebates to the brokers and the retailers. That is why we seek to recover from Kankakee, the brokers, and the retailers – because their scheme deprived Chicago of revenue for several years from use tax that the retailers should have paid on the transactions. But our Third and Fourth Amended Complaints do not claim to be entitled to seek any sales tax revenue that IDOR disbursed to Kankakee; and we were not entitled to any sales tax revenue on the transactions because they did not occur in Chicago or Skokie. Instead, our claim is that the tax should have been paid as use tax, from which we were entitled to a portion of the revenue. Our suit asks the circuit court to order those involved in the scheme that deprived us of revenue to pay us, directly, money equal to the amount of which we were deprived. Moreover, "distribution" is also a term of art under the statutes. Under the UTA, it is the process by which the State pays use tax, every month, to all Illinois municipalities and counties and to three other local government entitles. See 30 ILCS 105/6z-17(a) & 6z-18; id. 115/2. The money judgment we seek has none of those characteristics – the money will not come from the State; it will not be for just one month, but instead for the several years that the scheme lasted; and we seek to recover only for ourselves (Chicago and Skokie), and not for any other municipalities or local

government entities.

Kankakee and the brokers observe that "[s]ubject-matter jurisdiction turns on a claim's substance rather than its form," Kankakee Br. 20; see also id. at 20-23 (citing cases), and assert that the appellate court "privileged form over substance" in ruling that the relief we seek is not a "redistribution," id. at 23; see also id. at 24. Again, we do not seek a redistribution in either substance or form. Indeed, elsewhere in their brief Kankakee and the brokers betray the weakness of their assertion that we seek a redistribution – they say that whether we are entitled to the relief we seek instead "turns *fundamentally* and *unavoidably* on whether the transactions that generated the revenues were subject to the sales tax or [instead to] the use tax." Kankakee Br. 2 (emphasis in original). That is, indeed, the question on which this case turns; but the further assertion by Kankakee and the brokers – that this question "come[s] . . . squarely within the exclusive jurisdiction of the state's designated tax agency," id. – should be rejected. That IDOR is the "state's designated tax agency" does not mean that the legislature gave it exclusive jurisdiction to determine which of the two taxes applied to the sales at issue, rather than continuing to recognize the original jurisdiction of the courts and providing IDOR concurrent jurisdiction. And here, as we explain, IDOR does not have exclusive jurisdiction. Instead, determining which of the taxes applied to the subject transactions depends entirely on where the purchase orders were accepted – outside Illinois or instead in Kankakee –

and determining where the purchase orders were accepted is not a function that only IDOR can perform, but is within the conventional competence of the courts. E.g., Village of Itasca, 352 Ill. App. 3d at 855.

Of the cases Kankakee and the brokers cite, they say that Sheffler v. Commonwealth Edison Co., 2011 IL 110166 "is the opinion most relevant to the dispute here." Kankakee Br. 21. But Sheffler undermines their position. There, this court held that while courts have jurisdiction over claims against public utilities seeking ordinary civil damages, 2011 IL 110166, ¶¶ 42-43, the circuit court lacked jurisdiction over the claims against Commonwealth Edison in that case because those claims sought "reparations" – "relief based on systemic defects in the provision of [public utility] services," id. ¶ 56 – such that "allowing plaintiffs' claims to proceed in the circuit court would place the circuit court in the position of assessing what constitutes adequate service" by a public utility, id. ¶ 53, which is a determination that is within the special expertise of, and thus must be made by, the Illinois Commerce Commission, rather than the courts, see id. ¶ 40. By contrast, the determination on which this case turns – whether the subject sales were accepted outside Illinois or instead within Kankakee – is not a determination that only IDOR can make, but, as we have explained, is within the conventional competence of the courts.

Kankakee and the brokers embrace the appellate court's statement that Illinois tax statutes "'clearly . . . ves[t] IDOR with exclusive jurisdiction

to levy, collect, and distribute sales tax and use tax revenue under [ROTA] and [UTA],'" Kankakee Br. 17 (quoting City of Chicago, 2017 IL App (1st) 153531, ¶ 30); id. at 20 (same); and Kankakee and the brokers also assert that "the tax statutes '. . . demonstrate[ ] the legislature's explicit intent that [IDOR] have exclusive jurisdiction' over the assessment, collection, and distribution of tax revenues," id. at 18 (citing J&J) (brackets in Kankakee Br.). The bracketed alteration is disingenuous; J&J did not involve IDOR or any tax statute. Regardless, even the general statements do not help Kankakee or the brokers, since this case does not involve any of the taxation functions Kankakee and the brokers identify, as we have explained and the appellate court ruled. See City of Chicago, 2017 IL App (1st) 153531, ¶ 31.

Next, Kankakee and the brokers assert that the appellate court's decision "provides a roadmap to strategic plaintiffs seeking to avoid an agency's exclusive jurisdiction. They need only frame their claims as 'unjust enrichment,' and voila: the courts have jurisdiction to hear them." Kankakee Br. 24. That assertion should be rejected out of hand. Plainly, not every claim can be "framed" as unjust enrichment – such a cause of action has four specific elements, as we explain in Part II below. Moreover, where a complaint in fact states a common-law claim for unjust enrichment, there is no reason – and Kankakee and the brokers offer none – why courts should be divested of jurisdiction over that claim.

Kankakee and the brokers also assert:

> To resolve the claims asserted in the proposed Fourth Amended Complaint, the Circuit Court would have to determine the proper situs of hundreds of thousands of retail sales by nearly 20 internet retailers . . . stretching back more than a decade. Then, if Plaintiffs prevailed on liability, the Court would have to determine the amount in tax revenues that Chicago and Skokie *would* have received had the Internet Retailers paid use tax rather than sales tax – a calculation requiring an assessment, for each month of the period of proposed liability, of the sales made by the Internet Retailers, Plaintiffs' populations, the state's total population, the gross receipts of IDOR's Audit Bureau, the legislature's appropriations, and the total amount that all taxpayers paid in use tax. Finally, the Circuit Court would have to enter a judgment requiring Kankakee . . . to redistribute to Chicago and Skokie an amount equal to the tax revenues that IDOR had allegedly misallocated.

Kankakee Br. 15-16 (emphasis in original). At the outset, it bears pointing out that the upshot of this passage is that, for more than a decade, the scheme among Kankakee, the brokers, and the retailers deprived plaintiffs of tens of millions of dollars of use tax revenue that was rightfully theirs and is a portion of the amount by which Kankakee, the brokers, and the retailers were unjustly enriched. The passage contains no argument that it is impossible for a court to calculate the amount plaintiffs are owed. At best, it is an argument that the calculation requires several steps. That is not relevant to whether the circuit court has jurisdiction. Moreover, Kankakee and the brokers misdescribe some of the steps. For example, the court would not engage in an "assessment" as that word is commonly defined in the tax context; as we have explained, in determining the overpayment of tax revenue to Kankakee and the underpayment to plaintiffs, the court would not

assess any tax. The tax was paid, albeit falsely reported as sales tax rather than use tax. Nor would the calculation require the court to consider "the gross receipts of IDOR's Audit Bureau" or "the legislature's appropriations," as we explain in note 12 supra. As for determining "the total amount that all taxpayers paid in use tax," that statement is mystifying – the entire basis for our claim is that the retailers did not pay use tax on the transactions at issue, but wrongfully paid sales tax on them. Nor do we seek a judgment against only Kankakee – defendants include the brokers and the retailers, too. Finally, the judgment would not require any of those entities to "redistribute" any revenue, as we have explained. Rather, the judgment would require Kankakee, the brokers, and the retailers to pay us an amount equal to the use tax revenue to which we are entitled and by which they have been unjustly enriched.

Kankakee and the brokers also assert that "the statutes vest all authority over sales and use tax matters in IDOR," Kankakee Br. 18, citing two provisions of the Department of Revenue Law – one providing that IDOR "has the power to administer and enforce all the rights powers, and duties contained in [ROTA] to collect all revenues thereunder," 20 ILCS 2505/2505-25; the other providing that IDOR "has the power to exercise all the rights, powers and duties vested in [IDOR] by [UTA]," id. 2505/2505-90. And Kankakee and the brokers emphasize the word "all" in the second provision. Kankakee Br. 18. But those provisions do not help here; they merely state

that IDOR has the powers that two other statutes – ROTA and UTA – confer on it. Neither provision identifies the powers those other two statutes confer on IDOR or take away from the courts. In examining the statutes as a whole under J&J, the cited provisions plainly do not demonstrate an intent to oust the circuit courts of jurisdiction.

In addition, Kankakee and the brokers cite a provision that allows IDOR to "correc[t] faulty tax returns," as well as two provisions that, Kankakee and the brokers represent, allow IDOR to "adjus[t] [revenue] distributions to offset earlier misallocations." Kankakee Br. 18-19. Contrary to Kankakee's and the brokers' representation, the latter provisions do not address misallocations with respect to earlier "distributions"; the statutes use the word "disbursements." 30 ILCS 105/6z-18; 65 ILCS 5/8-11-16. It is telling that Kankakee and the brokers change this word. Regardless, none of these provisions helps here. IDOR's authority to correct faulty tax returns is limited to circumstances where "the taxpayer agrees that he or she has made a reporting error that should be corrected." 20 ILCS 2505/2505-475. Kankakee and the brokers fail to mention this. Because the taxpayers here – the retailers – have not admitted that they made reporting errors, IDOR had no authority to correct any errors under section 2505-475.

With respect to adjusting revenue disbursements to offset earlier misallocations, Kankakee and the brokers cite a section of the Illinois Municipal Code, Kankakee Br. 18-19, 30, which provides: "When certifying

the amount of a monthly disbursement to a municipality under . . . Section 6z-18 of [SFA], the Department shall increase or decrease such amount by an amount necessary to offset any misallocation of previous disbursements." 65 ILCS 5/8-11-16.[14] That provision or its predecessor was addressed in City of Kankakee v. Department of Revenue, 2013 IL App (3d) 120599, and City of Champaign v. Department of Revenue, 89 Ill. App. 3d 1066 (4th Dist. 1980), both of which involved IDOR audits revealing that retailers had falsely reported they made sales in one municipality that they actually made elsewhere. City of Kankakee, 2013 IL App (3d) 120599, ¶ 5; City of Champaign, 89 Ill. App. 3d at 1067 (prior version of section 8-11-16). IDOR informed the municipalities it would recoup the tax revenue they improperly received; and the municipalities sought judicial review of IDOR's decision. City of Kankakee, 2013 IL App (3d) 120599, ¶¶ 1, 3, 4, 14; City of Champaign, 89 Ill. App. 3d at 1067.

In this case, by contrast, IDOR never examined whether it had misallocated tax revenue from the sales at issue. As we have explained, after

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[14] Section 6z-18 of SFA, 30 ILCS 105/6z-18, contains language similar to section 8-11-16 of the Municipal Code; and Kankakee and the brokers cite both provisions for the same proposition. Kankakee Br. 18-19, 30. Kankakee and the brokers also say that the two provisions "only allow IDOR to correct misallocations that occurred within the previous six months." Id. at 30. That is not accurate – those provisions actually allow IDOR to correct erroneous disbursements made "within the previous 6 months from the time a misallocation is discovered." 65 ILCS 5/8-11-16 (emphasis added); see also 30 ILCS 105/6z-18 (same). Here, there is no indication that IDOR has ever discovered the misallocations we allege, since, as we have explained, IDOR never performed an audit. Thus, the time to correct has not yet begun to run.

this court's decision in Hartney, IDOR discontinued audits involving pre-Hartney local sourcing issues, A202 (citation omitted), like the issues presented here. And that fact renders irrelevant to this case ROTA and UTA provisions Kankakee and the brokers cite that authorize IDOR to undertake investigations and hold administrative hearings in order "to resolve controversies relating to sales and use taxes." Kankakee Br. 19 (citing 35 ILCS 105/11, 12b; 35 ILCS 120/8); see also id. at 20.

In turn, because IDOR never examined whether it had misallocated tax revenue from the sales at issue, it never made a decision of which we could seek judicial review, as Kankakee and Champaign did. And, unlike the Video Gaming Act at issue in J&J, which allows interested parties to obtain administrative hearings before the Illinois Gaming Board, no Illinois statute allows municipalities to obtain an administrative hearing before IDOR on tax sourcing issues. Thus, our claims for unjust-enrichment are our sole means to seek redress for the deprivation of tax revenue.[15]

Kankakee and the brokers contend that recognizing circuit court

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[15] Kankakee and the brokers also refer to numerous other sections of the tax statutes, Kankakee Br. 18-20, 25, 30, that do not bear on the issues in this case. Although those provisions show that the legislature enacted a comprehensive administrative framework, they do not show, explicitly or implicitly, that the legislature intended to confer exclusive jurisdiction on IDOR over claims like the ones we allege in this case, as would be necessary to divest the circuit courts of original jurisdiction to adjudicate such claims. Zahn, 2016 IL 120526, ¶ 15 ("If the legislature intends for exclusive original jurisdiction to lie with the agency rather than with the circuit courts when it has enacted . . . a comprehensive statutory scheme, it must make that intention explicit."); see also J&J, 2016 IL 119870, ¶ 24 (same).

jurisdiction over this action would "wreak havoc," Kankakee Br. 25 (heading), claiming five "severe consequences," id. at 25-27. They are wrong as to all five. First, they assert that while ROTA requires IDOR to maintain the confidentiality of information that it collects during an investigation of a retailer's compliance with that statute, municipalities that bring claims like ours in circuit court "have no such obligations." Kankakee Br. 25. That is another mystifying assertion. Where warranted, circuit courts have authority to issue protective orders to protect confidentiality. Ill. Sup. Ct. R. 201(c); see also, e.g., Burger v. Lutheran General Hospital, 198 Ill. 2d 21, 37 (2001) (Rule 201(c) "authorizes the circuit court, when appropriate, to issue protective orders to shield particularly sensitive materials from unnecessary disclosure.").

Second, Kankakee and the brokers assert that circuit court actions would

> leave taxpayers under the constant threat of lawsuit for their good-faith reporting decisions. An internet retailer that pays sales tax will face the risk of being sued by municipalities for failing to pay use tax. But paying use tax will only leave the retailer open to suit by *other* municipalities on the ground that it should have paid *sales* tax.

Kankakee Br. 25-26 (emphasis in original). At the outset, we do not agree that the reporting decisions here were made in good faith. The allegations of our complaint, which must be taken as true, preclude any such contention. See, e.g., City of Chicago, 2017 IL App (1st) 153531, ¶ 41 ("Plaintiffs allege that the brokers set up sham offices in [Kankakee] and performed sham

services for the internet retailers . . . ."); id. ("[P]laintiffs allege . . . a scheme in which the brokers received a portion of the sales tax [revenue] through the rebate agreement[s] paid by [Kankakee] in connection with the agreement[s] to deliberately missource retail sales"; that "the brokers participated in this scheme"; and that "the rebate payments [were also made to] the [internet] retailers."). Beyond that, this concern is inflated. Village of Itasca recognized more than thirteen years ago that claims involving the location at which sales were accepted for purposes of determining which municipality is entitled to tax revenue from those sales may be brought in the circuit court. 352 Ill. App. 3d at 852-53. Yet, if reported decisions are any guide, that case did not open the floodgates to similar lawsuits. And, if the number of court cases did become a problem, the General Assembly could address it, such as by requiring, rather than merely permitting, IDOR to adjudicate such matters, or some subset of them.

Third, Kankakee and the brokers assert that circuit court actions would "creat[e] a risk . . . that IDOR and the courts may come to opposite conclusions about the same transactions," or, "[m]aybe worse, . . . may come to the *same* conclusion, causing taxpayers to incur multiple liability for a single violation," Kankakee Br. 26 (emphasis in original) – "risks" that, Kankakee and the brokers further assert, "are not hypothetical" in light of the circuit court's statement in this case that "'a number of the proposed defendants have been, or are currently being, audited by IDOR with regard

to sales and/or use tax issues,'" id. (citing A200). But the particular "sales and/or use tax issues" presented in those IDOR audits plainly are not the same issues presented in this case – here, the issues are pre-Hartney local sourcing issues, and, as we have explained, after Hartney, IDOR discontinued the audits that involved such issues. A202. Moreover, Kankakee's and the brokers' assertion that "taxpayers [could] incur multiple liability for a single violation" makes no sense. And, again, if the number of court cases involving these issues ever exceeded what the General Assembly thought appropriate, that body could address it, such as by requiring, rather than merely permitting, IDOR to adjudicate such matters, or some subset of them. That likewise refutes Kankakee's and the brokers' fourth and fifth contentions that circuit court actions would both force municipalities that received tax revenue to incur the expense of defending private taxpayers' reporting decisions, Kankakee Br. 26, and "open the door to suits by municipalities over allegedly unpaid or underpaid state income taxes, excise taxes, or any other tax currently administered by IDOR and remitted in part to local governments," id. at 27. Moreover, if the last circumstance were likely to occur, one would expect that it would already have occurred since Village of Itasca was decided. Yet we are unaware of any case involving that circumstance.

Kankakee and the brokers set out the statement in Kosicki v. S.A. Healy Co., 380 Ill. 298 (1942), that "'[w]here a statute creates a new right or

imposes a new duty or liability, unknown to the common law, and at the same time gives a remedy for its enforcement, the remedy so prescribed is exclusive,'" Kankakee Br. 28 (citing Kosicki, 380 Ill. at 302), and then characterize that statement as a "doctrine" that "[t]he Appellate Court's decision [in this case] contradicts," id. at 29. But that statement from Kosicki is not the law. Indeed, as Kosicki itself makes clear two sentences later, the law is actually that "[w]here . . . a new remedy is given by statute, and there are no negative words or other provisions rendering it exclusive, it will be deemed to be cumulative only and not to take away prior remedies." 380 Ill. at 302. Among "the prior remedies" that such a statute does not "take away" are common-law remedies, including claims like ours for unjust enrichment, as this court recently explained in Rush University Medical Center v. Sessions, 2012 IL 112906:

> The implied repeal of the common law is not and has never been favored. Thus, a statute that does not expressly abrogate the common law will be deemed to have done so only if that is what is "necessarily implied from what is expressed." But in such cases, there must be an "irreconcilable repugnancy" between the statute and the common law right such that both cannot be carried into effect.

Id. ¶ 17 (citations omitted); see also, e.g., K. Miller Construction Co., Inc. v. McGinnis, 394 Ill. App. 3d 248, 257-63 (1st Dist. 2009) (Home Remodeling and Repair Act did not abolish an unjust-enrichment action based on *quantum meruit*). As pertinent here, no revenue statute mentions the common law or any common-law action, much less abrogates the common law

expressly. Nor is such abrogation implied, since there is no "irreconcilable repugnancy" between any revenue statute and our claims for unjust enrichment.

Kankakee and the brokers also emphasize the statement in Cramer v. Insurance Exchange Agency, 174 Ill. 2d 513 (1996): "when the legislature has provided a remedy for a heretofore unremedied evil, the courts should not allow an end-run around the limits imposed by that statute by creating a common-law action that remedies the same basic evil." Id. at 528. They contend that "this suit represents precisely such an end-run" around limits set forth in certain revenue statutes. Kankakee Br. 31-32. But, as Cramer makes clear, the quoted statement means that courts cannot create a common-law action, after enactment of the statute, to remedy the same evil. That is not the case here, since the common-law action for unjust enrichment existed long before the pertinent statutes, and remedies a different evil.[16]

Finally, Kankakee's and the brokers' argument that our unjust-enrichment claims exceed our home-rule authority, Kankakee Br. 32-35, should be rejected as well. Their statement that "[t]he collection and distribution of taxes under the ROTA and the UTA are, straightforwardly, matters of 'statewide rather than local dimension,'" id. at 33 (citing City of Chicago v. StubHub, Inc., 2011 IL 111127, ¶ 24), does not help them because,

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[16] The other cases Kankakee and the brokers cite in addition to Cramer, see Kankakee Br. 28-29, 31-32, are inapposite for the same reason as Cramer.

as we have explained, we do not seek to collect or distribute any tax. Rather, we seek to recover money – collected from the retailers and received by Kankakee, the brokers, and the retailers as revenue, to be sure, but now simply property that they hold even though it belongs to Chicago and Skokie. Any municipality, home rule or not, has authority to do that.[17]

Thus, for example, if an employee of Kankakee were to misplace a laptop belonging to Kankakee, and a Chicago resident somehow obtained possession of it but refused to return it to Kankakee, then Kankakee plainly would have a viable claim against the Chicago resident to recover that laptop. And, just as plainly, if possession of Kankakee's laptop were instead somehow obtained not by a resident of Chicago, but by the City of Chicago itself, and Chicago refused to return it, then Kankakee would have a viable claim against Chicago. This case is indistinguishable from those scenarios, since our complaints allege that Kankakee, the brokers, and the retailers have possession of property belonging to us – tax revenue that they improperly obtained – and we seek to recover that property, just as if the property we sought to recover from them were instead laptops belonging to us. It does not matter that determining whether the revenue belongs to us – and not to Kankakee, the brokers, and the retailers – depends on the

[17] For this reason, the "government and affairs" limitation in the Illinois Constitution's Article VII, section 6(a) has no bearing on this case; and neither do the cases Kankakee and the brokers cite. See Kankakee Br. 32-34.

substance of the tax laws; if, as our complaint alleges, the revenue belongs to us, then we are entitled to recover it on our unjust-enrichment claims.

II. REVIEW OF THE APPELLATE COURT'S HOLDING THAT PLAINTIFFS' COMPLAINT STATES ACTIONABLE UNJUST-ENRICHMENT CLAIMS HAS BEEN FORFEITED; AND, REGARDLESS, THAT HOLDING IS CORRECT.

Kankakee and the brokers presented one question in their petition for leave to appeal, and it concerned the jurisdiction of the circuit court to hear this case. They did not ask this court to review the appellate court's ruling that plaintiffs state actionable unjust-enrichment claims against them. Consistent with that omission, the opening brief by Kankakee and the brokers does not challenge that ruling. Under a long line of cases, issues omitted from the petition for leave to appeal are forfeited. E.g., 1350 Lake Shore, 223 Ill. 2d at 629 ("Failure to include an issue in a petition for leave to appeal results in forfeiture of that issue for review.") (citing People v. Carter, 208 Ill. 2d 309, 318 (2003)). And issues omitted from the opening brief are waived. Ill. Sup. Ct. R. 341(h)(7) ("Points not argued [in the appellants' opening brief are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). For both reasons, then, the question whether plaintiffs stated claims for unjust enrichment is not before the court.

The retailers' amicus brief addresses only the issue not before the court. That is improper. "[A]n *amicus curiae* is not a party to the action but is, instead, a 'friend' of the court," and, as a consequence, "'takes the case as

he finds it, with the issues framed by the parties.'" Burger, 198 Ill. 2d 21 at 62 (quoting People v. P.H., 145 Ill. 2d 209, 234 (1991)); accord, e.g., Karas v. Strevell, 227 Ill. 2d 440, 450-51 (2008). Thus, "[t]his court has repeatedly rejected attempts by *amicus* to raise issues not raised by the parties to the appeal." Karas, 227 Ill. 2d at 450; Burger, 198 Ill. 2d at 62. Accordingly, the court should not address the retailers' position that plaintiffs' complaints fail to state actionable unjust-enrichment claims. In any event, the position is incorrect on the merits, as we now explain.

A. Plaintiffs State Actionable Unjust-Enrichment Claims Against The Internet Retailers.

"To state a cause of action [for] unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." E.g., HPI, 131 Ill. 2d at 160. Thus, a complaint states an unjust-enrichment claim where it alleges four elements: (1) that the defendant has retained a benefit, and that the defendant's retention of the benefit (2) is unjust, (3) is to the plaintiff's detriment, and (4) violates the fundamental principles of justice, equity, and good conscience.

Here, the allegations of our Fourth Amended Complaint against the retailers satisfy all four elements. Concerning the first element, we allege that they have retained benefits we seek – specifically, amounts they improperly received as rebates on the sales they falsely reported to IDOR

that they made in Kankakee that they actually made outside Illinois. A163-A168, A174-A175, A176. Our allegations also satisfy the second, third, and fourth elements – the retailers' retention of those benefits is unjust, is to our detriment, and violates the principles of justice, equity, and good conscience. In particular, we allege that they received the rebates only because they falsely reported to IDOR they made the sales in Kankakee and wrongfully paid sales tax, rather than use tax, on the transactions, thereby depriving Chicago of tens of millions of dollars in use tax revenue, and also depriving Skokie of use tax revenue, that we, rather than they, would have received had they truthfully reported that they made the sales outside Illinois and properly paid use tax on the transactions. Id. In light of these allegations, the circuit court was plainly incorrect in concluding that our allegations are "far too general and conclusory . . . and fai[l] to plead factually adequate causes of action against [the internet] defendants," A192, and the retailers' defense of that conclusion, Amicus Br. 6, should be rejected. In a related vein, the retailers assert that the Fourth Amended Complaint "lumps [them] together" and contains "no allegation directed at any specific" retailer. Id. Individualized allegations are not required where all the retailers engaged in the same wrongful conduct, as we allege they did. SA30. Our allegations plainly satisfy all four elements of a cause of action for unjust enrichment against all the retailers.

The retailers assert that "[u]njust enrichment does not constitute an

independent cause of action," Amicus Br. 7 (citing Chicago Title Insurance Co. v. Teachers' Retirement System, 2014 IL App (1st) 131452, ¶¶ 17-18); see also id. at 5, but is instead "a condition that may be brought about by unlawful or improper conduct as defined by law, such as fraud, duress or undue influence" id. (citing Alliance Acceptance Co. v. Yale Insurance Agency, Inc., 271 Ill. App. 3d 483, 492 (1st Dist. 1995)). That assertion is flatly inconsistent with this court's decision in HPI, which expressly recognizes unjust enrichment as "a cause of action" and sets forth its elements, 131 Ill. 2d at 160, none of which requires any type of wrongful conduct, much less fraud, duress, or undue influence. Again, HPI specifies: "To state a cause of action [for] unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice equity and good conscience." Id.; accord, e.g., National Union Fire Insurance Co. v. DiMucci, 2015 IL App (1st) 122725, ¶ 67 (citing HPI and stating: "A cause of action based upon unjust enrichment does not require fault or illegality on the part of [the] defendant; the essence of the cause of action is that one party is enriched and it would be unjust for that party to retain the enrichment."). And that means that the retailers' additional assertion that we "failed to allege any fraud, duress, or undue influence," Amicus Br. 8, is irrelevant; under HPI and its progeny, such allegations are not necessary to state an unjust-enrichment claim. As

for the retailers' further assertion that we fail to allege any "actionable wrong" in this case, id. at 7 (heading); see also id. at 9, that is plainly incorrect. We allege wrongful conduct by the retailers – specifically, that they falsely reported to IDOR they made sales in Kankakee that they actually made outside Illinois, and wrongfully paid sales tax, rather than use tax, on those transactions. A162-A166, A172-A175.

With respect to our allegations that the retailers have been unjustly enriched by the rebates they received, the retailers emphasize that 65 ILCS 5/8-11-20 expressly allows municipalities and retailers to enter into rebate agreements. Amicus Br. 8; see also id. at 20. That statement, although correct, does not help the retailers. Neither section 8-11-20 nor any other statute or legal principle permits retailers to wrongfully pay sales tax instead of use tax on a transaction, and then defend a rebate of sales tax revenue from that transaction on the basis that the rebate was received pursuant to an agreement with a municipality.

The retailers also assert, incorrectly, that "there is no connection . . . between Plaintiffs and the Internet Retailers such that, as between them, it would be unjust for the Internet Retailers to retain funds that Kankakee . . . rebated to them through the brokers." Amicus Br. 10; see also id. at 5. The connection between us and the retailers is simple enough: they have money that belongs to us. Their wrongful payment of sales tax, rather than use tax, enabled them to obtain rebates of the sales tax revenue that Kankakee

improperly received, thereby depriving us of use tax revenue. No more of a connection between the plaintiff and a defendant on a claim for unjust enrichment is required.

The retailers observe that "any monies received by [them] were received from the defendant brokers, not from Plaintiffs"; and on that basis, they contend that our unjust-enrichment claim against them "is futile" because it is "at best, entirely derivative." Amicus Br. 10. As purported support, they cite State Farm General Insurance Co. v. Stewart, 288 Ill. App. 3d 678 (1st Dist. 1997). But that case does not even suggest that an unjust-enrichment claim is foreclosed where the defendant receives the benefit from a third party, rather than from the plaintiff. To the contrary, it acknowledges the holding in HPI that on an unjust-enrichment-claim, the plaintiff is entitled to recover a benefit that was transferred to the defendant by a third party where "(1) the benefit should have been given to the plaintiff, but the third party mistakenly gave it to the defendant instead[;] (2) the defendant procured the benefit from the third party through some sort of wrongful conduct[;] or (3) the plaintiff for some other reason had a better claim to the benefit than the defendant." State Farm, 288 Ill. App. 3d at 691 (quoting HPI, 131 Ill. 2d at 161-62). Indeed, the retailers set out that passage from HPI. Amicus Br. 11.

Both situations (2) and (3) in that passage from HPI describe our unjust-enrichment claims against the retailers. Specifically, the benefits we

allege the retailers have retained to our detriment are the rebates they received, as a result of their wrongful conduct, from Kankakee (through the brokers).[18] Here, again, the retailers assert that the rebates were "expressly authorized by . . . [section] 8-11-20." Amicus Br. 10. But, as we explain above, neither section 8-11-20 nor anything else provides a defense to an unjust-enrichment claim when the rebates are received from revenue that should have been paid as use tax, but was wrongfully paid as sales tax.

With respect to our allegations that the retailers misrepresented they made sales in Kankakee that they actually made outside Illinois, they assert that these representations were made to IDOR and that IDOR "is empowered by statute to audit any taxpayer representations." Amicus Br. 9. That does not help the retailers. It does not refute our allegation that, as a result of their misrepresentations to IDOR, they were unjustly enriched to our detriment. Moreover, after this court's decision in Hartney, IDOR discontinued audits related to pre-Hartney local sourcing issues, A202 (citation omitted), and municipalities cannot initiate proceedings at IDOR or compel IDOR to initiate proceedings.

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[18] Under its plain language, situation (2) in the passage from HPI permits recovery from any defendant who procured the benefit from a third party "through" some sort of wrongful conduct, whether committed by that same defendant, another defendant, or a non-defendant. 131 Ill. 2d at 161. Thus, regardless whether Kankakee or any of the brokers engaged in any wrongful conduct, HPI permits us to recover from all of them, in addition to the retailers, based on the wrongful acts that, we allege, the retailers committed.

The retailers assert that we have not "identified a single viable reason why [we] have a better claim to the rebates than the[y] or, for that matter, any of the hundreds of other [Illinois] municipalities." Amicus Br. 12. To the contrary, we certainly have identified why we have a better claim to the rebates than the retailers – they obtained the rebates by wrongful conduct that has deprived us of use tax revenue to which we are entitled. As for a claim by other municipalities, we do not contend that we have a better claim to the rebates. And, indeed, our claim does not diminish the rights of any other municipality. We seek only the amount to which we would have been entitled had Kankakee, the brokers, and the retailers not engaged in their wrongful scheme. That is only a portion of the amount by which Kankakee, the brokers, and the retailers have been unjustly enriched. The rest is the sales tax revenue that should have been disbursed, as use tax revenue, to other municipalities and units of government. For whatever reason, no other entity has pursued recovery of its separate share of that revenue. See City of Chicago, 2017 IL App (1st) 153531, ¶ 34 ("[E]ven assuming that every other entity entitled to use tax revenue came forward and recovered its proportionate share of diverted use tax from defendants . . . , [Kankakee] would simply be in the same position had the missourced sales been properly reported as subject to the use tax.").

The retailers complain that "authorizing Plaintiffs to pursue . . . unjust enrichment claims for allegedly missourced use tax claims [sic] against

the[m] would arguably create a new cause of action for unjust enrichment against *any* Illinois taxpayer for missourcing or mispayment of *any* tax." Amicus Br. 11 (emphasis in original). That complaint makes no sense. Our claims against the internet retailers are not even "arguably . . . a new cause of action for unjust enrichment"; the cause of action for unjust enrichment has existed for many decades, and, as we have explained, our claims plainly satisfy the elements of such a cause of action. Moreover, the retailers do not explain why taxpayers should be immune from claims that they missourced taxes or paid the wrong tax. It is for the legislature to decide which tax a taxpayer must pay on which transactions. Schemes like the one we allege the retailers participated in cost Chicago tens of millions of dollars, and cost Skokie money as well. There is no reason to allow the retailers to be unjustly enriched by that scheme.

Finally, the retailers assert that "[t]he Appellate Court's holding . . . gives [us] authority not only to add the Internet Retailers currently named in [our] Fourth Amended Complaint, but to continue adding *any* entities that meet [our] general allegations of 'wrongdoing,'" which "could result in mass litigation that would unnecessarily burden the judicial system." Amicus Br. 7. As we have explained, these claims have not proliferated in the wake of Village of Itasca and Beeler. And we have alleged much more than general wrongdoing. Likewise, our claims are no more "unnecessary" than meritorious claims in any other lawsuit. As we have explained, we have no

administrative remedy. Moreover, if the General Assembly ever became concerned with the number of cases in the circuit court for unjust-enrichment as a result of missourcing or mispayment of taxes, it could provide an administrative remedy by requiring, rather than merely permitting, IDOR to adjudicate such matters, or some subset of them. Absent such a remedy, our unjust-enrichment claims against the retailers are entirely proper, and indeed necessary.

B. Plaintiffs' Unjust-Enrichment Claims Support The Imposition Of Constructive Trusts.

This court held in Smithberg v. Illinois Municipal Retirement Fund, 192 Ill. 2d 291 (2000), that "[w]hen a person has obtained money to which he is not entitled, under such circumstances that in equity and good conscience he ought not retain it, a constructive trust can be imposed to avoid unjust enrichment." Id. at 299 (emphasis added). Here, we explain, our Fourth Amended Complaint states unjust-enrichment claims against the retailers. To avoid that unjust enrichment, we are entitled, under Smithberg, to the imposition of constructive trusts in the appropriate amount.

The retailers contend that we are not entitled to constructive trusts because, they assert, the Fourth Amended Complaint does not allege any "wrongdoing" on their part and the rebates they received were "freely given by Kankakee . . . in accordance with Illinois law." Amicus Br. 13. The notion that our Fourth Amended Complaint does not allege wrongful acts by the retailers is flat-out incorrect – we specifically allege that they falsely reported

to IDOR they made sales in Kankakee that they actually made outside Illinois, and wrongfully paid sales tax, rather than use tax, on those transactions. As for the retailers' reliance on the statutory provision concerning rebates, if those rebates are paid out of sales tax revenue in connection with a scheme like we allege here, they are not outside the reach of the party that was wronged by that scheme.

C. Plaintiffs' Unjust-Enrichment Claims Support Awards Of Restitution.

Citing only a comment in a 1975 law review article that "'[t]he traditional means of effecting restitution [requires] a showing of fraud or the abuse of a fiduciary relationship,'" the retailers contend that the circuit court correctly concluded that our "claim for 'restitution' fail[s]," Amicus Br. 13, because our Fourth Amended Complaint does not allege that they committed "fraud, abuse of a fiduciary relationship, or other extreme tortious conduct," id. at 14. At the same time, however, they acknowledge that restitution is a remedy for unjust enrichment, see id. at 13, and under Illinois law, as we have explained, the elements of an unjust-enrichment claim do not include fraud, abuse of a fiduciary relationship, or other extreme tortious conduct. Plainly, the omission from the Fourth Amended Complaint of allegations that are not necessary to the cause of action alleged is not a reason to deny leave to file that complaint.

CONCLUSION

This court should affirm the judgment of the appellate court.

Respectfully submitted,

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SUPPLEMENTARY APPENDIX

Table of Contents to the Supplementary Appendix

[19] The clerk of the circuit court prepared an original record consisting of 38 volumes, and two supplemental records. One item we include in this supplementary appendix is from Volume 38 of the original record. That volume is separately paginated; and we cite its pages as "38Vol. __." We also include two items from Volume 1 of the first supplemental record. That volume is likewise separately paginated; and we cite its pages as "1SR __." None of the other items we include is from the original record or either supplemental record.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, et al., Defendants.	CASE NO. 11 CH 29745 (consolidated with 11 CH 29744 and 11 CH 34266) Honorable Peter Flynn

PLAINTIFFS' MOTIONS TO RECONSIDER, FOR LEAVE TO FILE REVISED PLEADING, AND TO TRANSFER CASE

"The intended purpose of a petition to reconsider is to bring to the court's attention … errors in the court's previous application of existing law." Gardner v. Navistar Int'l Transp. Corp., 213 Ill. App. 3d 242, 248 (4th Dist. 1991). As discussed below, this Court's order of October 9, 2015 ("Order") rests on several such errors, including:

- Erroneously holding that Plaintiffs could not allege an unjust enrichment claim, based on the assumption that Plaintiffs have failed to allege an actionable wrong and a sufficient connection between the Plaintiffs and Defendants (Order at 11-13; see Apollo Real Estate Investment Fund, IV, L.P. v. Gelber, 398 Ill. App. 3d 773 (1st Dist. 2009));

- Erroneously holding that, under the doctrine of primary jurisdiction, IDOR's expertise is required to determine the situs of the sales transactions at issue in this case or to determine a remedy for Plaintiffs' claims (Order at 13-18; see Village of Itasca v. Village of Lisle, 352 Ill. App. 3d 847 (2d Dist. 2004)); and

- Even assuming the doctrine of primary jurisdiction could apply, erroneously dismissing Plaintiffs' claims with prejudice, rather than staying the case (Order at 13; see People v. NL Indus., 152 Ill. 2d 82 (1992) ("Should primary jurisdiction be found to exist, the action should never be dismissed from the court but may only be stayed.").

For these and the other reasons discussed below, pursuant to 735 ILCS 5/2-1203 and this Court's inherent authority, Plaintiffs respectfully (1) move this Court to reconsider its Order, (2)

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move for leave to file the revised Fourth Amended Complaint tendered with this motion as Exhibit A, and (3) move to transfer this matter to the Tax and Miscellaneous Remedies Section of the Law Division.

Introduction

If a sale takes place inside Illinois (i.e., is "sourced" to Illinois), the 6.25% State sales tax applies. If a sale takes place outside Illinois, the 6.25% State use tax applies. In either case, the State of Illinois distributes a "local share" pursuant to a simple statutory formula. In the case of the State sales tax, the municipality in which the sale takes place receives 100% of the local share. In the case of the State use tax, the "local share" is again distributed according to a statutory formula, with Chicago receiving 20%, and with Skokie receiving a smaller amount, based on a formula.[1] IDOR does not apply any discretion or technical expertise in making these calculations.

Plaintiffs allege that the proposed Business Defendants misreported their sales as having taken place inside Illinois rather than outside Illinois. As a result, Defendants were unjustly enriched. Specifically, Plaintiffs were deprived of what should have been their statutory portions of the local share of the State use tax, the Municipal Defendants received 100% of the local share of the State sales tax, and pursuant to their rebate and agency agreements, the Municipal Defendants shared that money with the Broker and Business Defendants.

Plaintiffs' claims are in all essential respects the same as those that the Illinois Appellate Court held were improperly dismissed by the circuit court in Village of Itasca v. Village of Lisle,

[1] As discussed in more detail later in this motion, pursuant to statute, Skokie's share is based on population. 35 ILCS 105/6z-17(a)(v) and 35 ILCS 115/2(a). IDOR publishes the monthly use tax amount received by each local government along with the locality's population. See www.revenue.state.il.us/LocalGovernment/Disbursements/IncomeUse/income.htm. These facts should be subject to stipulation.

352 Ill. App. 3d 847 (2d Dist. 2004) - i.e., claims for monetary relief asserted directly against the business that incorrectly reported its taxes and the municipality that incorrectly received tax as a result. Here, as in Itasca, the main issue is where the sale took place. Here, as in Itasca, IDOR does not have exclusive or primary jurisdiction. The fact that Plaintiffs were injured by thirteen businesses working with two municipalities and brokers - rather than one business working with one municipality (as in Itasca) - should not mean that Plaintiffs are deprived of a remedy.[2] A plaintiff's access to the courts should not turn on the number of defendants that wronged it.

In any event, based on discovery to date, Plaintiffs anticipate that any factual differences among the various businesses will be immaterial. This is because all of the businesses employed the same two brokers, and the procedures employed by the Internet Retailers were all essentially the same, as were the procedures employed by the two Procurement Companies. Based on this, Plaintiffs believe that after some minimal discovery, the material facts will not be in dispute, and the case can be decided on cross motions for summary judgment.

I. Motion to Reconsider

A. Plaintiffs Have Valid Claims for Unjust Enrichment.

Unjust enrichment is an independent cause of action that is "maintainable in all cases where one person has received money under such circumstances that in equity and good conscience he ought not be allowed to keep it." A.T. Kearney, v. INCA Intern. , 132 Ill. App. 3d 655, 660 (1985). To state a claim for unjust enrichment, a plaintiff need only "allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's

[2] The thirteen businesses consist of eleven Internet Retailers and two Procurement Companies. As confirmed in our letter of October 1, 2015, Plaintiffs have withdrawn their claims against a third Procurement Company to which IDOR gave a release in connection with an audit of the company's sourcing of its sales.

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retention of the benefit violated the fundamental principles of justice, equity, and good conscience." HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc., 131 Ill. 2d 145, 160 (1989).[3]

Here, Plaintiffs have alleged that the Defendants have unjustly retained a benefit, in the form of the local share of the State sales tax. This was unjust, because it was the result of misreporting by the Business Defendants. It was to Plaintiffs' detriment, because Plaintiffs would have received the local share of the State use tax had the sales been correctly reported. Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience, because the sales should have been reported as subject to the State use tax. Although the benefit was paid in the first instance to the Municipal Defendants, it was then received and retained by the Broker and Business Defendants, pursuant to their rebate and agency agreements with the Municipal Defendants. Under controlling and well-settled law, Plaintiffs have valid claims for unjust enrichment against all of the Defendants.

1. Wrongful Conduct Is Not Required, But Plaintiffs Have Alleged It.

In its Order, the Court stated that Plaintiffs "do not articulate what [the] actionable wrong is." Order at 10. Plaintiffs' claims for monetary relief do not require wrongful conduct on the part of Defendants. "A cause of action based on unjust enrichment ... does not require fault on the part of the defendant. ... Instead, the essence of the cause of action is that one party is enriched and it would be unjust for that party to retain the enrichment." Partipilo v. Hallman, 156 Ill. App. 3d 806, 810 (1st Dist. 1987).

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[3] The Court cited City of Chicago v. Beretta U.S.A. Corp., 213 Ill. 2d 351 (2004), for the proposition that some enforceable duty must underlie any cause of action. Order at 10. Beretta, however, involved a tort claim and its holding as to the duty requirement is specific to tort liability. See id. at 390 – 93. The elements of an unjust enrichment claim do not require a showing of duty.

In any event, Plaintiffs have alleged wrongful conduct. Specifically, Plaintiffs allege that the Business Defendants misreported their sales as subject to the State sales tax rather than the State use tax. See, e.g., Third Amended Complaint at ¶¶ 33 – 34, 56; proposed Fourth Amended Complaint ¶¶ 63, 83.[4] Misreporting one's taxes is a violation of the applicable statutes and therefore wrongful in and of itself, as evidenced by the laws that impose penalties for such actions. See 35 ILCS 735/3-3. The fact that the rates are the same for the two taxes does not mean that the taxpayer has no obligation to correctly report what type of tax applies, especially when misreporting the tax will result in the taxpayer's receipt of a rebate at another's expense. Misreporting of taxes was the same wrongful conduct alleged in Itasca, and the plaintiff there was allowed to seek monetary relief based on that allegation. The same holding must apply here.

2. Plaintiffs Have Alleged A Direct Connection Between Their Loss And Defendants' Conduct.

In its Order, the Court noted that, to state a claim for unjust enrichment, "there must be a direct connection between the plaintiff and the defendant's retention of the benefit" but concluded that "there is no connection, let alone a direct one, between the Chicago Plaintiffs and the rebates." Order at 11 (emphasis in original). In fact, a direct connection is alleged - it was alleged in Plaintiffs' Third Amended Complaint (¶¶ 45, 57), and it is alleged in their proposed Fourth Amended Complaint (¶ 51) and Revised Fourth Amended Complaint (Ex. A at ¶¶ 35, 52, 53, 55, 68, 69, 71). Plaintiffs have consistently alleged that the Business Defendants' misreporting of their taxes directly deprived Plaintiffs of their portion of the local share of the State use tax. As a result of that misreporting, the Municipal Defendants received a benefit (the

[4] Since leave was denied to file the Fourth Amended Complaint, we assume that the claims the Court dismissed were those contained in the Third Amended Complaint; however, both pleadings contained essentially the same allegations.

local share of the State sales tax), which they shared with the Broker and Business Defendants as rebates. It would be plainly unjust for any of the Defendants to retain the benefit that should have gone to Plaintiffs.

3. No Contractual Relationship or "Dealings" are Required.

Under Illinois law, it was not necessary for any of the Defendants to have had contracts or "dealings" with Plaintiffs, or for the money to have come directly from Plaintiffs, in order for Plaintiffs to state a claim for unjust enrichment. In Apollo Real Estate Investment Fund, IV, L.P. v. Gelber, 398 Ill. App. 3d 773 (1st Dist. 2009), the Appellate Court held that a claim for unjust enrichment could be pursued where the benefit was transferred to the defendant by a third party and "where (1) the benefit should have been given to the plaintiff, but the third party mistakenly gave it to the defendant instead; (2) the defendant procured the benefit from the third party through some type of wrongful conduct; or (3) the plaintiff for some other reason had a better claim to the benefit than the defendant." Id. at 787, citing HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc., 131 Ill. 2d 145,161-62 (1989). Plaintiffs have alleged that the Defendants received the benefit of misreported taxes. And if the taxes should have been reported as State use tax, as alleged, then the Defendants had no valid claim to the benefit, let alone a better claim than that of Plaintiffs.

4. Plaintiffs are Entitled to Restitution in the Form of a Constructive Trust.

Pursuant to their unjust enrichment claims, Plaintiffs are entitled to restitution. See Raintree Homes, Inc. v. Vill. of Long Grove, 209 Ill. 2d 248, 257 (2004) (restitution is the form of relief granted where "unjust enrichment is the only substantive basis for recovery"). "A constructive trust arises when a court determines that a defendant must make restitution." A.T. Kearney, Inc. v. INCA Int'l, Inc., 132 Ill. App. 3d 655, 665 (1st Dist. 1985). "The purpose of the

constructive trust is to prevent unjust enrichment." Id. See also Smithberg v. Ill. Mun. Ret. Fund, 192 Ill. 2d 291, 299 (2000) ("When a person has obtained money to which he is not entitled, under such circumstances that in equity and good conscience he ought not to retain it, a constructive trust can be imposed to avoid unjust enrichment").

Plaintiffs have identified a res: that portion of the local share of the State sales tax that Plaintiffs should have received as State use tax. The res is not inchoate or indeterminable - it is set by statute, with no discretion or technical expertise to be applied by IDOR, and the amounts are easily calculated. The fact that the portion of the res that is in the hands of the Broker and Business Defendants (in the form of rebates) did not come directly from IDOR, but via the Municipal Defendants, does not change this conclusion. See A.T. Kearney, 132 Ill. App. 3d at 663 ("Where a person has an equitable interest in property held by another who is not in a fiduciary relation to him, and the holder transfers the property to a third person who is not a bona fide purchaser, the equitable interest is not cut off by such transfer and the equitable claimant can enforce it against the third person."). Nor does the fact that the res consists of otherwise fungible dollars. In People ex rel. Daley v. Warren Motors, Inc., 114 Ill. 2d 305, 315 (1986), the court held that a constructive trust could be imposed upon benefits the defendants realized as result of a tax reduction scheme, even though the benefits did not constitute a definable and traceable res.

Here again, the Itasca decision controls - the Itasca Court specifically stated that Itasca's amended complaint stated a cause of action for constructive trust against both Lisle and the business that misreported its taxes and received a rebate. 352 Ill. App. 3d at 857.

B. **Dismissal of Plaintiffs' Claims on Jurisdictional Grounds**

1. **IDOR Does Not Have Exclusive Jurisdiction.**

In its Order, the Court suggested that Plaintiffs "are attempting to judicially pre-empt IDOR's authority ..." Order at 16. A key holding of Itasca, however, is that IDOR does not have exclusive jurisdiction to enforce the State sales tax, and that same holding applies to the State use tax. The rationale of the Itasca holding was that the State sales tax statute does not include explicit language to confer exclusive jurisdiction on IDOR. Itasca, 352 Ill. App. 3d at 853. The Itasca court relied on Employers Mutual Cos. v. Skilling, 163 Ill. 2d 284, 287 (1994), in which the Illinois Supreme Court held:

> The courts of Illinois have original jurisdiction over all justiciable matters. (Ill. Const.1970, art. VI, § 9.) The legislature may vest exclusive original jurisdiction in an administrative agency. However, if the legislative enactment does divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, it must do so explicitly. (emphasis added).[5]

In this regard, the State use tax statute is no different from the State sales tax statute. Like the State sales tax statute, the State use tax statute has no explicit language to confer exclusive jurisdiction. As a matter of law, it therefore does not confer exclusive jurisdiction on IDOR.

2. **There are No IDOR Proceedings to Which this Court Can Defer.**

The Itasca court also discussed the concept of primary jurisdiction, where a court may, in some instances, "stay judicial proceedings pending referral of the controversy ... to an administrative agency having expertise in the area." Id. That concept does not apply here.

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[5] People ex rel. Fahner v. American Tel. & Tel. Co., 86 Ill. 2d 479 (1981) and Village of Niles v. K Mart, 158 Ill. App. 3d 521 (1st Dist. 1987), cited in the Order (at 16 - 17), were decided before the Supreme Court's decision in Skilling.

No pending administrative proceedings involving Plaintiffs' claims have been identified, and Plaintiffs are unaware of any such proceeding. And as the Court noted in the Order, the materials submitted to the Court by the parties regarding the status of IDOR audits indicate that "IDOR has decided to 'discontinue' audits related to pre-*Hartney* 'local sourcing issues' [such as the issues underlying Plaintiffs' claims] ...and 'IDOR has decided to focus its energy and resources on .. ensuring compliance with the new regulatory structure governing local sourcing.'" Order at 17.[6]

Thus, the only indication is that IDOR is not planning to initiate or conduct such a proceeding. And Plaintiffs are not aware of any available avenue by which they could compel IDOR to initiate proceedings. See McFatridge v. Madigan, 2013 IL 113676 ¶ 17 (2013) (mandamus is not available to compel a public official to perform acts that are discretionary); People v. Skryd, 241 Ill. 2d 34, 38 - 39 (2011) (same). By deferring to IDOR, which has already declined to pursue the matter, this Court is essentially stating that Plaintiffs have no redress for their claims. In fact, the only venue available to Plaintiffs for redress of their injuries is in this Court through its exercise of its original jurisdiction.

3. The Complexity of this Case Does Not Justify Dismissal.

In its Order, the Court stated that Itasca "dealt with a much simpler set of facts, and a narrower scope of issues, than the Chicago Plaintiffs present." Order at 14. This factor, even if present, should have no bearing on the issue of whether Plaintiffs' claims should be dismissed. The complexity of the case would at most concern the question of whether to apply the concept

[6] IDOR appears to not object to this litigation, stating that its termination of audits "cannot be used in ... any legal forum, as evidence that the Department approved your local sourcing determinations." See redacted letter from IDOR to taxpayer, dated June 26, 2014, supplied to the Court under cover of email from Plaintiffs' counsel dated August 13, 2015, in response to the Court's request for IDOR audit results.

of primary jurisdiction on the basis of the need for the agency's technical expertise. Itasca, 352 Ill. App. 3d at 854-55. The central issue here is where the sales at issue took place, and the principal question that the Court would have to decide is where purchase order acceptance occurred - the same question that was at issue in Itasca.

In any event, Plaintiffs anticipate that the facts and issues involved in Plaintiffs' claims are not materially more complex than those involved in Itasca. Specifically:

- Although there are eleven Internet Retailers, they all used one of two brokers and followed the same basic procedures.
- Although there are two Procurement Companies, they used the same broker and the same basic procedures.
- Although covering a potentially longer period of time than Itasca, Plaintiffs allege that the procedures used by all the Defendants did not materially change over time.

There is no indication that the Itasca Court considered it to be a "one-off" decision. Order at 15. Nor is there any indication that "mass litigation" will result if Plaintiffs are allowed to proceed. Id. The only case before the Court is this one, and Plaintiffs are not aware of any similar cases pending or threatened elsewhere, even though this case was filed over 4 years ago and Plaintiffs first brought their use tax claims almost three years ago. Itasca is eleven years old, and there has been no flood of similar cases since that time. Moreover, in light of the Hartney decision, and the resulting revision of the IDOR sourcing regulations, there is no reason to assume that there will be a significant amount of continuing litigation over these issues.[7]

The basic holding of Itasca - that IDOR does not have primary jurisdiction over sourcing claims - is applicable in this case. Surely, if Itasca was allowed to proceed with its claims

[7] If a significant and continuing problem were to arise, the appropriate remedy would be for the General Assembly to amend the State sales and use tax statutes to add explicit language making IDOR's jurisdiction exclusive.

against the business and municipality that deprived it of State sales tax, there is no reason that Plaintiffs should be denied the same form of relief just because they were injured by thirteen businesses, and two brokers and municipalities.

4. **IDOR's Involvement Is Not Needed.**

Another issue raised in the Order is that the plaintiff in Itasca "sought relief which could be granted without resort to IDOR," whereas the relief requested in this case would require the involvement of IDOR. Order at 15. See also Order at 7 n.4, 8, 12, 13 and 14. In fact, the relief requested in this case would not require the involvement of IDOR.

Here again, the State sales tax procedures at issue in Itasca were in all material respects the same as the State use tax procedures at issue in this case. In both cases, IDOR collects the tax and deposits the local share in a separate fund. See 35 ILCS 105/9 (State use tax); 35 ILCS 120/3 (State sales tax). In both cases, pursuant to statute, the local share is distributed. In the case of the State sales tax, the entire local share goes to the jurisdiction where the sale occurs. 35 ILCS 105/6z-18. In the case of the State use tax, distribution is governed by a statutory formula, with 20% of the local share going to Chicago, 35 ILCS 105/6z-17(a)(i), and a smaller amount going to Skokie pursuant to its population as determined by the most recent Federal census. 35 ILCS 105/6z-17(a)(v) and 35 ILCS 115/2(a). Thus, the Chicago percentage is set, and the Skokie percentage should be subject to stipulation.

The Itasca court allowed the plaintiff to proceed directly against the defendants for the tax it lost to them, without having to involve IDOR. The same holding must apply here.

5. There Are Valid and Simple Remedies Available to Redress Plaintiffs' Injuries.

If Plaintiffs prevail, the calculation of their damages will be simple and according to statute. After calculation, there are three possible ways of allocating them among the Defendants, as discussed below.

First, the Municipal Defendants could be required to pay Chicago its full 20% portion of the local share of the State use tax, and to pay Skokie its full portion, on the theory that the Municipal Defendants incorrectly received the full local share of the State sales tax. The Municipal Defendants, in turn, might have claims for indemnification from the Broker and/or Business Defendants, to whom they paid rebates. A problem with this approach is that the Municipal Defendants, having given most of the local share to the Broker and Business Defendants, may not be in a position to pay Plaintiffs what they are owed, or it may take them years to do so.

Second, the Municipal, Broker and Business Defendants could be required to pay Plaintiffs their respective portions of the local share of the State use tax pro rata, based on the relative shares that they each received in accordance with their agreements. This would make the most sense, because the Business Defendants are the ones who misreported their taxes, they received the vast bulk of the wrongly distributed taxes, and they presumably are most able to compensate Plaintiffs now for their lost tax revenues.

A third approach would be to join IDOR and require it to perform a redistribution. Since Plaintiffs would have first carried their burden of demonstrating that the taxes should have been reported as State use tax, the only thing that IDOR would have to do is the administrative function of redistributing the taxes, which is the type of action that can be the subject of a mandamus order, where necessary. See McFatridge, supra; Skryd, supra; 20 ILCS 2505/2505-

475. Plaintiffs have included a count to provide for this option in their revised Fourth Amended Complaint (see below); however, Plaintiffs do not believe that this should be necessary. As in Itasca, Plaintiffs can and should be allowed to proceed directly against the Municipal, Broker and Business Defendants, without the need for IDOR's involvement. As discussed, the calculation of the amounts owed is simple and defined by statute.

Which of the above three approaches to use is an issue that can be addressed at a later date. For now, the main point is that there is no need or reason to defer to IDOR on the basis of primary jurisdiction.[8]

6. Dismissal is Not Allowed Under the Doctrine of Primary Jurisdiction.

Even if the doctrine of primary jurisdiction did apply (which it does not), that would at most call for a stay of these proceedings - not a dismissal with prejudice. See Itasca, 352 Ill. App. 3d at 853, citing People v. NL Indus., 152 Ill. 2d 82, 95 (1992) ("Should primary jurisdiction be found to exist, the action should never be dismissed from the court but may only be stayed."). The Order did not stay these proceedings - it dismissed them with prejudice. This was a plain misapplication of the law.

II. Motion for Leave to File Revised Fourth Amended Complaint

In an effort to avoid any misunderstanding, and to moot certain pleading issues that might otherwise remain, Plaintiffs are tendering with this motion a revised Fourth Amended Complaint

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[8] A related concern that the Court noted in its Order is that other municipalities may also have been deprived of their shares of the State use tax. Order at 17. Those other municipalities, however, have not chosen to take action, and IDOR has not chosen to take action on their behalf. They have no stake in this litigation. Moreover, the percentages of the local share to which they might be entitled are relatively small. Theoretically, Plaintiffs might have chosen to bring their claims as a class action on behalf of all municipalities, but that would have involved a variety of additional steps, complications, expenses and delays. The fact that a class action could have been brought - even if true - should not prevent Plaintiffs from bringing a non-class action to recover their own damages.

(attached as Exhibit A), and they hereby move for leave to file that pleading in lieu of the version that was previously tendered. It does five main things:

- It removes the four counts that sought declaratory judgments.
- It adds IDOR as a defendant, should the Court decide that the best way to fashion a remedy would be for IDOR to perform the administrative task of redistributing tax, rather than having it paid directly to Plaintiffs.
- It adds further specificity regarding the basis for Plaintiffs' allegations that the Internet Retailers misreported their taxes.
- It conforms Plaintiffs' allegations regarding the Procurement Companies to facts that Plaintiffs have learned since tendering the original Fourth Amended Complaint.
- It removes the third Procurement Company (USCC), which as noted was given a release by IDOR.

III. Motion to Transfer Case to Tax and Miscellaneous Remedies Section of Law Division

During the oral argument on Plaintiffs' Motion for Leave to File their Fourth Amended Complaint, the Court questioned whether this case properly belongs in the Chancery Division, rather than the Law Division. See transcript of proceedings, July 16, 2015, at 43 - 44. Due to a number of developments since this case was filed, Plaintiffs agree. Specifically:

- Plaintiffs' claims are no longer the same as those of the RTA and Cook County, which seek State and local sales taxes.
- Plaintiffs no longer seek declaratory judgments.
- Due to Hartney, Plaintiffs no longer seek injunctive relief.

Plaintiffs' claims at this point are strictly for monetary relief. Specifically, Plaintiffs seek their portion of the State use tax that was improperly appropriated by Defendants pre-Hartney.

Circuit Court of Cook County General Order 1.2, ¶ 2.1(a)(3)(viii) provides that the Tax and Miscellaneous Remedies Section of the Law Division is to hear "all tax matters including

administrative review of such matters . . . when the amount in controversy exceeds $3,000.00 regardless of the remedy requested." (Emphasis added). This provision clearly applies.

Circuit Court of Cook County General Order 1.3(c) provides:

> Any action assigned to a judge that is determined by that judge, whether by suggestion of the parties or otherwise, to have been filed or to be pending in the wrong department, division, district or section of the Circuit Court of Cook County, shall be transferred to the Presiding Judge of the division or district in which it is pending for the purpose of transferring the action to the Presiding Judge of the proper division or district, or for reassignment to the proper section.

Because all tax matters that exceed $3,000.00 are to be heard in the Tax and Miscellaneous Remedies Section of the Law Division, this case, even if stayed, should be transferred to the Presiding Judge of the Chancery Division, for transfer to the Presiding Judge of the Law Division, and assignment to the Tax and Miscellaneous Remedies Section.

WHEREFORE, Plaintiffs hereby (1) move this Court to reconsider its order of October 9, 2015, (2) move for leave to file the revised Fourth Amended Complaint tendered with this motion as Exhibit A, and (3) move to transfer this case to the Tax and Miscellaneous Remedies Section of the Law Division.

Dated: November 5, 2015

Respectfully submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, , RYAN, LLC *et al.*, Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266)

FOURTH AMENDED COMPLAINT

Plaintiffs City of Chicago ("Chicago") and Village of Skokie ("Skokie") (collectively referred to as "Plaintiffs"), for their Fourth Amended Complaint, allege as follows:

Parties

Plaintiffs

1. Plaintiffs Chicago and Skokie are municipal corporations located in Cook County, Illinois.

Municipal Defendants

2. Defendant City of Kankakee ("Kankakee") is a municipal corporation located in Kankakee County, Illinois.

3. Defendant Village of Channahon ("Channahon") is a municipal corporation located in Will and Grundy Counties, Illinois.

4. Defendants Kankakee and Channahon are referred to collectively herein as the "Municipal Defendants."

Broker Defendants

5. Defendant MTS Consulting, LLC ("MTS") is an Illinois limited liability company located in Skokie, Cook County, Illinois.

6. Defendant Inspired Development LLC ("Inspired") is an Illinois limited liability company located in Chicago, Cook County, Illinois.

7. Defendant Ryan, LLC, aka "Ryan U.S. Tax Services" ("Ryan") is a Delaware limited liability company doing business in Illinois, with offices in Chicago. Ryan was formerly known as and is the successor in interest to Ryan & Company, Inc. Pursuant to agreements between Ryan and Inspired, at all times relevant to this Fourth Amended Complaint, Ryan and Inspired worked together and in concert with respect to the sales and tax practices that are the subject of this lawsuit, including Ryan's receipt in whole or in part of Inspired's revenue from Kankakee and Channahon related to the tax programs that are the subject of this lawsuit.

8. Defendants MTS, Inspired, and Ryan are referred to collectively herein as the "Broker Defendants."

Internet Retailer Defendants

9. Cabela's Incorporated is a Delaware corporation with a location in Hoffman Estates, Illinois. Cabela's Wholesale, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabela's Catalog, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabelas.com, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabela's Marketing & Brand Management, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabela's Retail IL, Inc. is an Illinois corporation with a registered agent in Chicago, Illinois. Cabela's Incorporated, Cabela's Wholesale, Inc., Cabela's

Catalog, Inc., Cabelas.com, Inc., Cabela's Marketing & Brand Management, Inc., and Cabela's Retail IL, Inc. are collectively referred to herein as "Cabela's."

10. CompuCom Systems, Inco. ("Compucom") is a Delaware corporation with a location in Des Plaines, Illinois.

11. Dell Marketing L.P. ("Dell") is a Texas limited partnership with a location in Buffalo Grove, Illinois.

12. Hewlett Packard Company ("HP") is a Delaware corporation with a location in Chicago, Illinois.

13. HSN, Inc. is a Delaware Corporation. Home Shopping Network, Incorporated is a Florida corporation with an affiliate television station in Chicago, Illinois. HSN, Inc. and Home Shopping Network, Incorporated are collectively referred to herein as "HSN".

14. Lenovo (United States) Inc. ("Lenovo") is a Delaware corporation with a registered agent in Chicago, Illinois.

15. McKesson Purchasing Company LLC ("McKesson") is a Delaware limited liability company with a location in Chicago, Illinois.

16. NCR Corporation ("NCR") is a Maryland corporation with a registered agent in Chicago, Illinois.

17. Shaw Industries, Inc. ("Shaw") is a Georgia corporation with a location in Villa Park, Illinois.

18. WESCO Distribution, Inc. is a Delaware corporation with a location in Elmhurst, Illinois. Communications Supply Corporation is a Connecticut corporation with a location in Carol Stream, Illinois. WESCO Distribution, Inc. and Communications Supply Corporation are collectively referred to herein as "WESCO."

19. Williams-Sonoma, Inc. is a California corporation with a location in Chicago, Illinois. Williams-Sonoma Stores, Inc. is a California corporation with a location in Chicago, Illinois. Williams-Sonoma, Inc. and Williams-Sonoma Stores, Inc. are collectively referred to herein as "Williams-Sonoma."

20. The businesses described above in this section are sometimes referred to collectively herein as the "Internet Retailer Defendants."

Procurement Company Defendants

21. AT&T Network Procurement, L.P. is a New Jersey limited partnership. AT&T Network Procurement Management, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. AT&T Corp. is a New York corporation with a registered agent in Chicago, Illinois. AT&T Network Supply, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. AT&T, Inc. is an Illinois corporation with a location in Chicago, Illinois. Cingular Supply, LLC is a Delaware limited liability company with a registered agent in Springfield, Illinois. Cingular Supply II, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. IBT Equipment Purchasing, Inc. is a Delaware corporation with a registered agent in Chicago, Illinois. Illinois Bell Telephone Co. is an Illinois corporation with a registered agent in Chicago, Illinois. AT&T Network Procurement, LP, AT&T Network Procurement Management, LLC, AT&T Corp., AT&T Network Supply, LLC, AT&T, Inc., Cingular Supply, LLC, Cingular Supply II, LLC, IBT Equipment Purchasing, Inc., and Illinois Bell Telephone Co. are collectively referred to herein as "AT&T."

22. Verizon Wireless Network Procurement LP d/b/a Verizon Wireless is a Delaware limited partnership. Verizon Wireless Services, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. Chicago SMSA Limited Partnership is an Illinois

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limited partnership with a registered agent in Chicago, Illinois. Verizon Wireless Network Procurement, LP, Verizon Wireless Services, LLC, and Chicago SMSA Limited Partnership are collectively referred to herein as "Verizon."

23. The businesses described above in this section are sometimes referred to collectively herein as the "Procurement Company Defendants." The individual entities are sometimes referred to as either "Procurement Companies" or "Operating Companies."

Illinois Department of Revenue

24. Pursuant to 735 ILCS 5/2-405(a), the Illinois Department of Revenue ("IDOR") is joined as a defendant because it has an interest in the controversy and could possibly be of assistance in the resolution of this matter. IDOR has a principal office in Chicago, Illinois.

Jurisdiction and Venue

25. The Internet Retailer Defendants and the Procurement Company Defendants are sometimes referred to collectively herein as the "Business Defendants."

26. The Municipal, Broker and Business Defendants are sometimes referred to collectively herein as the "Defendants."

27. This Court has jurisdiction over the Defendants in this case pursuant to 735 ILCS 5/2-209 because all of the Defendants are residents of and/or transact business within the State.

28. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 and 5/2-103 because numerous Defendants reside in Cook County, because it is the county where Defendants' activity described herein has inflicted damage, and/or because it is the County in which the transaction or some part thereof occurred out of which the causes of action arose.

Factual Allegations

Illinois Sales Tax Statutes

29. Pursuant to the Retailer's Occupation Tax Act ("ROTA"), 35 ILCS 120, Illinois imposes a sales tax on all persons engaged in the business of selling tangible personal property at retail in the state. This tax (also sometimes referred to herein as the "ROT" or "State sales tax") is computed as a percentage of retail sales, and applies statewide at a rate of 6.25% of the sale price. 35 ILCS 120/2-10.

30. In Illinois, which uses "origin sourcing," the location where the sale occurs determines which local governmental unit receives the "Local Share" of the State sales tax, which is 1.0% of the sale price. *See* 35 ILCS 120/2-12.

31. Beginning in 2000, to convince businesses to make sales that would be sourced to their towns, the Municipal Defendants began offering businesses significant rebates of any sales tax revenue the municipalities received from the sales made by such businesses. Pursuant to written rebate and agency agreements, the Municipal, Broker and Business Defendants agreed to share the Local Share of the State sales tax that the Municipal Defendants received as a result of sales being sourced to the Municipal Defendants.

Illinois Use Tax Statutes

32. Retailers do not pay ROT on sales that take place and are shipped from out-of-state, even when the goods are delivered to customers in Illinois. However, in connection with such sales, the customer owes Illinois use tax, pursuant to the Use Tax Act, 35 ILCS 105/1 *et seq.*, because the customer will use the goods in Illinois. Like the State sales tax, the State use tax has a rate of 6.25% of the sale price. 35 ILCS 3-10. A retailer that has a sufficient physical presence in Illinois to be considered a "retailer maintaining a place of business in Illinois" is

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required to collect the State use tax from the purchaser and remit the tax to IDOR. 35 ILCS 105/3-45. 86 Ill. Reg. Section 150.41. For example, a business with stores in Illinois, but with out-of-state facilities from which Internet, telephone, mail order or catalogue sales are made, must collect the State use tax on such sales that are delivered to Illinois customers. The State sales tax and the State use tax are companion taxes designed to ensure that all retail sales made in Illinois, or made to Illinois customers, are subject to a tax of 6.25%.

33. The Local Share of the State use tax is 1.25% for general merchandise and 1.0% for qualifying food, drug and medical supplies. 35 ILCS 105/9. The Local Share of the State use tax is distributed in the following ways: 20% to Chicago, 10% to the RTA, 0.6% to Metro-East Mass Transit District, a fixed dollar amount to the Build Illinois Fund, 35 ILCS 105/6z-17(a)(i)-(iv), and the remaining portion to all Illinois municipalities (except Chicago) and counties based on population. 35 ILCS 105/6z-17; 35 ILCS 115/2(a).

34. Because the entire Local Share of the State sales tax goes to the one municipality where the sale is declared to take place, it is possible for an Internet Retailer or Procurement Company to obtain a rebate of a portion of the Local Share of the State sales tax by entering into a rebate agreement with an Illinois municipality and then declaring its sales to be made in that municipality, causing the municipality to receive 100% of the Local Share of the State sales tax. Thus, the municipality has an incentive to rebate a large portion of the Local Share of the State sales tax because it receives the Local Share only if the company declares that it is making sales in that municipality.

35. As detailed herein, the Business Defendants misreported their out-of-state sales to Illinois customers as subject to State sales tax rather than State use tax. As a result, the Municipal Defendants wrongfully received the Local Share of the State sales tax and deprived

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Plaintiffs of what should have been Plaintiffs' portion of the Local Share of the State use tax. The Broker and Business Defendants received portions of the Local Share of the State sales tax, through rebates paid by the Municipal Defendants. Thus, Plaintiffs lost their portion of the Local Share of the State use tax to the Municipal, Broker and Business Defendants as a result of the Business Defendants' misreporting of their taxes.

Standing and Authority

36. Pursuant to *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2d Dist. 2004) and other pertinent Illinois case law, Plaintiffs have standing and authority to bring this action to seek the relief described in the counts set forth below. In this action, Plaintiffs are seeking such relief only as to periods prior to November 21, 2013, when the Illinois Supreme Court issued its decision in the case of *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (2013).

Limitations

37. Plaintiffs are filing this fourth amended complaint within five years of when they knew, or could reasonably have known, of the facts supporting their causes of action against the Business Defendants. Specifically:

a. Prior to August 23, 2011, when Plaintiffs filed their initial complaint, the Municipal Defendants and Broker Defendants refused to produce pertinent documents in response to Freedom of Information requests, claiming that the identity of the Business Defendants was highly confidential, as was all tax-related information concerning their sales.

b. On March 22, 2012, the Defendants were ordered to identify the Business Defendants and produce copies of their rebate agreements.

c. Between April 2012 and June 2013, the Defendants identified the Business Defendants, produced copies of their rebate agreements and produced some documents concerning some of their sales.

d. On July 26, 2012, all third-party discovery was stayed.

e. On January 22, 2013, Plaintiffs filed their Second Amended Complaint, adding a count alleging that certain as-yet unidentified Business Defendants had misreported their sales as subject to State sales tax rather than State use tax.

f. On December 17, 2013, the stay of third-party discovery was lifted.

g. On February 3, 2014, Plaintiffs filed a bill of particulars identifying businesses that appeared to be potential Business Defendants, based on the discovery that had taken place to date.

h. In March 2014, Chicago served on the Business Defendants subpoenas seeking documents confirming that their sales prior to *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (November 21, 2013), were subject to the State use tax rather than the State sales tax. Chicago's subpoenas sought, among other things, documents that would show where purchase order acceptance took place for the pre-*Hartney* sales made by the Business Defendants, along with other pertinent details about their sales and operations.

i. In response, the Business Defendants filed motions to quash the subpoenas.

j. On May 14, 2014, the Court entered and continued the motions to quash and stayed third-party discovery pending a ruling on those motions.

k. On March 17, 2015, the Court issued an order and opinion concerning the motions to quash holding, among other things, that Plaintiffs had standing to pursue their claims.

Count I
Against Internet Retailer Defendants
Unjust Enrichment - Constructive Trust - Restitution

38. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 37.

39. Prior to entering into their rebate agreements with the Municipal Defendants, the Internet Retailers correctly reported their sales as taking place outside of Illinois and therefore subject to the State use tax, rather than the State sales tax.

40. After entering into their rebate agreements, the Internet Retailers reported their sales as having taken place in either Kankakee or Channahon, where the Broker Defendants conducted certain activities for them.

41. Since terminating their rebate agreements, the Internet Retailers have reverted to reporting their sales as taking place outside of Illinois and therefore subject to the State use tax, rather than the State sales tax.

42. Under the IDOR regulations that were in effect before *Hartney*, sales were generally sourced to the location at which "purchase order acceptance" occurred, so as to form a binding contract between the seller and buyer. 86 Ill. Admin. Code 270.115(b)(1).

43. The term "acceptance," as used in the IDOR regulations, means the acceptance of an order or other offer that forms a contract for the sale of goods, and it requires a communication between the seller and buyer, whether by written confirmation, shipping or some other manifestation of acceptance, so as to form a binding contract.

44. The Broker Defendants used essentially the same procedures for all of the Internet Retailers.

45. What the Broker Defendants did for the Internet Retailers in Kankakee and Channahon was credit checks - not purchase order acceptance.

46. For example, a representative email from a Broker Defendant to an Internet Retailer stated in pertinent part:

> We have completed our review of [your] Sales Order [number _]. Our review consisted of 1) verifying that no customer has filed bankruptcy in any Federal Bankruptcy Court during the prior 90 days, and 2) utilizing our proprietary fraud detection procedures. Having cleared our review process without exception, all sales are hereby formally approved by this office.

47. Such communications, from a Broker Defendant to an Internet Retailer, did not constitute order acceptance under Illinois law.

48. A representative set of terms and conditions, posted on the web site of an Internet Retailer, read as follows:

> Terms and Conditions of Sale
>
> I AGREE to [Internet Retailer's] Terms and Conditions of Sale
> I DO NOT AGREE to [Internet Retailer's] Terms and Conditions of Sale.
>
> * * *
>
> These Terms of Sale ("Agreement") apply to your purchase of products and/or services and support ("Product") sold in the United States by [Internet Retailer], including its direct or indirect subsidiaries. By placing your order for Product, you accept and are bound to the terms of this Agreement. If you have placed an order but do not wish to be subject to these Terms of Sale, you must promptly cancel your order before it enters production and becomes noncancelable ... or return your purchase in accordance with [Internet Retailer's] Return policy ...
>
> This Agreement may NOT be altered, supplemented or amended by the use of any other document(s) unless otherwise agreed to in a written agreement signed by both you and [Internet Retailer]. ... Terms of payment are within [Internet Retailer's] sole discretion and unless otherwise agreed to by [Internet Retailer], payment must be received by [Internet Retailer] prior to [Internet Retailer's] acceptance of an order. Payment for the products will be made by credit card,

> wire transfer or some other prearranged payment method unless credit terms have been agreed to by [Internet Retailer]. ... Your order is subject to cancellation by [Internet Retailer], in [Internet Retailer's] sole discretion. ... (Emphasis added.)

49. According to these terms and conditions, an agreement has been formed when the customer places his or her order (which includes credit card information), but the agreement is subject to cancellation in the Internet Retailer's sole discretion, which could include cancellation because the Internet Retailer's agent determines that the customer has filed for bankruptcy within the last 90 days, meaning that the customer's payment could be voided as a preference. See 11 U.S.C. § 547.

50. Whether the credit check was a condition subsequent or a condition precedent, the result is the same - the contract was formed outside of Illinois, when the Internet Retailer and its customer communicated their offer and acceptance. It was not formed in Kankakee or Channahon, where the Internet Retailer or its agent performed a credit check or other internal action.

51. The sales made by the Internet Retailers took place outside of Illinois and therefore should have been reported as subject to State use tax, resulting in Plaintiffs receiving their portions of the local share of the State use tax.

52. The Internet Retailer Defendants wrongfully took what should have been Plaintiffs' Local Share of the State use tax and diverted it to the Internet Retailer Defendants in the form of rebates of local shares of State sales taxes.

53. The Internet Retailer Defendants' receipt of rebates of the Local Share of State sales tax has wrongfully deprived Plaintiffs of the Local Share of the State use tax and constitutes unjust enrichment of the Internet Retailer Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Internet Retailer Defendants and for the following:

(A) (i) Imposition of a constructive trust on all rebates of State sales tax received by the Internet Retailer Defendants as a result of the unjust enrichment described herein; (ii) ordering an equitable accounting of the same; and (iii) ordering the Internet Retailer Defendants to return Plaintiffs a portion of the rebates equal to Plaintiffs' statutory sales tax shares of the Internet Retailer Defendants' sales as restitution, plus interest;

(B) To the extent not encompassed in the above relief, compensatory damages in the amount of State use tax that Plaintiffs lost as a result of the Internet Retailer Defendants' misreporting their sales, plus interest;

(C) Such other and further relief as this Court may deem just and proper.

Count II
Against Municipal Defendants and Broker Defendants
Unjust Enrichment - Constructive Trust - Restitution
Internet Retail Sales

54. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 53.

55. The Municipal Defendants' and Broker Defendants' receipt of the Local Share of State sales tax from the Internet Retailers has wrongfully deprived Plaintiffs of the Local Share of the State use tax and constitutes unjust enrichment of the Municipal Defendants and Broker Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Municipal Defendants and Broker Defendants and for the following:

(A) (i) Imposition of a constructive trust on all rebates of State sales tax received by the Municipal Defendants and Broker Defendants as a result of the unjust enrichment described herein; (ii) ordering an equitable accounting of the same; and (iii) ordering the Municipal Defendants and Broker Defendants to return Plaintiffs a portion of the rebates equal to Plaintiffs'

statutory State sales tax shares of the Internet Retailer Defendants' sales as restitution, plus interest;

(B) To the extent not encompassed in the above relief, compensatory damages in the amount of State use tax that Plaintiffs lost as a result of the Municipal Defendants' and Broker Defendants' wrongful receipt of the Local Share of State sales tax, plus interest;

(C) Such other and further relief as this Court may deem just and proper.

Count III
Against Procurement Company Defendants
Unjust Enrichment - Constructive Trust - Restitution

56. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 37.

57. Prior to entering into their rebate agreements with the Municipal Defendants, the Procurement Companies correctly reported their sales as taking place outside of Illinois and therefore subject to the State use tax, rather than the State sales tax.

58. After entering into their rebate agreements, the Procurement Companies reported their sales as having taken place in either Kankakee or Channahon, where the Broker Defendants conducted certain activities for them, including what purported to be "acceptance" of the Operating Companies' purchase orders.

59. Since terminating their rebate agreements, the Procurement Companies have reverted to reporting their sales as taking place outside of Illinois and therefore subject to the State use tax, rather than the State sales tax.

60. Under the IDOR regulations that were in effect before *Hartney*, sales made under a long term blanket or master contract, which (though definite as to price and quantity) must be implemented by the buyer's placing of specific orders when goods are wanted, were generally

sourced to the seller's place of business where such subsequent specific orders were placed. 86 Ill. Admin. Code 270.115(d).

61. However, these IDOR regulations assumed that the seller and buyer were independent parties engaged in arms-length transactions, so that the formation of a binding contract was required. For the Procurement and Operating Companies, the formation of a binding contract was not required.

62. The Procurement and Operating Companies did not function in the same way that independent sellers and buyers would function. For example:

a. The Procurement Companies had no employees of their own. The ordering and purchasing process always began with the Operating Company.

b. All details of purchases (such as vendor, product, quantity and price) were determined by the Operating Companies. The Procurement Companies did not mark up the prices of goods they sold to their Operating Companies.

c. Payments by Operating Companies to their Procurement Companies were handled through accounting entries.

d. All goods were shipped by the out-of-state vendors to the attention of the Operating Companies.

e. All disputes with vendors were handled by the Operating Companies.

63. The step of having the Procurement Companies "accept" orders from their Operating Companies was added for the sole purpose of sourcing the sales to Illinois, thereby converting their State use taxes into State sales taxes, in order to obtain a sales tax rebate.

64. The step of order acceptance was otherwise unnecessary, as it was not performed in the past, and even afterwards no orders from the Operating Companies were ever rejected by the Procurement Companies.

65. In fact, the agreements between the Operating and Procurement Companies even included provisions contemplating that orders would sometimes be filled without the need for order acceptance, with internal accounts to be adjusted after-the-fact.

66. For the Procurement Company Defendants, the step of "order acceptance" in Illinois was a purposeless transaction that was added solely to obtain a rebate of State sales tax.

67. Thus, the arrangement of having the Broker Defendants "accept" orders in Illinois was without economic substance or economic effect. See, e.g., United States Gypsum Co. v. United States, 452 F. 2d 445 (7th Cir. 1972), quoted in First Chicago Building v. Department of Revenue, 49 Ill. App. 3d 237, 241 (1st Dist. 1977): "The fact that a taxpayer may properly arrange its affairs to minimize taxation does not give it license to create purposeless entities or to engage in transactions with subsidiaries which independent parties would not dream of concluding." See also Indiana Department of State Revenue v. Belterra Resort Indiana, LLC, 935 N.E. 2d 174 (Ind. 2010) (disregarding transactions between parent and subsidiary for sales tax purposes, where transactions were component parts of a single transaction intended to avoid tax); Cajun Contractors, Inc. v. State of Louisiana, 515 So. 2d 625 (La. App. 1987) (holding that transactions between operating company and procurement company were not taxable sales and noting that "[t]he substance of an agreement is controlling for the determination of tax liability"); Mapo, Inc. v. State Board of Equalization, 53 Cal. App. 3d 245 (Cal. App. 1976) (holding that facts concerning transactions between company and corporate grandparent "did not justify the imposition of sales taxes intended for dealings between separate producers and consumers").

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68. The Procurement Company Defendants wrongfully took what should have been Plaintiffs' Local Share of the State use tax and diverted it to Procurement Company Defendants in the form of rebates of the Local Share of the State sales tax.

69. The Procurement Company Defendants' receipt of rebates of the Local Share of State sales tax has wrongfully deprived Plaintiffs of the Local Share of the State use tax and constitutes unjust enrichment of the Procurement Company Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Procurement Company Defendants, jointly and severally, and for the following:

(A) (i) Imposition of a constructive trust on all rebates of State sales tax received by the Procurement Company Defendants as a result of the unjust enrichment described herein; (ii) ordering an equitable accounting of the same; and (iii) ordering the Procurement Company Defendants to return Plaintiffs a portion of the rebates equal to Plaintiffs' statutory sales tax shares of the Procurement Company Defendants' sales as restitution, plus interest;

(B) To the extent not encompassed in the above relief, compensatory damages in the amount of all State use tax that Plaintiffs lost as a result of the Procurement Company Defendants' misreporting of their sales, plus interest;

(C) Such other and further relief as this Court may deem just and proper.

Count IV
Against Municipal Defendants and Broker Defendants
Unjust Enrichment - Constructive Trust - Restitution
Procurement Company Sales

70. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 37 and 57 through 69.

71. The Municipal and Broker Defendants' receipt of the Local Share of State sales tax from the Procurement Company Defendants has wrongfully deprived Plaintiffs of the Local

Share of the State use tax and constitutes unjust enrichment of the Municipal and Broker Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Municipal and Broker Defendants including the following:

(A) (i) Imposition of a constructive trust on all State sales tax revenue received by Kankakee, Channahon, and the Broker Defendants as a result of the incorrect designation of the sales of the Procurement Company Defendants) as being subject to the State sales tax rather than the State use tax; (ii) ordering an equitable accounting of the same; and (iii) ordering the Municipal Defendants and Broker Defendants to return Plaintiffs a portion of the rebates equal to Plaintiffs' statutory sales tax shares of the Procurement Company Defendants' sales as restitution, plus interest;

(B) To the extent not encompassed in the above relief, compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the Procurement Company Defendants' misreporting of their sales, plus interest;

(C) Such other and further relief as this Court may deem just and proper.

COUNT V
Illinois Department of Revenue
Action to Correct Erroneous Distribution of Local Shares

72. Section 2-405(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-405(a), provides in pertinent part:

> Any person may be made a defendant who ... is alleged to have or claim an interest in the controversy, or in any part thereof, ...

73. Pursuant to 20 ILCS 2505/25 and 20 ILCS 2505/90, IDOR has the power to exercise all the rights, powers, and duties contained in the State sales tax and State use tax Acts.

74. Pursuant to 20 ILCS 2505/2505-475, IDOR has the power to correct errors in tax distributions.

75. IDOR may have an interest in the controversy at issue in this case, as the case concerns the State sales tax and State use tax.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor, including the following:

(A) An order requiring IDOR to reallocate the Local Share of the tax revenue derived from the sales at issue in this case, should the Court determine that such reallocation is appropriate in lieu of the direct payments requested in Counts I through IV; and

(B) Such other and further relief as this Court may deem just and proper.

Dated: _, 2015

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

The REGIONAL TRANSPORTATION AUTHORITY, an Illinois special purpose unit of government and municipal corporation, the VILLAGE OF FOREST VIEW, an Illinois home rule municipality, the VILLAGE OF TINLEY PARK, an Illinois home rule municipality, the VILLAGE OF LEMONT, an Illinois non-home rule municipality, the VILLAGE OF STICKNEY, an Illinois home rule municipality, the VILLAGE OF ORLAND PARK, an Illinois home rule municipality, ELK GROVE VILLAGE, an Illinois home rule municipality, the VILLAGE OF MELROSE PARK, an Illinois non-home rule municipality, the TOWN OF CICERO, an Illinois non-home rule municipality, the VILLAGE OF HAZEL CREST, an Illinois home rule municipality, and the VILLAGE OF NORTHBROOK, an Illinois home rule municipality,

Plaintiffs,

vs.

THE CITY OF KANKAKEE, an Illinois home rule municipality, the VILLAGE OF CHANNAHON, an Illinois home rule municipality, MINORITY DEVELOPMENT COMPANY, LLC, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT, LLC, CORPORATE FUNDING SOLUTIONS, LLC, CAPITAL FUNDING SOLUTIONS, LLC and XYZ SALES, INC.,

Defendants.

No. 11 CH 29744
(Consolidated with Case Nos. 11 CH 29745 and 11 CH 34266)

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TRANSCRIPT OF PROCEEDINGS had in the above-entitled cause on the 13th of November, A.D. 2015, at 9:45 a.m.

BEFORE: HONORABLE PETER FLYNN.

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THE COURT: Did I set a general status for today.

MR. O'BRYAN: No, your Honor. John O'Bryan on behalf of Plaintiff City of Chicago. We have noticed up a motion for reconsideration.

THE COURT: Did you ever read my standing order?

MR. O'BRYAN: I did, your Honor.

THE COURT: I don't entertain argument on motions to reconsider. I don't accept briefings on motions to reconsider. I don't know what all you people are here for, frankly.

MR. O'BRYAN: Your Honor, I wasn't expecting argument, but I did want to present the motion so that you knew I'm filing it.

THE COURT: You're certainly entitled to present the motion. It's the room full of people that takes me a little aback.

All right. So you have a motion to reconsider?

MR. O'BRYAN: Yes, your Honor.

THE COURT: I have read the motion to reconsider. It's actually a motion to reconsider for leave to file a revised pleading and to transfer

case.

The motion does not tell me really anything I didn't already know and does not, in my view, provide any sound reason for me to vacate the ruling which I entered. I am of the view, among other things, that the issues which are presented by what I will refer to as the City's motion and prior Fourth Amended Complaint or Motion For Leave to File Fourth Amended Complaint, raise questions which are going to have to be settled clearly by the Appellate Court at some point. And it seems obvious to me, as matter of judicial efficiency, that the point should be now and not later.

I don't mind your filing the motion to reconsider. The recent jurisprudence in the Appellate Court suggests that the reason that we all used to file motions to reconsider, which is to make the record better for appeal, doesn't work so well anymore because they tend to take the position that if you didn't say it before, saying it in a motion to reconsider won't help. But that's their problem, not mine.

One point of clarification that I will offer; the Plaintiffs seem to think that the court

dismissed the Plaintiff's claims based on the doctrine of primary jurisdiction. That is not quite, I think, a correct reading of the order that I entered.

My October 9th order discussed both primary jurisdiction and jurisdiction, the actual authority of this court to enter a judgment in this situation. The situation we have here implicates both primary and general jurisdiction, I think. And my October 9th order endeavored to discuss both and to separate out the considerations pertaining to each.

The primary jurisdiction issue arises, in my view, largely because of Village of Itasca. Village of Itasca presents -- and I should start by saying Village of Itasca does not at all and cannot address what I think is the real problem here, because Village of Itasca is a pure sales tax case; it has nothing to do with use tax. But even in the sales tax context, Village of Itasca is almost the exception that proves the rule.

And Village of Itasca itself addresses the situation for the court in that case with both eyes fixed on the fact that it's a one-off. There

is a clearly marked dispute between one plaintiff and one defendant, the court knows what it is, it doesn't present anything out of the way in terms of other issues. Let's do it.

If Village of Itasca had been cast instead in the form of a claim by the Village of Itasca that it is entitled to search the landscape for people it thinks are mis-sourcing sales tax claims and then bring them all to the court and convert the court into a branch of IDOR, I think the Appellate Court might have taken a different position.

So although I have previously asserted in the context of the RTA dispute, and I'll stick to that, that the Village of Itasca case does not mean and should not -- I'm saying this backwards -- That the Village of Itasca case makes it reasonably clear in the RTA context that this court doesn't lack primary jurisdiction, that that issue isn't the one that is presented directly.

Village of Itasca, as I said at Page 14 of my order, is distinguishable from this situation because it dealt with a much simpler set of facts and a narrower scope of issues than is presented

here, and also, and crucially -- and this is before we get to the jurisdiction "jurisdiction" -- did not deal with use tax.

The use tax problem could be framed, I suppose, as a sort of primary jurisdiction problem, because one of the things that I'm concerned about is whose job is it to do this stuff; is it the court's or is it IDOR's. And that's kind of the question primary jurisdiction asks.

In terms of what the Chicago Plaintiffs want, which is to require the local share that was improperly distributed to the defendant municipalities, to be repaid by the defendant municipalities to IDOR, and then redistributed by IDOR, that does raise primary jurisdiction problems. Among other things, this court as my order points out, even if we got that far, is in no position to conduct such a redistribution. It's way outside the scope of my authority.

And a point that I think has to be emphasized here is that the IDOR distribution scheme with regard to use tax, unlike the sales tax issues which are presented by the RTA, would involve a redistribution and recalculation, not just for these

litigants, but for all 205-plus municipalities in the state that get distributions of use tax. Most of those municipalities aren't parties here, and I don't see how I could enter a judgment affecting their interests without having them as parties.

So when I said in Paragraph 17 that IDOR, not this court, has both the statutory authority and the expertise and database to effectuate such relief, I was making a point which can fairly be understood to be both a primary jurisdiction point and a general jurisdiction point. The general jurisdiction point arises because even were I to entertain the dispute which is presented, I don't think I have the authority to grant effective relief. The best I could do would be to send it back to IDOR.

Now, the motion to reconsider says on Page 12 that if Plaintiffs prevail, the calculation of their damages would be simple and according to statute. The author of that sentence must make a living in quantum mechanics, because, well, the calculation may be simple with comparison to quantum mechanics and simple compared to the ordinary business of courts. You've got 205 municipalities

and have an algorithm which IDOR is vested by statute in the authority to create and apply. And it's just not that easy.

The Plaintiffs then say there are three possible ways of allocating damages among the Defendants.

My problem isn't allocating damages among the Defendants; my problem is allocating damages ultimately among the recipients of a recalculated, redistributed use tax.

Further, I don't agree with the proposals that are suggested here. The first proposal is, quote, "The municipal Defendants could be required to pay Chicago it's full 20 percent portion of the local share of the State use tax and to pay Skokie its full portion on the theory that the municipal defendant incorrectly received the full local share of the State's sales tax," end of quote. That just plain doesn't work.

For one thing, it ignored the other 203 municipalities who must necessarily, the way the use tax statute and IDOR's procedures operate, be taken into account in a recalculation. The problem there could be characterized as, we don't know what the

local share of the state use tax is until IDOR tells us. That's not something I can figure out on the back of an envelope.

And I can't award 20 percent of something unless I know what the something is. The only way I think I can find that out is through IDOR. Maybe I'm right; maybe I'm wrong, but that's my take on it.

The second proposal has a similar difficulty. The Plaintiffs propose that the municipal broker and business defendants could be required to pay Plaintiffs their respective portions of the local share of the state use tax pro rata. This overlooks a number of things, one of which is that I don't think there's a cause of action against the broker and the business defendants even on the best day. So that's just not going to work.

We also have the same difficulty in determining what the payout is. The payout is supposed to be their respective portions of the local share of the state use tax pro rata; but, again, we still have to figure out what the local share is. That's where I stop, because I don't think I can do that.

A third approach, the Plaintiffs say, would be to join IDOR and require it to perform a redistribution. That's actually, if we were to do this, probably the necessary and certainly the most expedient method of getting the job done. But that proposal by its very nature underscores why this exercise is an inappropriate one for this court. The plaintiffs are not entitled to hijack IDOR and turn it into an organization which simply does the Plaintiff's bidding.

The Plaintiffs say that the only thing that IDOR would have to do is the administrative function of redistributing the taxes, which is the type of action that can be the subject of a mandamus order where necessary.

I don't agree. IDOR has taken the position, as my order points out, that it does not care to devote its limited resources which -- I will parenthetically observe -- get more limited by the hour in the current State budgetary climate. IDOR doesn't want to spend its limited resources dealing with pre-Hartney claims.

The legislature didn't tell me to make that judgment; it told IDOR to make its judgment.

And for me to require IDOR at the behest of the City of Chicago to reallocate its resources to a task that IDOR has already determined is not an efficient use of its resources; clearly, goes beyond the scope of mandamus. We're dealing with a lot more than arithmetic here. And although I will acknowledge that mandamus can deal with arithmetic, where appropriate, this involves considerably more than that.

So, I understand that Chicago and Skokie feel frustrated; yet, the frustration that they feel is attributable, in my view, more to the nature of the use tax and the cause of action that the Plaintiffs have asserted or attempted to assert, than to this court not hopping on board to subject the revenue collecting authorities of the State of Illinois as a whole to their parochial concerns of Chicago and Skokie.

Having said that, I will tie it all up with one point that seems to me to be extremely important here. And this does in a sense cycle back to primary jurisdiction, if you want to think of it that way. It is the other end of the spectrum to the Itasca one-off situation.

If Chicago and Skokie can do what they want to do here, so can 203 other municipalities simultaneously or seriate. That prospect is worse than a free-for-all, and I suspect that in a long run, it would do a heck of a lot more damage than it would provide any help.

Now, it might make some sense to ask the legislature or maybe even JCAR -- I don't know if JCAR could do this, but it seems they can do pretty much anything -- to direct IDOR to do some sort of state-wide study that might move this ball forward and might provide us with tools that we could use without implicating IDOR resources. But that is much more a legislative decision, in my view, or a decision with an administrative discretion than it is something that a trial court in the City of Chicago ought to be doing. If I can do this, then 200 other judges located in 200 other municipalities in the State of Illinois can do the same thing all at the same time.

So the motion to reconsider is denied. Off you go to the Appellate Court, and we will see what happens with this.

MR. O'BRYAN: And just one administrative

question, your Honor. Should today's orders reflect "Denied for reasons set forth in open court or on the transcript," and leave it at that?

THE COURT: The motion to reconsider is denied for the reasons set forth in the court's October 9, 2015 opinion, with the clarification and further explanation set forth in the record this morning. I think that gets it right.

Thank you.

MR. O'BRYAN: Thank you, your Honor.

THE COURT: When do I see everybody else next?

MR. SOLBERG: We don't have a current date, Judge.

THE COURT: Would it not be a good idea to get one?

MS. YUSOF: Do you have dates yourself that we could consider?

THE COURT: I hadn't thought about this. I hadn't expected everybody to show up.

MS. YUSOF: Some of us have been talking about what will happen next depending on what happens in the Chicago case. So I would say that maybe setting out a date --

THE COURT: It seems to me they're independent.

RTA can go forward whether Chicago does or not.

MR. SOLBERG: Judge, we are trying to figure out who's completed what and kind of what the procedural posture is and whether there's an operative complaint we need to respond to, whether a response can --

MS. YUSOF: There were never any responsive pleadings or deadlines set for that.

MR. SOLBERG: Then the next steps, your Honor. They have our complaint. It was all kind of postponed.

There's a bill of particulars with a limited number of retailers now that are involved. And so the next step is for us to get to that issue, to either move to dismiss that complaint or to answer that complaint and move forward.

We have been talking with the RTA. Legally, the two cases are clearly the same. Practically, there is some basis that maybe we can try to resolve things.

THE COURT: This could make -- it would certainly have been in cost-effective terms.

MS. YUSOF: Right.

MR. SOLBERG: So if you want to set a status

for us to come in, that might light a fire under each of us to move forward and have our discussion.

THE COURT: I should do that, and I will. My guess is that it would make -- this being the middle of November -- better sense to set a status in January because so little gets accomplished between now and the end of the year as a practical matter anyway.

In terms of the thoughts about the next step or series of steps, the two orders that I entered in the not-too-distant past, the one on the respondents in the discovery issue and the other on the City of Chicago's complaint, pretty much dropped most of the available shoulds. And I think at this point you know where I'm coming from with this. Another motion to dismiss may not be the most efficient and sensible way for the court.

MR. SOLBERG: Your Honor, I guess I should have said dispositive motion. We do know under 8-11-21, which is at issue in the RTA case, that there are certain conditions that have to be met. The sales have to sourced from a store or warehouse in the RTA's district.

With the limited number of retailers that

we now believe are at issue, we may very well be able to come to you with a very quick motion for summary judgment, with proof to show that certain of these retailers did not source -- did not deliver the goods. So there are motions that we think would be available to us.

THE COURT: If you do that, you said certain of the retailers, right?

MR. SOLBERG: Correct.

THE COURT: What you will get, if your motion addresses some but not all of retailers, is an order under 2-1005(d), which kind of winnows the --

MR. SOLBERG: Right. Correct. And there are others that, for example, have undergone IDOR audit that we think answers the question under 8-11-21 as well. So that's the process, and that's actually the dialogue that we are intending to have with the Plaintiffs to see whether there's common ground to narrow this dispute.

THE COURT: Let me toss in a point about retailers that have undergone an IDOR audit. I have not addressed, because I have not needed to address until now, the question of whether in this unusual setting completion of an IDOR audit, with IDOR not

challenging anything, has some kind of preclusive effect. I don't know. It's not self-evident to me whether it is or not, but that's something we are going to have to address if we need to.

Conversely, if IDOR doesn't audit and says -- it comes, as it were, in the Itasca side effects, you know, okay, Mr. Retailer, you're wrongly sourcing this; what effect does that have in this court? Can that simply be introduced and then a motion for judgment filed or what?

MR. BROWDY: Well, in that situation, it's mostly hypothetical, but not completely hypothetical --

THE COURT: I'm not trying to answer it --

MR. BROWDY: No, no. Well, the taxpayers also have recourse in higher courts which they're availing themselves of.

MS. YUSOF: And I don't believe that that would be the case for -- at least for the RTA's claims, to the extent any retailer has provided us that sort of information. We have said as to those particular retailers, the taxpayer itself, we had issued the termination of the respondent in discovery motion on those.

THE COURT: But what I would think we might want to do, I'm going to leave this all for you to think about, factor in to the extent that it's useful, it may not be. We may need to divide the retailers into a of couple groups.

Group 1 is a retailer which has been through an IDOR audit. As to that group we need to address what's the effect of the IDOR audit, if any. And if that's a legal dispute that we need to set up, then I think we ought to get it set up and decided with reasonable expedition.

And we need to keep in mind that the parties involved in this suit are on the whole not the retailer, which adds a further intriguing order. The retailer would have, I suppose, an administrative review action of some sort. But these are non-parties to the IDOR audit, and that wouldn't necessarily work well. So that's one group.

Another group is on, hypothetically, the retailers who do not -- as to whom the prerequisites of 8-11-21 can't be met, that can be crisply focused motion; as to these retailers, the Plaintiffs can't go forward because of X, and then we can determine

whether X exists or not.

As to some retailers, when we get to the end of the day, we're going to have a dispute over sourcing. In my view, that dispute cannot usefully be tried for six retailers at the same time because the facts are all different. We're going to have to figure out how efficiently to get at that, and whatever help all of you could provide in setting up a relatively streamlined procedure, the happier I'll be.

So I am giving you stuff to think about before the next status.

MR. BLONDER: There's also two other legal issues which you have touched on in the past. One is you previously -- but there is a statue of limitations that will apply, but we want to open this to have a dispute as to what that is. So that's going to be an issue for you as well.

The second is --

THE COURT: I think I can confidently say that there are some statute of limitations that will probably have a --

MR. BLONDER: And the second is, with respect to Hartney and it's kind of implications for

pre-Hartney conduct versus post-Hartney conduct, which is the legal issue that we touched on in some of the briefs, but it's still out there, which will factor into this as well.

THE COURT: Do we have in the RTA's current complaint both pre- and post-Hartney issues?

MS. YUSOF: Within the 8-11-21 there but the claims on unjust en claims, the issue of pre-Hartney timing is there, but the claims on unjust enrichment are limited to post-Hartney timing specifically in the titles.

MR. BROWDY: The private defendants -- I don't know how else to put it out there -- Mr. Blonder's clients, but my client does anticipate moving to dismiss, and in part based on 11-21. And we do recognize that as an issue and we're going to address that. We don't think it's an Itasca-type case even though it is true, it is retailers occupation tax.

MS. YUSOF: What? The 8-11-21 claims are not against any parties other than the municipalities.

MR. O'BRYAN: Our argument would be the language against only the municipality means not against private defendants.

THE COURT: That would seem relatively clear to me.

MR. O'BRYAN: I agree.

THE COURT: But what RTA is trying to do is assert against private defendants claims which do not necessarily arise under 8-11-21. We haven't fought all the way through that yet.

MR. O'BRYAN: True.

THE COURT: And the way that I got through that with regard to the City claims has not a little to do with the fact that it's a use tax claim and not a sales tax claim. So there may be room for motion practice here.

If we're going to have motion practice of that sort, though, what I would rather do is have all of the defendants who are going to assert a claim like that, bundle them together so we can deal with them at the same time.

Basically, I'm looking for a road map. I keep saying that, but we're getting closer to where we can see a road.

MR. O'BRYAN: We have done that in the past, Judge, and we'll definitely do it again.

MS. YUSOF: Judge, there is one issue as far as

the 8-11-21 claims which we -- now and when we come back in January. You may recall we had clarified after your March 17th order whether the RTA could still issue a subpoena to any retailers, and you had indicated we could issue subpoenas, and we did to about 25 or so retailers.

And not all of them replied, some of them did, but there is some room there for us to still negotiate with them on trying to get whatever other responses we can. It was relatively limited subpoena, very limited, especially as to the 8-11-21 claims as far as what warehouses do they have within the RTA's jurisdiction. Some of them did not answer that question.

So that is something that we would want to be able to obtain before having to address the dispositive nature of any motion by the municipalities on the 8-11-21 claims.

THE COURT: Well, subpoenas are subpoenas, and so long as a subpoena calls for information pertinent to the subject matter of the litigation, it's proper under the discovery rules.

I have, however, a serious concern whether it is productive, sensible, or fair to allow

the RTA Plaintiffs to demand a trial as to 257 retailers.

MS. YUSOF: And certainly there are not that many. There were 30 at most.

THE COURT: I picked a number out of space. Okay?

That does, to my way of thinking, tend to put Itasca back in play. Put in really grossly oversimplified terms, the concern that the Supreme Court expressed in the Singer (phonetic) case was, I think at its core, a concern that the AG would not be able to highjack the revenue process or push it around to suit whatever agenda the AG happens to have.

That concern is a valid concern. Although it is possible in the sales tax arena in a way that it isn't in the use tax arena for a court to start conducting what begin to look like a whole bunch IDOR audits. The question whether that ought to go on on a large scale outside the auspices of IDOR, is separate and different from the question of whether you could do it as a one-off, which happened in Itasca.

I don't know yet what the ultimate

configuration of the claims that we're going to go forward with here looks like, but the bigger it is, the more trouble I'm going to have with it because I really don't want to mess up revenue collection in the State of Illinois, especially these days when there is so little of it.

It's something that the management of this litigation, how we structure issues, is going to play into, because it is as much a practical concern, in my view, as it is a legal or theoretical question. So give some thought to all that.

So how about we set in the middle of January -- find me a 10 o'clock.

THE CLERK: Friday, January 15th.

THE COURT: Friday, January 15 at 10:00 work for everybody?

MS. YUSOF: Yes for RTA.

THE COURT: Let it be so.

(Which were all proceedings had in the above-entitled cause on this date.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, NOHEMI SALAZAR, C.S.R., a Certified Shorthand Reporter within and for the County of Cook and State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the taking of said trial and that the foregoing is a true, complete, and correct transcript of my shorthand notes so taken as aforesaid and contains all the proceedings given at said hearing.

IN WITNESS WHEREOF, I do hereunto set my hand and affix my seal of office at Chicago, Illinois this 4th day of December, 2015.

Nohemi Salazar CSR

Certified Shorthand Reporter
Cook County, Illinois
My commission expires May 31, 2017

C.S.R. Certificate No. 84-4648.

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Revenue Article 1 Transfer Act (Refs & Annos)

105/6z-17. State and Local Sales Tax Reform Fund

West's Smith-Hurd Illinois Compiled Statutes Annotated Chapter 30. Finance Effective: August 26, 2014 *(Approx. 2 pages)*

Proposed Legislation

Effective: August 26, 2014

30 ILCS 105/6z-17
Formerly cited as IL ST CH 127 ¶ 142z-17

105/6z-17. State and Local Sales Tax Reform Fund

Currentness

§ 6z-17. State and Local Sales Tax Reform Fund.

(a) After deducting the amount transferred to the Tax Compliance and Administration Fund under subsection (b), of the money paid into the State and Local Sales Tax Reform Fund: (i) subject to appropriation to the Department of Revenue, Municipalities having 1,000,000 or more inhabitants shall receive 20% and may expend such amount to fund and establish a program for developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income and very low-income households within such municipality, (ii) 10% shall be transferred into the Regional Transportation Authority Occupation and Use Tax Replacement Fund, a special fund in the State treasury which is hereby created, (iii) until July 1, 2013, subject to appropriation to the Department of Transportation, the Madison County Mass Transit District shall receive .6%, and beginning on July 1, 2013, subject to appropriation to the Department of Revenue, 0.6% shall be distributed each month out of the Fund to the Madison County Mass Transit District, (iv) the following amounts, plus any cumulative deficiency in such transfers for prior months, shall be transferred monthly into the Build Illinois Fund and credited to the Build Illinois Bond Account therein:

Fiscal Year	Amount
1990	$2,700,000
1991	1,850,000
1992	2,750,000
1993	2,950,000

From Fiscal Year 1994 through Fiscal Year 2025 the transfer shall total $3,150,000 monthly, plus any cumulative deficiency in such transfers for prior months, and (v) the remainder of the money paid into the State and Local Sales Tax Reform Fund shall be transferred into the Local Government Distributive Fund and, except for municipalities with 1,000,000 or more inhabitants which shall receive no portion of such remainder, shall be distributed, subject to appropriation, in the manner provided by Section 2 of "An Act in relation to State revenue sharing with local government entities", approved July 31, 1969, as now or hereafter amended.[1] Municipalities with more than 50,000 inhabitants according to the 1980 U.S. Census and located within the Metro East Mass Transit District receiving funds pursuant to provision (v) of this paragraph may expend such amounts to fund and establish a program for developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income and very low-income households within such municipality.

(b) Beginning on the first day of the first calendar month to occur on or after the effective date of this amendatory Act of the 98th General Assembly, each month the Department of Revenue shall certify to the State Comptroller and the State Treasurer, and the State Comptroller shall order transferred and the State Treasurer shall transfer from the State and

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Local Sales Tax Reform Fund to the Tax Compliance and Administration Fund, an amount equal to 1/12 of 5% of 20% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of the Department of Revenue under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and associated local occupation and use taxes administered by the Department. The amount distributed under subsection (a) each month shall first be reduced by the amount transferred to the Tax Compliance and Administration Fund under this subsection (b). Moneys transferred to the Tax Compliance and Administration Fund under this subsection (b) shall be used, subject to appropriation, to fund additional auditors and compliance personnel at the Department of Revenue.

Credits

Laws 1919, p. 946, § 6z-17, added by P.A. 85-1135, Art. II, § 12, eff. Jan. 1, 1990. Amended by P.A. 86-17, § 8, eff. July 2, 1989; P.A. 86-44, Art. 2, § 2-5, eff. July 13, 1989; P.A. 86-928, Art. 3, § 10, eff. Jan. 1, 1990; P.A. 86-953, § 12, eff. Nov. 30, 1989; P.A. 86-1028, Art. II, § 2-93, eff. Feb. 5, 1990. Re-enacted by P.A. 91-51, § 105, eff. June 30, 1999. Amended by P.A. 95-708, § 6, eff. Jan. 18, 2008; P.A. 98-44, § 30, eff. June 28, 2013; P.A. 98-1098, § 10, eff. Aug. 26, 2014.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 142z-17.

Footnotes

1 30 ILCS 115/2.

30 I.L.C.S. 105/6z-17, IL ST CH 30 § 105/6z-17
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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NOTES OF DECISIONS (3)

Administrative review
Economic incentive agreements
Tax adjustments

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Act 105. State Finance Act (Refs & Annos)

105/6z-18. Local Government Fund; disbursements

West's Smith-Hurd Illinois Compiled Statutes Annotated | Chapter 30. Finance | Effective: March 8, 2013 *(Approx. 3 pages)*

Proposed Legislation

Effective: March 8, 2013

30 ILCS 105/6z-18
Formerly cited as IL ST CH 127 ¶ 142z-18

105/6z-18. Local Government Fund; disbursements

Currentness

§ 6z-18. A portion of the money paid into the Local Government Tax Fund from sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics, which occurred in municipalities, shall be distributed to each municipality based upon the sales which occurred in that municipality. The remainder shall be distributed to each county based upon the sales which occurred in the unincorporated area of that county.

A portion of the money paid into the Local Government Tax Fund from the 6.25% general use tax rate on the selling price of tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by any agency of this State's government shall be distributed to municipalities as provided in this paragraph. Each municipality shall receive the amount attributable to sales for which Illinois addresses for titling or registration purposes are given as being in such municipality. The remainder of the money paid into the Local Government Tax Fund from such sales shall be distributed to counties. Each county shall receive the amount attributable to sales for which Illinois addresses for titling or registration purposes are given as being located in the unincorporated area of such county.

A portion of the money paid into the Local Government Tax Fund from the 6.25% general rate (and, beginning July 1, 2000 and through December 31, 2000, the 1.25% rate on motor fuel and gasohol, and beginning on August 6, 2010 through August 15, 2010, the 1.25% rate on sales tax holiday items) on sales subject to taxation under the Retailers' Occupation Tax Act[1] and the Service Occupation Tax Act,[2] which occurred in municipalities, shall be distributed to each municipality, based upon the sales which occurred in that municipality. The remainder shall be distributed to each county, based upon the sales which occurred in the unincorporated area of such county.

For the purpose of determining allocation to the local government unit, a retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. This paragraph does not apply to coal or other mineral when it is delivered or shipped by the seller to the purchaser at a point outside Illinois so that the sale is exempt under the United States Constitution as a sale in interstate or foreign commerce.

Whenever the Department determines that a refund of money paid into the Local Government Tax Fund should be made to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified, and to the person named, in such notification from the

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Department. Such refund shall be paid by the State Treasurer out of the Local Government Tax Fund.

As soon as possible after the first day of each month, beginning January 1, 2011, upon certification of the Department of Revenue, the Comptroller shall order transferred, and the Treasurer shall transfer, to the STAR Bonds Revenue Fund the local sales tax increment, as defined in the Innovation Development and Economy Act, collected during the second preceding calendar month for sales within a STAR bond district and deposited into the Local Government Tax Fund, less 3% of that amount, which shall be transferred into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department in administering the Innovation Development and Economy Act.

After the monthly transfer to the STAR Bonds Revenue Fund, on or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to named municipalities and counties, the municipalities and counties to be those entitled to distribution of taxes or penalties paid to the Department during the second preceding calendar month. The amount to be paid to each municipality or county shall be the amount (not including credit memoranda) collected during the second preceding calendar month by the Department and paid into the Local Government Tax Fund, plus an amount the Department determines is necessary to offset any amounts which were erroneously paid to a different taxing body, and not including an amount equal to the amount of refunds made during the second preceding calendar month by the Department, and not including any amount which the Department determines is necessary to offset any amounts which are payable to a different taxing body but were erroneously paid to the municipality or county, and not including any amounts that are transferred to the STAR Bonds Revenue Fund. Within 10 days after receipt, by the Comptroller, of the disbursement certification to the municipalities and counties, provided for in this Section to be given to the Comptroller by the Department, the Comptroller shall cause the orders to be drawn for the respective amounts in accordance with the directions contained in such certification.

When certifying the amount of monthly disbursement to a municipality or county under this Section, the Department shall increase or decrease that amount by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the 6 months preceding the time a misallocation is discovered.

The provisions directing the distributions from the special fund in the State Treasury provided for in this Section shall constitute an irrevocable and continuing appropriation of all amounts as provided herein. The State Treasurer and State Comptroller are hereby authorized to make distributions as provided in this Section.

In construing any development, redevelopment, annexation, preannexation or other lawful agreement in effect prior to September 1, 1990, which describes or refers to receipts from a county or municipal retailers' occupation tax, use tax or service occupation tax which now cannot be imposed, such description or reference shall be deemed to include the replacement revenue for such abolished taxes, distributed from the Local Government Tax Fund.

As soon as possible after the effective date of this amendatory Act of the 98th General Assembly, the State Comptroller shall order and the State Treasurer shall transfer $6,600,000 from the Local Government Tax Fund to the Illinois State Medical Disciplinary Fund.

Credits

Laws 1919, p. 946, § 6z-16, added by P.A. 85-1135, Art. II, § 12, eff. Jan. 1, 1990. Renumbered § 6z-18 and amended by P.A. 85-1440, Art. II, § 2-50, eff. Feb. 1, 1989. Amended by P.A. 86-928, Art. 3, § 10, eff. Jan. 1, 1990; P.A. 86-1481, Art. 6, § 2, eff. Jan. 14, 1991; P.A. 90-491, § 10, eff. Jan. 1, 1998. Re-enacted by P.A. 91-51, § 105, eff. June 30, 1999. Amended by P.A. 91-872, Fourth Sp. Sess., § 3, eff. July 1, 2000; P.A. 96-939, § 65, eff. June 24, 2010; P.A. 96-1012, § 5, eff. July 7, 2010; P.A. 97-333, § 90, eff. Aug. 12, 2011; P.A. 98-3, § 5, eff. March 8, 2013.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 142z-18.

Notes of Decisions (3)

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Footnotes

1 35 ILCS 120/1 et seq.

2 35 ILCS 110/1 et seq.

30 I.L.C.S. 105/6z-18, IL ST CH 30 § 105/6z-18
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Act 105. State Finance Act (Refs & Annos)

Proposed Legislation

Effective: July 6, 2017

30 ILCS 105/6z-20
Formerly cited as IL ST CH 127 ¶ 142z-20

105/6z-20. County and Mass Transit District Fund

Currentness

§ 6z-20. County and Mass Transit District Fund. Of the money received from the 6.25% general rate (and, beginning July 1, 2000 and through December 31, 2000, the 1.25% rate on motor fuel and gasohol, and beginning on August 6, 2010 through August 15, 2010, the 1.25% rate on sales tax holiday items) on sales subject to taxation under the Retailers' Occupation Tax Act[1] and Service Occupation Tax Act[2] and paid into the County and Mass Transit District Fund, distribution to the Regional Transportation Authority tax fund, created pursuant to Section 4.03 of the Regional Transportation Authority Act,[3] for deposit therein shall be made based upon the retail sales occurring in a county having more than 3,000,000 inhabitants. The remainder shall be distributed to each county having 3,000,000 or fewer inhabitants based upon the retail sales occurring in each such county.

For the purpose of determining allocation to the local government unit, a retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. This paragraph does not apply to coal or other mineral when it is delivered or shipped by the seller to the purchaser at a point outside Illinois so that the sale is exempt under the United States Constitution as a sale in interstate or foreign commerce.

Of the money received from the 6.25% general use tax rate on tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by any agency of this State's government and paid into the County and Mass Transit District Fund, the amount for which Illinois addresses for titling or registration purposes are given as being in each county having more than 3,000,000 inhabitants shall be distributed into the Regional Transportation Authority tax fund, created pursuant to Section 4.03 of the Regional Transportation Authority Act. The remainder of the money paid from such sales shall be distributed to each county based on sales for which Illinois addresses for titling or registration purposes are given as being located in the county. Any money paid into the Regional Transportation Authority Occupation and Use Tax Replacement Fund from the County and Mass Transit District Fund prior to January 14, 1991, which has not been paid to the Authority prior to that date, shall be transferred to the Regional Transportation Authority tax fund.

Whenever the Department determines that a refund of money paid into the County and Mass Transit District Fund should be made to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified, and to the person named, in such notification from the Department. Such refund shall be paid by the State Treasurer out of the County and Mass Transit District Fund.

As soon as possible after the first day of each month, beginning January 1, 2011, upon certification of the Department of Revenue, the Comptroller shall order transferred, and the

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Treasurer shall transfer, to the STAR Bonds Revenue Fund the local sales tax increment, as defined in the Innovation Development and Economy Act, collected during the second preceding calendar month for sales within a STAR bond district and deposited into the County and Mass Transit District Fund, less 3% of that amount, which shall be transferred into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department in administering the Innovation Development and Economy Act.

After the monthly transfer to the STAR Bonds Revenue Fund, on or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to the Regional Transportation Authority and to named counties, the counties to be those entitled to distribution, as hereinabove provided, of taxes or penalties paid to the Department during the second preceding calendar month. The amount to be paid to the Regional Transportation Authority and each county having 3,000,000 or fewer inhabitants shall be the amount (not including credit memoranda) collected during the second preceding calendar month by the Department and paid into the County and Mass Transit District Fund, plus an amount the Department determines is necessary to offset any amounts which were erroneously paid to a different taxing body, and not including an amount equal to the amount of refunds made during the second preceding calendar month by the Department, and not including any amount which the Department determines is necessary to offset any amounts which were payable to a different taxing body but were erroneously paid to the Regional Transportation Authority or county, and not including any amounts that are transferred to the STAR Bonds Revenue Fund, less 2% of the amount to be paid to the Regional Transportation Authority, which shall be transferred into the Tax Compliance and Administration Fund. The Department, at the time of each monthly disbursement to the Regional Transportation Authority, shall prepare and certify to the State Comptroller the amount to be transferred into the Tax Compliance and Administration Fund under this Section. Within 10 days after receipt, by the Comptroller, of the disbursement certification to the Regional Transportation Authority, counties, and the Tax Compliance and Administration Fund provided for in this Section to be given to the Comptroller by the Department, the Comptroller shall cause the orders to be drawn for the respective amounts in accordance with the directions contained in such certification.

When certifying the amount of a monthly disbursement to the Regional Transportation Authority or to a county under this Section, the Department shall increase or decrease that amount by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the 6 months preceding the time a misallocation is discovered.

The provisions directing the distributions from the special fund in the State Treasury provided for in this Section and from the Regional Transportation Authority tax fund created by Section 4.03 of the Regional Transportation Authority Act shall constitute an irrevocable and continuing appropriation of all amounts as provided herein. The State Treasurer and State Comptroller are hereby authorized to make distributions as provided in this Section.

In construing any development, redevelopment, annexation, preannexation or other lawful agreement in effect prior to September 1, 1990, which describes or refers to receipts from a county or municipal retailers' occupation tax, use tax or service occupation tax which now cannot be imposed, such description or reference shall be deemed to include the replacement revenue for such abolished taxes, distributed from the County and Mass Transit District Fund or Local Government Distributive Fund, as the case may be.

Credits

Laws 1919, p. 946, § 6z-20, added by P.A. 86-928, Art. 3, § 10, eff. Jan. 1, 1990. Amended by P.A. 86-1481, Art. 6, § 2, eff. Jan. 14, 1991; P.A. 86-1481, Art. 10, § 2, eff. Jan. 14, 1991; P.A. 87-435, Art. 2, § 2-30, eff. Sept. 10, 1991; P.A. 90-491, § 10, eff. Jan. 1, 1998; P.A. 91-872, Fourth Sp. Sess., § 3, eff. July 1, 2000; P.A. 96-939, § 65, eff. June 24, 2010; P.A. 96-1012, § 5, eff. July 7, 2010; P.A. 97-333, § 90, eff. Aug. 12, 2011; P.A. 100-23, § 35-10, eff. July 6, 2017.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 142z-20.

Footnotes

1 35 ILCS 120/1 et seq.

2 35 ILCS 115/1 et seq.

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3 70 ILCS 3615/4.03.

30 I.L.C.S. 105/6z-20, IL ST CH 30 § 105/6z-20
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Act 115. State Revenue Sharing Act (Refs & Annos)

115/2. Allocation and Disbursement

West's Smith-Hurd Illinois Compiled Statutes Annotated Chapter 30. Finance Effective: July 14, 2010 *(Approx. 3 pages)*

Proposed Legislation

Effective: July 14, 2010

30 ILCS 115/2
Formerly cited as IL ST CH 85 ¶ 612

115/2. Allocation and Disbursement

Currentness

§ 2. Allocation and Disbursement.

(a) As soon as may be after the first day of each month, the Department of Revenue shall allocate among the several municipalities and counties of this State the amount available in the Local Government Distributive Fund and in the Income Tax Surcharge Local Government Distributive Fund, determined as provided in Sections 1 and 1a above. Except as provided in Sections 13 and 13.1 of this Act, the Department shall then certify such allocations to the State Comptroller, who shall pay over to the several municipalities and counties the respective amounts allocated to them. The amount of such Funds allocable to each such municipality and county shall be in proportion to the number of individual residents of such municipality or county to the total population of the State, determined in each case on the basis of the latest census of the State, municipality or county conducted by the Federal government and certified by the Secretary of State and for annexations to municipalities, the latest Federal, State or municipal census of the annexed area which has been certified by the Department of Revenue. Allocations to the City of Chicago under this Section are subject to Section 6 of the Hotel Operators' Occupation Tax Act.[1] For the purpose of this Section, the number of individual residents of a county shall be reduced by the number of individuals residing therein in municipalities, but the number of individual residents of the State, county and municipality shall reflect the latest census of any of them. The amounts transferred into the Local Government Distributive Fund pursuant to Section 9 of the Use Tax Act,[2] Section 9 of the Service Use Tax Act,[3] Section 9 of the Service Occupation Tax Act,[4] and Section 3 of the Retailers' Occupation Tax Act,[5] each as now or hereafter amended, pursuant to the amendments of such Sections by Public Act 85-1135, shall be distributed as provided in said Sections.

(b) It is the intent of the General Assembly that allocations made under this Section shall be made in a fair and equitable manner. Accordingly, the clerk of any municipality to which territory has been annexed, or from which territory has been disconnected, shall notify the Department of Revenue in writing of that annexation or disconnection and shall (1) state the number of residents within the territory that was annexed or disconnected, based on the last census conducted by the federal, State, or municipal government and certified by the Illinois Secretary of State, and (2) furnish therewith a certified copy of the plat of annexation or, in the case of disconnection, the ordinance, final judgment, or resolution of disconnection together with an accurate depiction of the territory disconnected. The county in which the annexed or disconnected territory is located shall verify that the number of residents stated on the written notice that is to be sent to the Department of Revenue is true and accurate. The verified statement of the county shall accompany the written notice. However, if the county does not respond to the municipality's request for verification within 30 days, this verification requirement shall be waived. The written notice shall be provided to the Department of Revenue (1) within 30 days after the effective date of this amendatory Act of

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the 96th General Assembly for disconnections occurring after January 1, 2007 and before the effective date of this amendatory Act of the 96th General Assembly or (2) within 30 days after the annexation or disconnection for annexations or disconnections occurring on or after the effective date of this amendatory Act of the 96th General Assembly. For purposes of this Section, a disconnection or annexation through court order is deemed to be effective 30 days after the entry of a final judgment order, unless stayed pending appeal. Thereafter, the monthly allocation made to the municipality and to any other municipality or county affected by the annexation or disconnection shall be adjusted in accordance with this Section to reflect the change in residency of the residents of the territory that was annexed or disconnected. The adjustment shall be made no later than 30 days after the Department of Revenue's receipt of the written notice of annexation or disconnection described in this Section.

Credits

P.A. 76-587, § 2, eff. Aug. 1, 1969. Amended by P.A. 76-2588, § 2, eff. Aug. 8, 1970; P.A. 78-592, § 33, eff. Oct. 1, 1973; P.A. 79-1070, § 1, eff. Sept. 22, 1975; P.A. 81-1509, Art. IV, § 79, eff. Sept. 26, 1980; P.A. 84-853, § 1, eff. Jan. 1, 1986; P.A. 84-1470, § 20, eff. July 1, 1987; P.A. 85-1135, Art. III, § 7, eff. Sept. 1, 1988; P.A. 85-1414, § 1, eff. Nov. 29, 1988; P.A. 85-1440, Art. II, § 2-24, eff. Feb. 1, 1989; P.A. 86-18, § 1, eff. July 5, 1989. Re-enacted by P.A. 91-51, § 110, eff. June 30, 1999. Amended by P.A. 91-935, § 12, eff. June 1, 2001; P.A. 96-1040, § 5, eff. July 14, 2010.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 612.

Notes of Decisions (1)

Footnotes

1 35 ILCS 145/6.

2 35 ILCS 105/9.

3 35 ILCS 110/9.

4 35 ILCS 115/9.

5 35 ILCS 120/3.

30 I.L.C.S. 115/2, IL ST CH 30 § 115/2
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

Effective: January 1, 2014

35 ILCS 105/3
Formerly cited as IL ST CH 120 ¶ 439.3

105/3. Tax imposed

Currentness

§ 3. Tax imposed. A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Purchases of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of this amendatory Act of the 98th General Assembly are declaratory of existing law as to the meaning and scope of this Act.

Credits

Laws 1955, p. 2027, § 3, eff. July 14, 1955. Amended by Laws 1957, p. 305, § 1, eff. July 1, 1957; Laws 1957, p. 931, § 1, eff. July 1, 1957; Laws 1957, p. 2277, § 1, eff. July 9, 1957; Laws 1959, p. 412, § 1, eff. July 1, 1959; Laws 1961, p. 1559, § 1, eff. July 1, 1961; Laws 1961, p. 1939, § 1, eff. July 25, 1961; Laws 1961, p. 2314, § 1, eff. July 31, 1961; Laws 1963, p. 741, § 1, eff. March 21, 1963; Laws 1963, p. 1200, § 1, eff. July 1, 1963; Laws 1965, p. 165, § 1, eff. March 16, 1965; Laws 1965, p. 1186, § 1, eff. July 1, 1965; Laws 1967, p. 890, § 1, eff. July 1, 1967; Laws 1967, p. 1134, § 1, eff. July 1, 1967; Laws 1968, p. 130, § 1, eff. Aug. 18, 1968; P.A. 76-249, § 1, eff. July 1, 1969; P.A. 77-56, § 1, eff. July 1, 1971; P.A. 77-457, § 1, eff. July 23, 1971; P.A. 77-1020, § 1, eff. Aug. 17, 1971; P.A. 77-2077, § 1, eff. Oct. 1, 1972; P.A. 77-2829, §§ 54, 67, eff. Dec. 22, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 78-1135, § 1, eff. Oct. 1, 1974; P.A. 78-1297, § 58, eff. March 4, 1975; P.A. 79-946, § 1, eff. Oct. 1, 1975; P.A. 80-1292, § 1, eff. Jan. 1, 1979; P.A. 81-1, 3rd Sp.Sess., § 1, eff. Jan. 1, 1980; P.A. 81-440, § 1, eff. Jan. 1, 1980; P.A. 81-530, § 1, eff. Jan. 1, 1980; P.A. 81-991, § 1, eff. Jan. 1, 1980; P.A. 81-1108, § 1, eff. Jan. 1, 1980; P.A. 81-1378, § 1, eff. Jan. 1, 1981; P.A. 81-1379, § 2, eff. Aug. 12, 1980; P.A. 81-1509, Art. I, § 76, eff. Sept. 26, 1980; P.A. 81-1513, § 1, eff. Dec. 3, 1980; P.A. 81-1550, Art. I, § 31, eff. Jan. 8, 1981; P.A. 82-23, § 1, eff. Sept. 1, 1981; P.A. 82-24, § 1, eff. July 14, 1981; P.A. 82-665, § 1, eff. Nov. 3, 1981; P.A. 82-672, § 1, eff. Oct. 28, 1981; P.A. 82-683, § 1, eff. Nov. 12, 1981; P.A. 82-697, § 1, eff. July 1, 1982; P.A. 82-703, § 9, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 58, eff. July 13, 1982; P.A. 82-1013, § 1, eff. Sept. 17, 1982; P.A. 83-14, Art. II, § 2-1, eff. Jan. 1, 1984; P.A. 83-55, § 1, eff. Aug. 12, 1983; P.A. 83-86, § 1, eff. Jan. 1, 1984; P.A. 83-114, § 2, eff. Aug. 19, 1983; P.A. 83-327, § 1, eff. Jan. 1, 1984; P.A. 83-614, § 1, eff. Jan. 1, 1984; P.A. 83-950, § 1, eff. Dec. 1, 1983; P.A. 83-1129, § 6, eff. Sept. 1, 1984; P.A. 83-1338, § 1, eff. Sept. 7, 1984; P.A. 83-1353, § 6, eff. Sept. 8, 1984; P.A. 83-1362, Art. II, § 135, eff. Sept. 11, 1984; P.A. 83-1463, § 1, eff. Sept. 19, 1984; P.A. 83-1470, § 2, eff. Sept. 20, 1984; P.A. 83-1495, § 1, eff. Jan. 11, 1985; P.A. 83-1528, § 40, eff. Jan. 17, 1985; P.A. 84-155, § 1, eff. Jan. 1, 1986; P.A. 84-220, § 1, eff. Sept. 1, 1985; P.A. 84-223, § 1, eff.

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Sept. 1, 1985; P.A. 84-368, § 1, eff. Jan. 1, 1986; P.A. 84-400, § 1, eff. Jan. 1, 1986; P.A. 84-516, § 1, eff. Nov. 1, 1985; P.A. 84-832, Art. II, § 17, eff. Sept. 23, 1985; P.A. 84-1308, Art. II, § 156, eff. Aug. 25, 1986; P.A. 84-1315, § 1, eff. Jan. 1, 1987; P.A. 85-118, § 1, eff. Jan. 1, 1988; P.A. 85-415, § 1, eff. Jan. 1, 1988; P.A. 85-1135, Art. II, § 7, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 2, eff. Sept. 1, 1988; P.A. 85-1209, Art. II, § 2-84, eff. Aug. 30, 1988; P.A. 85-1372, § 1, eff. Sept. 1, 1988; P.A. 86-44, Art. 1, § 1-3, eff. Oct. 1, 1989; P.A. 86-244, § 1, eff. Aug. 15, 1989; P.A. 86-252, § 1, eff. Aug. 15, 1989; P.A. 86-820, Art. II, § 2-10, eff. Sept. 7, 1989; P.A. 86-905, Art. 4, § 1, eff. Sept. 11, 1989; P.A. 86-928, Art. 1, § 1, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 6, eff. Jan. 1, 1990; P.A. 86-953, § 5, eff. Nov. 30, 1989; P.A. 86-1394, § 1, eff. Jan. 1, 1991. Resectioned §§ 3 to 3-80 and amended by P.A. 86-1475, Art. 5, § 5-2, eff. Jan. 10, 1991. Amended by P.A. 87-876, § 3, eff. Jan. 1, 1993. Re-enacted by P.A. 91-51, § 115, eff. June 30, 1999. Amended by P.A. 91-870, § 5, eff. June 22, 2000; P.A. 98-583, § 5, eff. Jan. 1, 2014.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.3.

Notes of Decisions (71)

35 I.L.C.S. 105/3, IL ST CH 35 § 105/3
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

105/3-10. Rate of tax

West's Smith-Hurd Illinois Compiled Statutes Annotated | Chapter 35. Revenue | Effective: July 6, 2017 *(Approx. 3 pages)*

Unconstitutional or Preempted | Negative Treatment Reconsidered by Wirtz v. Quinn | Ill. | July 11, 2011

Proposed Legislation

Effective: July 6, 2017

35 ILCS 105/3-10
Formerly cited as IL ST CH 120 ¶ 439.3-10

105/3-10. Rate of tax

Currentness

§ 3-10. Rate of tax. Unless otherwise provided in this Section, the tax imposed by this Act is at the rate of 6.25% of either the selling price or the fair market value, if any, of the tangible personal property. In all cases where property functionally used or consumed is the same as the property that was purchased at retail, then the tax is imposed on the selling price of the property. In all cases where property functionally used or consumed is a by-product or waste product that has been refined, manufactured, or produced from property purchased at retail, then the tax is imposed on the lower of the fair market value, if any, of the specific property so used in this State or on the selling price of the property purchased at retail. For purposes of this Section "fair market value" means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. The fair market value shall be established by Illinois sales by the taxpayer of the same property as that functionally used or consumed, or if there are no such sales by the taxpayer, then comparable sales or purchases of property of like kind and character in Illinois.

Beginning on July 1, 2000 and through December 31, 2000, with respect to motor fuel, as defined in Section 1.1 of the Motor Fuel Tax Law,[1] and gasohol, as defined in Section 3-40 of the Use Tax Act,[2] the tax is imposed at the rate of 1.25%.

Beginning on August 6, 2010 through August 15, 2010, with respect to sales tax holiday items as defined in Section 3-6 of this Act, the tax is imposed at the rate of 1.25%.

With respect to gasohol, the tax imposed by this Act applies to (i) 70% of the proceeds of sales made on or after January 1, 1990, and before July 1, 2003, (ii) 80% of the proceeds of sales made on or after July 1, 2003 and on or before July 1, 2017, and (iii) 100% of the proceeds of sales made thereafter. If, at any time, however, the tax under this Act on sales of gasohol is imposed at the rate of 1.25%, then the tax imposed by this Act applies to 100% of the proceeds of sales of gasohol made during that time.

With respect to majority blended ethanol fuel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2023 but applies to 100% of the proceeds of sales made thereafter.

With respect to biodiesel blends with no less than 1% and no more than 10% biodiesel, the tax imposed by this Act applies to (i) 80% of the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2018 and (ii) 100% of the proceeds of sales made thereafter. If, at any time, however, the tax under this Act on sales of biodiesel blends with no less than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the

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tax imposed by this Act applies to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time.

With respect to 100% biodiesel and biodiesel blends with more than 10% but no more than 99% biodiesel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2023 but applies to 100% of the proceeds of sales made thereafter.

With respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. For the purposes of this Section, until September 1, 2009: the term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size; but "soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act,[3] or drinks containing 50% or more natural fruit or vegetable juice.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

Until August 1, 2009, and notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. Beginning August 1, 2009, and notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "food for human consumption that is to be consumed off the premises where it is sold" does not include candy. For purposes of this Section, "candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation that contains flour or requires refrigeration.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. For purposes of this Section, "grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only, regardless of whether the products meet the definition of "over-the-counter-drugs". For the purposes of this paragraph, "over-the-counter-drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 C.F.R. » 201.66. The "over-the-counter-drug" label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

Beginning on the effective date of this amendatory Act of the 98th General Assembly, "prescription and nonprescription medicines and drugs" includes medical cannabis purchased from a registered dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act.

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If the property that is purchased at retail from a retailer is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is taxable under this Act, the "selling price" on which the tax is computed shall be reduced by an amount that represents a reasonable allowance for depreciation for the period of prior out-of-state use.

Credits

Formerly § 3. Resectioned in part § 3-10 and amended by P.A. 86-1475, Art. 5, § 5-2, eff. Jan. 10, 1991. Amended by P.A. 87-731, § 101, eff. July 1, 1992; P.A. 88-45, Art. II, § 2-20, eff. July 6, 1993; P.A. 89-359, § 5, eff. Aug. 17, 1995; P.A. 89-420, § 5, eff. June 1, 1996; P.A. 89-463, § 5, eff. May 31, 1996; P.A. 89-626, Art. 2, § 2-21, eff. Aug. 9, 1996; P.A. 90-605, § 5, eff. June 30, 1998; P.A. 90-606, § 5, eff. June 30, 1998. Re-enacted by P.A. 91-51, § 115, eff; June 30, 1999. Amended by P.A. 91-872, Fourth Sp. Sess., § 5, eff. July 1, 2000; P.A. 93-17, § 5, eff. June 11, 2003; P.A. 96-34, § 910, eff. July 13, 2009; P.A. 96-37, § 60-20, eff. July 13, 2009; P.A. 96-38, § 5, eff. July 13, 2009; P.A. 96-1000, § 195, eff. July 2, 2010; P.A. 96-1012, § 10, eff. July 7, 2010; P.A. 97-636, § 15-20, eff. June 1, 2012; P.A. 98-122, § 915, eff. Jan. 1, 2014; P.A. 99-143, § 300, eff. July 27, 2015; P.A. 99-858, § 5, eff. Aug. 19, 2016; P.A. 100-22, § 30-5, eff. July 6, 2017.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.3-10.

Notes of Decisions (20)

Footnotes

1 35 ILCS 505/1.1.

2 35 ILCS 105/3-40.

3 410 ILCS 635/1 et seq.

35 I.L.C.S. 105/3-10, IL ST CH 35 § 105/3-10
Current through P.A. 100-585 of the 2018 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

105/3-45. Collection
West's Smith-Hurd Illinois Compiled Statutes Annotated Chapter 35. Revenue Effective: August 23, 2001 *(Approx. 2 pages)*

Effective: August 23, 2001

35 ILCS 105/3-45
Formerly cited as IL ST CH 120 ¶ 439.3-45

105/3-45. Collection

Currentness

§ 3-45. Collection. The tax imposed by this Act shall be collected from the purchaser by a retailer maintaining a place of business in this State or a retailer authorized by the Department under Section 6 of this Act, and shall be remitted to the Department as provided in Section 9 of this Act, except as provided in Section 3-10.5 of this Act.

The tax imposed by this Act that is not paid to a retailer under this Section shall be paid to the Department directly by any person using the property within this State as provided in Section 10 of this Act.

Retailers shall collect the tax from users by adding the tax to the selling price of tangible personal property, when sold for use, in the manner prescribed by the Department. The Department may adopt and promulgate reasonable rules and regulations for the adding of the tax by retailers to selling prices by prescribing bracket systems for the purpose of enabling the retailers to add and collect, as far as practicable, the amount of the tax.

If a seller collects use tax measured by receipts that are not subject to use tax, or if a seller, in collecting use tax measured by receipts that are subject to tax under this Act, collects more from the purchaser than the required amount of the use tax on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This paragraph does not apply to an amount collected by the seller as use tax on receipts that are subject to tax under this Act as long as the collection is made in compliance with the tax collection brackets prescribed by the Department in its rules and regulations.

Credits

Formerly § 3. Resectioned in part § 3-45 and amended by P.A. 86-1475, Art. 5, § 5-2, eff. Jan. 10, 1991. Re-enacted by P.A. 91-51, § 115, eff. June 30, 1999. Amended by P.A. 92-484, § 5, eff. Aug. 23, 2001.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.3-45.

Notes of Decisions (48)

35 I.L.C.S. 105/3-45, IL ST CH 35 § 105/3-45
Current through P.A. 100-585 of the 2018 Reg. Sess.

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NOTES OF DECISIONS (48)

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

105/6. Certificate and Sub-Certificate of Registration; separate certificates; foreign retailers; permit to collect tax

West's Smith-Hurd Illinois Compiled Statutes Annotated Chapter 35. Revenue *(Approx. 2 pages)*

35 ILCS 105/6
Formerly cited as IL ST CH 120 ¶ 439.6

105/6. Certificate and Sub-Certificate of Registration; separate certificates; foreign retailers; permit to collect tax

Currentness

§ 6. A retailer maintaining a place of business in this State, if required to register under the Retailers' Occupation Tax Act, [1] need not obtain an additional Certificate of Registration under this Act, but shall be deemed to be sufficiently registered by virtue of his being registered under the Retailers' Occupation Tax Act. Every retailer maintaining a place of business in this State, if not required to register under the Retailers' Occupation Tax Act, shall apply to the Department (upon a form prescribed and furnished by the Department) for a Certificate of Registration under this Act. In completing such application, the applicant shall furnish such information as the Department may reasonably require. Upon approval of an application for Certificate of Registration, the Department shall issue, without charge, a Certificate of Registration to the applicant. Such Certificate of Registration shall be displayed at the address which the applicant states in his application to be the principal place of business or location from which he will act as a retailer in this State. If the applicant will act as a retailer in this State from other places of business or locations, he shall list the addresses of such additional places of business or locations in this application for Certificate of Registration, and the Department shall issue a Sub-Certificate of Registration to the applicant for each such additional place of business or location. Each Sub-Certificate of Registration shall be conspicuously displayed at the place for which it is issued. Such Sub-Certificate of Registration shall bear the same registration number as that appearing upon the Certificate of Registration to which such Sub-Certificates relate. Where a retailer operates more than one place of business which is subject to registration under this Section and such businesses are substantially different in character or are engaged in under different trade names or are engaged in under other substantially dissimilar circumstances (so that it is more practicable, from an accounting, auditing or bookkeeping standpoint, for such businesses to be separately registered), the Department may require or permit such person to apply for and obtain a separate Certificate of Registration for each such business or for any of such businesses instead of registering such person, as to all such businesses, under a single Certificate of Registration supplemented by related Sub-Certificates of Registration. No Certificate of Registration shall be issued to any person who is in default to the State of Illinois for moneys due hereunder.

The Department may, in its discretion, upon application, authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this State, in the same manner and subject to the same requirements, including the furnishing of a receipt to the purchaser (if demanded by the purchaser), as a retailer maintaining a place of business within this State. The receipt given to the purchaser shall be sufficient to relieve him from further liability for the tax to which such receipt may refer. Such permit may be revoked by the Department as provided herein.

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Credits
Laws 1955, p. 2027, § 6, eff. July 14, 1955.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.6.

Footnotes

1 35 ILCS 120/1 et seq.

35 I.L.C.S. 105/6, IL ST CH 35 § 105/6
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

105/9. Due date; payment by electronic funds transfer; discount; deposits; conditional sales; returns; fund

West's Smith-Hurd Illinois Compiled Statutes Annotated | Chapter 35. Revenue | Effective: August 24, 2017 to June 30, 2018 (Approx. 9 pages)

Unconstitutional or Preempted | Negative Treatment Reconsidered by Wirtz v. Quinn | Ill. | July 11, 2011
Proposed Legislation

NOTES OF DECISIONS (9)

Effective: August 24, 2017 to June 30, 2018

35 ILCS 105/9
Formerly cited as IL ST CH 120 ¶439.9

105/9. Due date; payment by electronic funds transfer; discount; deposits; conditional sales; returns; fund

Currentness

<Text of section effective until July 1, 2018. See, also, text of section 35 ILCS 105/9, effective July 1, 2018.>

§ 9. Except as to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, each retailer required or authorized to collect the tax imposed by this Act shall pay to the Department the amount of such tax (except as otherwise provided) at the time when he is required to file his return for the period during which such tax was collected, less a discount of 2.1% prior to January 1, 1990, and 1.75% on and after January 1, 1990, or $5 per calendar year, whichever is greater, which is allowed to reimburse the retailer for expenses incurred in collecting the tax, keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. In the case of retailers who report and pay the tax on a transaction by transaction basis, as provided in this Section, such discount shall be taken with each such tax remittance instead of when such retailer files his periodic return. The discount allowed under this Section is allowed only for returns that are filed in the manner required by this Act. The Department may disallow the discount for retailers whose certificate of registration is revoked at the time the return is filed, but only if the Department's decision to revoke the certificate of registration has become final. A retailer need not remit that part of any tax collected by him to the extent that he is required to remit and does remit the tax imposed by the Retailers' Occupation Tax Act,[1] with respect to the sale of the same property.

Where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended beyond the close of the period for which the return is filed, the retailer, in collecting the tax (except as to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State), may collect for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period.

Except as provided in this Section, on or before the twentieth day of each calendar month, such retailer shall file a return for the preceding calendar month. Such return shall be filed on forms prescribed by the Department and shall furnish such information as the Department may reasonably require. On and after January 1, 2018, except for returns for motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, with respect to retailers whose annual gross receipts average $20,000 or more, all returns required to be filed pursuant to this Act shall be filed electronically. Retailers who demonstrate that they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement.

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The Department may require returns to be filed on a quarterly basis. If so required, a return for each calendar quarter shall be filed on or before the twentieth day of the calendar month following the end of such calendar quarter. The taxpayer shall also file a return with the Department for each of the first two months of each calendar quarter, on or before the twentieth day of the following calendar month, stating:

1. The name of the seller;

2. The address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State;

3. The total amount of taxable receipts received by him during the preceding calendar month from sales of tangible personal property by him during such preceding calendar month, including receipts from charge and time sales, but less all deductions allowed by law;

4. The amount of credit provided in Section 2d of this Act;

5. The amount of tax due;

5-5. The signature of the taxpayer; and

6. Such other reasonable information as the Department may require.

If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed.

Beginning October 1, 1993, a taxpayer who has an average monthly tax liability of $150,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1994, a taxpayer who has an average monthly tax liability of $100,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1995, a taxpayer who has an average monthly tax liability of $50,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 2000, a taxpayer who has an annual tax liability of $200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "annual tax liability" shall be the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. The term "average monthly tax liability" means the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year divided by 12. Beginning on October 1, 2002, a taxpayer who has a tax liability in the amount set forth in subsection (b) of Section 2505-210 of the Department of Revenue Law shall make all payments required by rules of the Department by electronic funds transfer.

Before August 1 of each year beginning in 1993, the Department shall notify all taxpayers required to make payments by electronic funds transfer. All taxpayers required to make payments by electronic funds transfer shall make those payments for a minimum of one year beginning on October 1.

Any taxpayer not required to make payments by electronic funds transfer may make payments by electronic funds transfer with the permission of the Department.

All taxpayers required to make payment by electronic funds transfer and any taxpayers authorized to voluntarily make payments by electronic funds transfer shall make those payments in the manner authorized by the Department.

The Department shall adopt such rules as are necessary to effectuate a program of electronic funds transfer and the requirements of this Section.

Before October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act,[2] the

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Service Use Tax Act[3] was $10,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act was $20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. If the month during which such tax liability is incurred began prior to January 1, 1985, each payment shall be in an amount equal to 1/4 of the taxpayer's actual liability for the month or an amount set by the Department not to exceed 1/4 of the average monthly liability of the taxpayer to the Department for the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability in such 4 quarter period). If the month during which such tax liability is incurred begins on or after January 1, 1985, and prior to January 1, 1987, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 27.5% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1987, and prior to January 1, 1988, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 26.25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1988, and prior to January 1, 1989, or begins on or after January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1989, and prior to January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year or 100% of the taxpayer's actual liability for the quarter monthly reporting period. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month. Before October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $9,000, or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $10,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $10,000 threshold stated above, then such taxpayer may petition the Department for change in such taxpayer's reporting status. On and after October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $20,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $20,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term. If any such quarter monthly payment is not paid at the time or in the amount required by this Section, then the taxpayer shall be liable for penalties and interest on the difference between the minimum amount due and the amount of such quarter monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section. The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for taxpayers who file on other than a calendar monthly basis.

If any such payment provided for in this Section exceeds the taxpayer's liabilities under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act and the Service Use

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Tax Act, as shown by an original monthly return, the Department shall issue to the taxpayer a credit memorandum no later than 30 days after the date of payment, which memorandum may be submitted by the taxpayer to the Department in payment of tax liability subsequently to be remitted by the taxpayer to the Department or be assigned by the taxpayer to a similar taxpayer under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations to be prescribed by the Department, except that if such excess payment is shown on an original monthly return and is made after December 31, 1986, no credit memorandum shall be issued, unless requested by the taxpayer. If no such request is made, the taxpayer may credit such excess payment against tax liability subsequently to be remitted by the taxpayer to the Department under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's 2.1% or 1.75% vendor's discount shall be reduced by 2.1% or 1.75% of the difference between the credit taken and that actually due, and the taxpayer shall be liable for penalties and interest on such difference.

If the retailer is otherwise required to file a monthly return and if the retailer's average monthly tax liability to the Department does not exceed $200, the Department may authorize his returns to be filed on a quarter annual basis, with the return for January, February, and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year.

If the retailer is otherwise required to file a monthly or quarterly return and if the retailer's average monthly tax liability to the Department does not exceed $50, the Department may authorize his returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year.

Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Act concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Act, such retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

In addition, with respect to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells, except that if, in the same transaction, (i) a retailer of aircraft, watercraft, motor vehicles or trailers transfers more than one aircraft, watercraft, motor vehicle or trailer to another aircraft, watercraft, motor vehicle or trailer retailer for the purpose of resale or (ii) a retailer of aircraft, watercraft, motor vehicles, or trailers transfers more than one aircraft, watercraft, motor vehicle, or trailer to a purchaser for use as a qualifying rolling stock as provided in Section 3-55 of this Act, then that seller may report the transfer of all the aircraft, watercraft, motor vehicles or trailers involved in that transaction to the Department on the same uniform invoice-transaction reporting return form. For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act,[4] a personal watercraft, or any boat equipped with an inboard motor.

The transaction reporting return in the case of motor vehicles or trailers that are required to be registered with an agency of this State, shall be the same document as the Uniform Invoice referred to in Section 5-402 of the Illinois Vehicle Code[5] and must show the name and address of the seller; the name and address of the purchaser; the amount of the selling

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price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 2 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of the Illinois Vehicle Code, and such other information as the Department may reasonably require.

The transaction reporting return in the case of watercraft and aircraft must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 2 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such transaction reporting return shall be filed not later than 20 days after the date of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so. The transaction reporting return and tax remittance or proof of exemption from the tax that is imposed by this Act may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

No retailer's failure or refusal to remit tax under this Act precludes a user, who has paid the proper tax to the retailer, from obtaining his certificate of title or other evidence of title or registration (if titling or registration is required) upon satisfying the Department that such user has paid the proper tax (if tax is due) to the retailer. The Department shall adopt appropriate rules to carry out the mandate of this paragraph.

If the user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of tax or proof of exemption made to the Department before the retailer is willing to take these actions and such user has not paid the tax to the retailer, such user may certify to the fact of such delay by the retailer, and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 2.1% or 1.75% discount provided for in this Section being allowed. When the user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

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Where a retailer collects the tax with respect to the selling price of tangible personal property which he sells and the purchaser thereafter returns such tangible personal property and the retailer refunds the selling price thereof to the purchaser, such retailer shall also refund, to the purchaser, the tax so collected from the purchaser. When filing his return for the period in which he refunds such tax to the purchaser, the retailer may deduct the amount of the tax so refunded by him to the purchaser from any other use tax which such retailer may be required to pay or remit to the Department, as shown by such return, if the amount of the tax to be deducted was previously remitted to the Department by such retailer. If the retailer has not previously remitted the amount of such tax to the Department, he is entitled to no deduction under this Act upon refunding such tax to the purchaser.

Any retailer filing a return under this Section shall also include (for the purpose of paying tax thereon) the total tax covered by such return upon the selling price of tangible personal property purchased by him at retail from a retailer, but as to which the tax imposed by this Act was not collected from the retailer filing such return, and such retailer shall remit the amount of such tax to the Department when filing such return.

If experience indicates such action to be practicable, the Department may prescribe and furnish a combination or joint return which will enable retailers, who are required to file returns hereunder and also under the Retailers' Occupation Tax Act, to furnish all the return information required by both Acts on the one form.

Where the retailer has more than one business registered with the Department under separate registration under this Act, such retailer may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.

Beginning January 1, 1990, each month the Department shall pay into the State and Local Sales Tax Reform Fund, a special fund in the State Treasury which is hereby created, the net revenue realized for the preceding month from the 1% tax on sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, and insulin, urine testing materials, syringes and needles used by diabetics.

Beginning January 1, 1990, each month the Department shall pay into the County and Mass Transit District Fund 4% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by an agency of this State's government.

Beginning January 1, 1990, each month the Department shall pay into the State and Local Sales Tax Reform Fund, a special fund in the State Treasury, 20% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property, other than tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by an agency of this State's government.

Beginning August 1, 2000, each month the Department shall pay into the State and Local Sales Tax Reform Fund 100% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of motor fuel and gasohol. Beginning September 1, 2010, each month the Department shall pay into the State and Local Sales Tax Reform Fund 100% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of sales tax holiday items.

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Beginning January 1, 1990, each month the Department shall pay into the Local Government Tax Fund 16% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by an agency of this State's government.

Beginning October 1, 2009, each month the Department shall pay into the Capital Projects Fund an amount that is equal to an amount estimated by the Department to represent 80% of the net revenue realized for the preceding month from the sale of candy, grooming and hygiene products, and soft drinks that had been taxed at a rate of 1% prior to September 1, 2009 but that are now taxed at 6.25%.

Beginning July 1, 2011, each month the Department shall pay into the Clean Air Act Permit Fund 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of sorbents used in Illinois in the process of sorbent injection as used to comply with the Environmental Protection Act or the federal Clean Air Act, but the total payment into the Clean Air Act Permit Fund under this Act and the Retailers' Occupation Tax Act shall not exceed $2,000,000 in any fiscal year.

Beginning July 1, 2013, each month the Department shall pay into the Underground Storage Tank Fund from the proceeds collected under this Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act an amount equal to the average monthly deficit in the Underground Storage Tank Fund during the prior year, as certified annually by the Illinois Environmental Protection Agency, but the total payment into the Underground Storage Tank Fund under this Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act shall not exceed $18,000,000 in any State fiscal year. As used in this paragraph, the "average monthly deficit" shall be equal to the difference between the average monthly claims for payment by the fund and the average monthly revenues deposited into the fund, excluding payments made pursuant to this paragraph.

Beginning July 1, 2015, of the remainder of the moneys received by the Department under this Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act, each month the Department shall deposit $500,000 into the State Crime Laboratory Fund.

Of the remainder of the moneys received by the Department pursuant to this Act, (a) 1.75% thereof shall be paid into the Build Illinois Fund and (b) prior to July 1, 1989, 2.2% and on and after July 1, 1989, 3.8% thereof shall be paid into the Build Illinois Fund; provided, however, that if in any fiscal year the sum of (1) the aggregate of 2.2% or 3.8%, as the case may be, of the moneys received by the Department and required to be paid into the Build Illinois Fund pursuant to Section 3 of the Retailers' Occupation Tax Act,[6] Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act,[7] and Section 9 of the Service Occupation Tax Act[8], such Acts being hereinafter called the "Tax Acts" and such aggregate of 2.2% or 3.8%, as the case may be, of moneys being hereinafter called the "Tax Act Amount", and (2) the amount transferred to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall be less than the Annual Specified Amount (as defined in Section 3 of the Retailers' Occupation Tax Act), an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; and further provided, that if on the last business day of any month the sum of (1) the Tax Act Amount required to be deposited into the Build Illinois Bond Account in the Build Illinois Fund during such month and (2) the amount transferred during such month to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall have been less than 1/12 of the Annual Specified Amount, an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; and, further provided, that in no event shall the payments required under the preceding proviso result in aggregate payments into the Build Illinois Fund pursuant to this clause (b) for any fiscal year in excess of the greater of (i) the Tax Act Amount or (ii) the Annual Specified Amount for such fiscal year; and, further provided, that the amounts payable into the Build Illinois Fund under this clause (b) shall be payable only until such time as the aggregate amount on deposit under each trust indenture

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securing Bonds issued and outstanding pursuant to the Build Illinois Bond Act is sufficient, taking into account any future investment income, to fully provide, in accordance with such indenture, for the defeasance of or the payment of the principal of, premium, if any, and interest on the Bonds secured by such indenture and on any Bonds expected to be issued thereafter and all fees and costs payable with respect thereto, all as certified by the Director of the Bureau of the Budget (now Governor's Office of Management and Budget). If on the last business day of any month in which Bonds are outstanding pursuant to the Build Illinois Bond Act,[9] the aggregate of the moneys deposited in the Build Illinois Bond Account in the Build Illinois Fund in such month shall be less than the amount required to be transferred in such month from the Build Illinois Bond Account to the Build Illinois Bond Retirement and Interest Fund pursuant to Section 13 of the Build Illinois Bond Act,[10] an amount equal to such deficiency shall be immediately paid from other moneys received by the Department pursuant to the Tax Acts to the Build Illinois Fund; provided, however, that any amounts paid to the Build Illinois Fund in any fiscal year pursuant to this sentence shall be deemed to constitute payments pursuant to clause (b) of the preceding sentence and shall reduce the amount otherwise payable for such fiscal year pursuant to clause (b) of the preceding sentence. The moneys received by the Department pursuant to this Act and required to be deposited into the Build Illinois Fund are subject to the pledge, claim and charge set forth in Section 12 of the Build Illinois Bond Act.[11]

Subject to payment of amounts into the Build Illinois Fund as provided in the preceding paragraph or in any amendment thereto hereafter enacted, the following specified monthly installment of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority provided under Section 8.25f of the State Finance Act, but not in excess of the sums designated as "Total Deposit", shall be deposited in the aggregate from collections under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act into the McCormick Place Expansion Project Fund in the specified fiscal years.

Fiscal Year	Total Deposit
1993	$0
1994	53,000,000
1995	58,000,000
1996	61,000,000
1997	64,000,000
1998	68,000,000
1999	71,000,000
2000	75,000,000
2001	80,000,000
2002	93,000,000
2003	99,000,000
2004	103,000,000
2005	108,000,000
2006	113,000,000
2007	119,000,000
2008	126,000,000
2009	132,000,000
2010	139,000,000
2011	146,000,000
2012	153,000,000
2013	161,000,000
2014	170,000,000
2015	179,000,000
2016	189,000,000
2017	199,000,000
2018	210,000,000
2019	221,000,000
2020	233,000,000
2021	246,000,000

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2022	260,000,000
2023	275,000,000
2024	275,000,000
2025	275,000,000
2026	279,000,000
2027	292,000,000
2028	307,000,000
2029	322,000,000
2030	338,000,000
2031	350,000,000
2032 and each fiscal year thereafter that bonds are outstanding under Section 13.2. of the Metropolitan Pier and Exposition Authority Act, but not after fiscal year 2060.	350,000,000

Beginning July 20, 1993 and in each month of each fiscal year thereafter, one-eighth of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority for that fiscal year, less the amount deposited into the McCormick Place Expansion Project Fund by the State Treasurer in the respective month under subsection (g) of Section 13 of the Metropolitan Pier and Exposition Authority Act, plus cumulative deficiencies in the deposits required under this Section for previous months and years, shall be deposited into the McCormick Place Expansion Project Fund, until the full amount requested for the fiscal year, but not in excess of the amount specified above as "Total Deposit", has been deposited.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning July 1, 1993 and ending on September 30, 2013, the Department shall each month pay into the Illinois Tax Increment Fund 0.27% of 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning with the receipt of the first report of taxes paid by an eligible business and continuing for a 25-year period, the Department shall each month pay into the Energy Infrastructure Fund 80% of the net revenue realized from the 6.25% general rate on the selling price of Illinois-mined coal that was sold to an eligible business. For purposes of this paragraph, the term "eligible business" means a new electric generating facility certified pursuant to Section 605-332 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.

Subject to payment of amounts into the Build Illinois Fund, the McCormick Place Expansion Project Fund, the Illinois Tax Increment Fund, and the Energy Infrastructure Fund pursuant to the preceding paragraphs or in any amendments to this Section hereafter enacted, beginning on the first day of the first calendar month to occur on or after August 26, 2014 (the effective date of Public Act 98-1098), each month, from the collections made under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act, the Department shall pay into the Tax Compliance and Administration Fund, to be used, subject to appropriation, to fund additional auditors and compliance personnel at the Department of Revenue, an amount equal to 1/12 of 5% of 80% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of the Department under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and associated local occupation and use taxes administered by the Department.

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Of the remainder of the moneys received by the Department pursuant to this Act, 75% thereof shall be paid into the State Treasury and 25% shall be reserved in a special account and used only for the transfer to the Common School Fund as part of the monthly transfer from the General Revenue Fund in accordance with Section 8a of the State Finance Act.

As soon as possible after the first day of each month, upon certification of the Department of Revenue, the Comptroller shall order transferred and the Treasurer shall transfer from the General Revenue Fund to the Motor Fuel Tax Fund an amount equal to 1.7% of 80% of the net revenue realized under this Act for the second preceding month. Beginning April 1, 2000, this transfer is no longer required and shall not be made.

Net revenue realized for a month shall be the revenue collected by the State pursuant to this Act, less the amount paid out during that month as refunds to taxpayers for overpayment of liability.

For greater simplicity of administration, manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, and who wish to do so, may assume the responsibility for accounting and paying to the Department all tax accruing under this Act with respect to such sales, if the retailers who are affected do not make written objection to the Department to this arrangement.

Credits

Laws 1955, p. 2027, § 9, eff. July 14, 1955. Amended by Laws 1957, p. 2024, § 1, eff. July 1, 1959; Laws 1959, p. 395, § 1, eff. July 1, 1959; Laws 1959, p. 412, § 1, eff. July 1, 1959; Laws 1959, p. 654, § 1, eff. July 8, 1959; Laws 1961, p. 1559, § 1, eff. July 1, 1961; Laws 1963, p. 119, § 1, eff. March 8, 1963; Laws 1963, p. 123, § 1, eff. March 8, 1963; Laws 1963, p. 1200, § 1, eff. July 1, 1963; Laws 1963, p. 1787, § 1, eff. July 16, 1963; Laws 1965, p. 167, § 1, eff. July 1, 1965; Laws 1965, p. 1186, § 1, eff. July 1, 1965; Laws 1965, p. 2820, § 1, eff. Jan. 1, 1966; Laws 1967, p. 1072, § 1, eff. July 1, 1967; Laws 1967, p. 1134, § 1, eff. July 1, 1967; Laws 1968, p. 381, § 1, eff. July 1, 1969; P.A. 76-249, § 1, eff. July 1, 1969; P.A. 76-365, § 1, eff. July 1, 1969; P.A. 76-2249, § 1, eff. July 1, 1970; P.A. 77-1081, § 1, eff. Aug. 17, 1971; P.A. 78-736, § 2, eff. Sept. 10, 1973; P.A. 79-839, § 2, eff. Sept. 8, 1975; P.A. 79-5, 6th Sp.Sess., § 2, eff. Nov. 1, 1976; P.A. 80-473, § 1, eff. Oct. 1, 1977; P.A. 80-474, § 1, eff. Sept. 3, 1977; P.A. 80-1364, § 55, eff. Aug. 13, 1978; P.A. 81-3, 2nd Sp.Sess., § 7, eff. Sept. 19, 1979; P.A. 81-1086, § 1, eff. Jan. 1, 1980; P.A. 81-1509, Art. I, § 76, eff. Sept. 26, 1980; P.A. 83-14, Art. III, § 3-1, eff. July 2, 1983; P.A. 83-1129, § 6, eff. Sept. 1, 1984; P.A. 83-1416, § 3, eff. Jan. 1, 1985; P.A. 83-1528, Art. II, § 40, eff. Jan. 17, 1985; P.A. 83-1537, § 1, eff. Jan. 29, 1985; P.A. 84-111, Art. I, § 20, eff. July 25, 1985; P.A. 84-1027, Art. I, § 2, Art. VI, § 3, eff. Nov. 15, 1985; P.A. 84-1112, Art. I, § 2, eff. Feb. 28, 1986; P.A. 84-1307, § 2, eff. Aug. 22, 1986; P.A. 84-1308, Art. II, § 156, eff. Aug. 25, 1986; P.A. 85-977, § 2, eff. July 1, 1988; P.A. 85-1135, Art. II, § 7, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 2, eff. Sept. 1, 1988; P.A. 85-1209, Art. III, § 3-129, eff. Aug. 30, 1988; P.A. 85-1222, § 11, eff. Aug. 30, 1988; P.A. 85-1372, § 1, eff. Sept. 1, 1988; P.A. 86-16, Art. 2, § 3, eff. June 30, 1989; P.A. 86-17, § 2, eff. July 2, 1989; P.A. 86-44, Art. 2, § 2-1, eff. July 13, 1989; P.A. 86-820, Art. II, § 2-10, eff. Sept. 7, 1989; P.A. 86-928, Art. 1, § 1, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 6, eff. Jan. 1, 1990; P.A. 86-953, § 5, eff. Nov. 30, 1989; P.A. 87-14, Art. 3, § 3-1, eff. Oct. 1, 1991; P.A. 87-733, § 1-4, eff. July 1, 1992; P.A. 87-838, § 245, eff. Jan. 24, 1992; P.A. 87-876, § 3, eff. Jan. 1, 1993; P.A. 87-895, Art. 4, § 4-12, eff. Aug. 14, 1992; P.A. 87-1246, § 2, eff. Dec. 24, 1992; P.A. 87-1258, § 2, eff. Jan. 7, 1993; P.A. 88-45, Art. II, § 2-20, eff. July 6, 1993; P.A. 88-116, Art. 2, § 2-5, eff. July 23, 1993; P.A. 88-194, § 5, eff. Jan. 1, 1994; P.A. 88-660, § 25, eff. Sept. 16, 1994; P.A. 88-669, Art. 90, § 90-1.7, eff. Nov. 29, 1994; P.A. 88-670, Art. 2, § 2-20, eff. Dec. 2, 1994; P.A. 89-379, § 5, eff. Jan. 1, 1996; P.A. 89-626, Art. 3, § 3-13, eff. Aug. 9, 1996; P.A. 90-491, § 20, eff. Jan. 1, 1999; P.A. 90-612, § 10, eff. July 8, 1998; P.A. 91-37, § 10, eff. July 1, 1999. Re-enacted by P.A. 91-51, § 115, eff. June 30, 1999. Amended by P.A. 91-101, § 10, eff. July 12, 1999; P.A. 91-541, § 10, eff. Aug. 13, 1999; P.A. 91-872, Fourth Sp. Sess., § 5, eff. July 1, 2000; P.A. 91-901, § 10, eff. Jan. 1, 2001; P.A. 92-12, § 920, eff. July 1, 2001; P.A. 92-16, § 33, eff. June 28, 2001; P.A. 92-208, § 15, eff. Aug. 2, 2001; P.A. 92-492, § 15, eff. Jan. 1, 2002; P.A. 92-600, Art. 5, § 5-21, eff. June 28, 2002; P.A. 92-651, § 25, eff. July 11, 2002; P.A. 94-793, § 475, eff. May 19, 2006. Reenacted and amended by P.A. 94-1074, § 10, eff. Dec. 26, 2006. Amended by P.A. 96-34, § 910, eff. July 13, 2009; P.A. 96-38, § 5, eff. July 13, 2009; P.A. 96-898, § 10, eff. May 28, 2010; P.A. 96-1012, § 10, eff. July 7, 2010; 97-95, § 10, eff.

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July 12, 2011; P.A. 97-333, § 125, eff. Aug. 12, 2011; P.A. 98-24, § 5-40, eff. June 19, 2013; P.A. 98-109, § 5-33, eff. July 25, 2013; P.A. 98-496, § 25, eff. Jan. 1, 2014; P.A. 98-756, § 175, eff. July 16, 2014; P.A. 98-1098, § 20, eff. Aug. 26, 2014; P.A. 99-352, § 20-126, eff. Aug. 12, 2015; P.A. 99-858, § 5, eff. Aug. 19, 2016; P.A. 99-933, § 5-95, eff. Jan. 27, 2017; P.A. 100-303, § 5, eff. Aug. 24, 2017.

Notes of Decisions (9)

Footnotes

1 35 ILCS 120/1 et seq.

2 35 ILCS 115/1 et seq.

3 35 ILCS 110/1 et seq.

4 625 ILCS 45/3-2.

5 625 ILCS 5/5-402.

6 35 ILCS 120/3.

7 35 ILCS 110/9.

8 35 ILCS 115/9.

9 30 ILCS 425/1 et seq.

10 30 ILCS 425/13.

11 30 ILCS 425/12.

35 I.L.C.S. 105/9, IL ST CH 35 § 105/9
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 120. Retailers' Occupation Tax Act (Refs & Annos)

Effective: January 1, 2014

35 ILCS 120/2
Formerly cited as IL ST CH 120 ¶441

120/2. Tax imposed

Currentness

§ 2. Tax imposed. A tax is imposed upon persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Sales of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of this amendatory Act of the 98th General Assembly are declaratory of existing law as to the meaning and scope of this Act.

Credits

Laws 1933, p. 924, § 2, eff. July 1, 1933. Amended by Laws 1933-34, Fourth Sp.Sess., p. 3, § 1, eff. July 1, 1935; Laws 1935, p. 1200, § 1, eff. July 1, 1935; Laws 1935-36, Second Sp.Sess., p. 82, § 1, eff. Dec. 11, 1936; Laws 1937, p. 1058, § 1, eff. April 11, 1937; Laws 1939, p. 1005, § 1, eff. July 1, 1939; Laws 1939, p. 1013, § 1, eff. Jan. 31, 1939; Laws 1941, vol. 1, p. 1079, § 1, eff. July 1, 1941; Laws 1953, p. 1310, § 1, eff. July 13, 1953; Laws 1955, p. 462, § 1, eff. July 1, 1955; Laws 1957, p. 933, § 1, eff. July 1, 1957; Laws 1959, p. 415, § 1, eff. July 1, 1959; Laws 1961, p. 2312, § 2, eff. July 31, 1961; Laws 1963, p. 735, § 1, eff. July 1, 1963; Laws 1963, p. 1191, § 1, eff. July 1, 1963; Laws 1965, p. 136, § 1, eff. March 9, 1965; Laws 1965, p. 1193, § 1, eff. July 1, 1965; Laws 1967, p. 889, § 1, eff. July 1, 1967; Laws 1967, p. 1124, § 1, eff. July 1, 1967; Laws 1967, p. 2142, § 1, eff. July 26, 1967; Laws 1968, p. 123, § 1, eff. Aug. 17, 1968; P.A. 76-248, § 1, eff. July 1, 1969; P.A. 77-53, § 1, eff. July 1, 1971; P.A. 77-456, § 1, eff. July 23, 1971; P.A. 77-1021, § 1, eff. Aug. 17, 1971; P.A. 77-2829, § 55, eff. Dec. 22, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 79-946, § 2, eff. Oct. 1, 1975; P.A. 80-1292, § 4, eff. Jan. 1, 1979; P.A. 81-1, 3rd Sp.Sess., § 4, eff. Jan. 1, 1980; P.A. 81-439, § 1, eff. Jan. 1, 1980; P.A. 81-530, § 4, eff. Jan. 1, 1980; P.A. 81-991, § 4, eff. Jan. 1, 1980; P.A. 81-1108, § 4, eff. Jan. 1, 1980; P.A. 81-1378, § 4, eff. Jan. 1, 1981; P.A. 81-1379, § 1, eff. Aug. 12, 1980; P.A. 81-1509, Art. I, § 79, eff. Sept. 26, 1980; P.A. 81-1513, § 4, eff. Dec. 3, 1980; P.A. 82-23, § 2, eff. Sept. 1, 1981; P.A. 82-24, § 4, eff. July 14, 1981; P.A. 82-665, § 4, eff. Nov. 3, 1981; P.A. 82-672, § 4, eff. Oct. 28, 1981; P.A. 82-683, § 4, eff. Nov. 12, 1981; P.A. 82-697, § 4, eff. July 1, 1982; P.A. 82-703, § 10, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 61, eff. July 13, 1982; P.A. 82-1013, § 4, eff. Sept. 17, 1982; P.A. 82-1057, Art. III, § 13, eff. Feb. 11, 1983; P.A. 83-14, Art. II, § 2-4, eff. Jan. 1, 1984; P.A. 83-55, § 4, eff. Aug. 12, 1983; P.A. 83-114, § 3, eff. Aug. 19, 1983; P.A. 83-327, § 4, eff. Jan. 1, 1984; P.A. 83-950, § 4, eff. Dec. 1, 1983; P.A. 83-1129, § 9, eff. Sept. 1, 1984; P.A. 83-1338, § 4, eff. Sept. 7, 1984; P.A. 83-1353, § 7, eff. Sept. 8, 1984; P.A. 83-1362, Art. II, § 138, eff. Sept. 11, 1984; P.A. 83-1463, § 4, eff. Sept. 19, 1984; P.A. 83-1470, § 5, eff. Sept. 20, 1984; P.A. 83-1495, § 4, eff. Jan. 11, 1985; P.A. 83-1528, Art. II, § 43, eff. Jan. 17, 1985;

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P.A. 84-155, § 4, eff. Jan. 1, 1986; P.A. 84-166, § 5, eff. Aug. 16, 1985; P.A. 84-220, § 4, eff. Sept. 1, 1985; P.A. 84-221, Art. I, § 8, eff. Sept. 1, 1985; P.A. 84-223, § 4, eff. Sept. 1, 1985; P.A. 84-368, § 4, eff. Jan. 1, 1986; P.A. 84-376, § 1, eff. Jan. 1, 1986; P.A. 84-400, § 4, eff. Jan. 1, 1986; P.A. 84-516, § 4, eff. Nov. 1, 1985; P.A. 84-832, Art. II, § 20, eff. Sept. 23, 1985; P.A. 84-1308, Art. II, § 159, eff. Aug. 25, 1986; P.A. 84-1315, § 4, eff. Jan. 1, 1987; P.A. 85-118, § 4, eff. Jan. 1, 1988; P.A. 85-415, § 4, eff. Jan. 1, 1988; P.A. 85-1135, Art. II, § 11, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 5, eff. Sept. 1, 1988; P.A. 85-1209, Art. II, § 2-87, eff. Aug. 30, 1988; P.A. 85-1372, § 2, eff. Sept. 1, 1988; P.A. 86-44, Art. 1, § 1-6, eff. Oct. 1, 1989; P.A. 86-244, § 4, eff. Aug. 15, 1989; P.A. 86-252, § 4, eff. Aug. 15, 1989; P.A. 86-444, § 2, eff. Jan. 1, 1990; P.A. 86-820, Art. II, § 2-13, eff. Sept. 7, 1989; P.A. 86-905, Art. 4, § 4, eff. Sept. 11, 1989; P.A. 86-928, Art. 1, § 4, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 9, eff. Jan. 1, 1990; P.A. 86-953, § 8, eff. Nov. 30, 1989; P.A. 86-1394, § 4, eff. Jan. 1, 1991. Resectioned §§ 2 to 2-65 and amended by P.A. 86-1475, Art. 5, § 5-5, eff. Jan. 10, 1991. Re-enacted by P.A. 91-51, § 135, eff. June 30, 1999. Amended by P.A. 91-870, § 20, eff. June 22, 2000; P.A. 98-583, § 20, eff. Jan. 1, 2014.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 441.

Notes of Decisions (152)

35 I.L.C.S. 120/2, IL ST CH 35 § 120/2
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 120. Retailers' Occupation Tax Act (Refs & Annos)

120/2-10. Rate of tax
West's Smith-Hurd Illinois Compiled Statutes Annotated | Chapter 35. Revenue | Effective: July 6, 2017 *(Approx. 3 pages)*

Unconstitutional or Preempted | Negative Treatment Reconsidered by Wirtz v. Quinn | Ill. | July 11, 2011
Proposed Legislation

NOTES OF DECISIONS (32)

Effective: July 6, 2017

35 ILCS 120/2-10
Formerly cited as IL ST CH 120 ¶ 441-10

120/2-10. Rate of tax

Currentness

§ 2-10. Rate of tax. Unless otherwise provided in this Section, the tax imposed by this Act is at the rate of 6.25% of gross receipts from sales of tangible personal property made in the course of business.

Beginning on July 1, 2000 and through December 31, 2000, with respect to motor fuel, as defined in Section 1.1 of the Motor Fuel Tax Law,[1] and gasohol, as defined in Section 3-40 of the Use Tax Act,[2] the tax is imposed at the rate of 1.25%.

Beginning on August 6, 2010 through August 15, 2010, with respect to sales tax holiday items as defined in Section 2-8 of this Act, the tax is imposed at the rate of 1.25%.

Within 14 days after the effective date of this amendatory Act of the 91st General Assembly, each retailer of motor fuel and gasohol shall cause the following notice to be posted in a prominently visible place on each retail dispensing device that is used to dispense motor fuel or gasohol in the State of Illinois: "As of July 1, 2000, the State of Illinois has eliminated the State's share of sales tax on motor fuel and gasohol through December 31, 2000. The price on this pump should reflect the elimination of the tax." The notice shall be printed in bold print on a sign that is no smaller than 4 inches by 8 inches. The sign shall be clearly visible to customers. Any retailer who fails to post or maintain a required sign through December 31, 2000 is guilty of a petty offense for which the fine shall be $500 per day per each retail premises where a violation occurs.

With respect to gasohol, as defined in the Use Tax Act, the tax imposed by this Act applies to (i) 70% of the proceeds of sales made on or after January 1, 1990, and before July 1, 2003, (ii) 80% of the proceeds of sales made on or after July 1, 2003 and on or before July 1, 2017, and (iii) 100% of the proceeds of sales made thereafter. If, at any time, however, the tax under this Act on sales of gasohol, as defined in the Use Tax Act, is imposed at the rate of 1.25%, then the tax imposed by this Act applies to 100% of the proceeds of sales of gasohol made during that time.

With respect to majority blended ethanol fuel, as defined in the Use Tax Act, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2023 but applies to 100% of the proceeds of sales made thereafter.

With respect to biodiesel blends, as defined in the Use Tax Act, with no less than 1% and no more than 10% biodiesel, the tax imposed by this Act applies to (i) 80% of the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2018 and (ii) 100% of the proceeds of sales made thereafter. If, at any time, however, the tax under this Act on sales of biodiesel blends, as defined in the Use Tax Act, with no less than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the tax imposed by this Act applies

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to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time.

With respect to 100% biodiesel, as defined in the Use Tax Act, and biodiesel blends, as defined in the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2023 but applies to 100% of the proceeds of sales made thereafter.

With respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. For the purposes of this Section, until September 1, 2009: the term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size; but "soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act,[3] or drinks containing 50% or more natural fruit or vegetable juice.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

Until August 1, 2009, and notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. Beginning August 1, 2009, and notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "food for human consumption that is to be consumed off the premises where it is sold" does not include candy. For purposes of this Section, "candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation that contains flour or requires refrigeration.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. For purposes of this Section, "grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only, regardless of whether the products meet the definition of "over-the-counter-drugs". For the purposes of this paragraph, "over-the-counter-drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 C.F.R. » 201.66. The "over-the-counter-drug" label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

Beginning on the effective date of this amendatory Act of the 98th General Assembly, "prescription and nonprescription medicines and drugs" includes medical cannabis purchased from a registered dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act.

Credits

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Formerly § 2. Resectioned in part § 2-10 and amended by P.A. 86-1475, Art. 5, § 5-5, eff. Jan. 10, 1991. Amended by P.A. 87-731, § 104, eff. July 1, 1992; P.A. 87-876, § 6, eff. Jan. 1, 1993; P.A. 89-359, § 20, eff. Aug. 17, 1995; P.A. 89-420, § 20, eff. June 1, 1996; P.A. 89-463, § 20, eff. May 31, 1996; P.A. 89-626, Art. 2, § 2-24, eff. Aug. 9, 1996; P.A. 90-605, § 20, eff. June 30, 1998; P.A. 90-606, § 20, eff. June 30, 1998. Re-enacted by P.A. 91-51, § 135, eff. June 30, 1999. Amended by P.A. 91-872, Fourth Sp. Sess., § 20, eff. July 1, 2000; P.A. 93-17, § 20, eff. June 11, 2003; P.A. 96-34, § 925, eff. July 13, 2009; P.A. 96-37, § 60-30, eff. July 13, 2009; P.A. 96-38, § 20, eff. July 13, 2009; P.A. 96-1000, § 210, eff. July 2, 2010; P.A. 96-1012, § 15, eff. July 7, 2010; P.A. 97-636, § 15-35, eff. June 1, 2012; P.A. 98-122, § 930, eff. Jan. 1, 2014; P.A. 99-143, § 315, eff. July 27, 2015; P.A. 99-858, § 20, eff. Aug. 19, 2016; P.A. 100-22, § 30-20, eff. July 6, 2017.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 441-10.

Notes of Decisions (32)

Footnotes

1 35 ILCS 505/1.1.

2 35 ILCS 105/3-40.

3 410 ILCS 635/1 et seq.

35 I.L.C.S. 120/2-10, IL ST CH 35 § 120/2-10
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 120. Retailers' Occupation Tax Act (Refs & Annos)

120/3. Returns; payment; electronic funds transfer; deductions; discounts; disposition of proceeds; accounts

Unconstitutional or Preempted | Negative Treatment Reconsidered by Wirtz v. Quinn | Ill. | July 11, 2011
Proposed Legislation

NOTES OF DECISIONS (40)

Effective: August 24, 2017 to June 30, 2018

35 ILCS 120/3
Formerly cited as IL ST CH 120 ¶ 442

120/3. Returns; payment; electronic funds transfer; deductions; discounts; disposition of proceeds; accounts

Currentness

<Text of section effective until July 1, 2018. See, also, text of section 35 ILCS 120/3, effective July 1, 2018.>

§ 3. Except as provided in this Section, on or before the twentieth day of each calendar month, every person engaged in the business of selling tangible personal property at retail in this State during the preceding calendar month shall file a return with the Department, stating:

1. The name of the seller;

2. His residence address and the address of his principal place of business and the address of the principal place of business (if that is a different address) from which he engages in the business of selling tangible personal property at retail in this State;

3. Total amount of receipts received by him during the preceding calendar month or quarter, as the case may be, from sales of tangible personal property, and from services furnished, by him during such preceding calendar month or quarter;

4. Total amount received by him during the preceding calendar month or quarter on charge and time sales of tangible personal property, and from services furnished, by him prior to the month or quarter for which the return is filed;

5. Deductions allowed by law;

6. Gross receipts which were received by him during the preceding calendar month or quarter and upon the basis of which the tax is imposed;

7. The amount of credit provided in Section 2d of this Act;

8. The amount of tax due;

9. The signature of the taxpayer; and

10. Such other reasonable information as the Department may require.

On and after January 1, 2018, except for returns for motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, with respect to retailers whose annual gross receipts average $20,000 or more, all returns required to be filed pursuant to this Act shall be filed electronically. Retailers who demonstrate that they do

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not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement.

If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed.

Each return shall be accompanied by the statement of prepaid tax issued pursuant to Section 2e for which credit is claimed.

Prior to October 1, 2003, and on and after September 1, 2004 a retailer may accept a Manufacturer's Purchase Credit certification from a purchaser in satisfaction of Use Tax as provided in Section 3-85 of the Use Tax Act if the purchaser provides the appropriate documentation as required by Section 3-85 of the Use Tax Act. [1] A Manufacturer's Purchase Credit certification, accepted by a retailer prior to October 1, 2003 and on and after September 1, 2004 as provided in Section 3-85 of the Use Tax Act, may be used by that retailer to satisfy Retailers' Occupation Tax liability in the amount claimed in the certification, not to exceed 6.25% of the receipts subject to tax from a qualifying purchase. A Manufacturer's Purchase Credit reported on any original or amended return filed under this Act after October 20, 2003 for reporting periods prior to September 1, 2004 shall be disallowed. Manufacturer's Purchaser Credit reported on annual returns due on or after January 1, 2005 will be disallowed for periods prior to September 1, 2004. No Manufacturer's Purchase Credit may be used after September 30, 2003 through August 31, 2004 to satisfy any tax liability imposed under this Act, including any audit liability.

The Department may require returns to be filed on a quarterly basis. If so required, a return for each calendar quarter shall be filed on or before the twentieth day of the calendar month following the end of such calendar quarter. The taxpayer shall also file a return with the Department for each of the first two months of each calendar quarter, on or before the twentieth day of the following calendar month, stating:

1. The name of the seller;

2. The address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State;

3. The total amount of taxable receipts received by him during the preceding calendar month from sales of tangible personal property by him during such preceding calendar month, including receipts from charge and time sales, but less all deductions allowed by law;

4. The amount of credit provided in Section 2d of this Act;

5. The amount of tax due; and

6. Such other reasonable information as the Department may require.

Beginning on October 1, 2003, any person who is not a licensed distributor, importing distributor, or manufacturer, as defined in the Liquor Control Act of 1934, but is engaged in the business of selling, at retail, alcoholic liquor shall file a statement with the Department of Revenue, in a format and at a time prescribed by the Department, showing the total amount paid for alcoholic liquor purchased during the preceding month and such other information as is reasonably required by the Department. The Department may adopt rules to require that this statement be filed in an electronic or telephonic format. Such rules may provide for exceptions from the filing requirements of this paragraph. For the purposes of this paragraph, the term "alcoholic liquor" shall have the meaning prescribed in the Liquor Control Act of 1934.

Beginning on October 1, 2003, every distributor, importing distributor, and manufacturer of alcoholic liquor as defined in the Liquor Control Act of 1934, shall file a statement with the Department of Revenue, no later than the 10th day of the month for the preceding month during which transactions occurred, by electronic means, showing the total amount of gross receipts from the sale of alcoholic liquor sold or distributed during the preceding month to purchasers; identifying the purchaser to whom it was sold or distributed; the purchaser's tax registration number; and such other information reasonably required by the Department. A

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distributor, importing distributor, or manufacturer of alcoholic liquor must personally deliver, mail, or provide by electronic means to each retailer listed on the monthly statement a report containing a cumulative total of that distributor's, importing distributor's, or manufacturer's total sales of alcoholic liquor to that retailer no later than the 10th day of the month for the preceding month during which the transaction occurred. The distributor, importing distributor, or manufacturer shall notify the retailer as to the method by which the distributor, importing distributor, or manufacturer will provide the sales information. If the retailer is unable to receive the sales information by electronic means, the distributor, importing distributor, or manufacturer shall furnish the sales information by personal delivery or by mail. For purposes of this paragraph, the term "electronic means" includes, but is not limited to, the use of a secure Internet website, e-mail, or facsimile.

If a total amount of less than $1 is payable, refundable or creditable, such amount shall be disregarded if it is less than 50 cents and shall be increased to $1 if it is 50 cents or more.

Beginning October 1, 1993, a taxpayer who has an average monthly tax liability of $150,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1994, a taxpayer who has an average monthly tax liability of $100,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1995, a taxpayer who has an average monthly tax liability of $50,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 2000, a taxpayer who has an annual tax liability of $200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "annual tax liability" shall be the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. The term "average monthly tax liability" shall be the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year divided by 12. Beginning on October 1, 2002, a taxpayer who has a tax liability in the amount set forth in subsection (b) of Section 2505-210 of the Department of Revenue Law shall make all payments required by rules of the Department by electronic funds transfer.

Before August 1 of each year beginning in 1993, the Department shall notify all taxpayers required to make payments by electronic funds transfer. All taxpayers required to make payments by electronic funds transfer shall make those payments for a minimum of one year beginning on October 1.

Any taxpayer not required to make payments by electronic funds transfer may make payments by electronic funds transfer with the permission of the Department.

All taxpayers required to make payment by electronic funds transfer and any taxpayers authorized to voluntarily make payments by electronic funds transfer shall make those payments in the manner authorized by the Department.

The Department shall adopt such rules as are necessary to effectuate a program of electronic funds transfer and the requirements of this Section.

Any amount which is required to be shown or reported on any return or other document under this Act shall, if such amount is not a whole-dollar amount, be increased to the nearest whole-dollar amount in any case where the fractional part of a dollar is 50 cents or more, and decreased to the nearest whole-dollar amount where the fractional part of a dollar is less than 50 cents.

If the retailer is otherwise required to file a monthly return and if the retailer's average monthly tax liability to the Department does not exceed $200, the Department may authorize his returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year.

If the retailer is otherwise required to file a monthly or quarterly return and if the retailer's average monthly tax liability with the Department does not exceed $50, the Department may authorize his returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year.

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Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Act concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Act, such retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

Where the same person has more than one business registered with the Department under separate registrations under this Act, such person may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.

In addition, with respect to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells, except that if, in the same transaction, (i) a retailer of aircraft, watercraft, motor vehicles or trailers transfers more than one aircraft, watercraft, motor vehicle or trailer to another aircraft, watercraft, motor vehicle retailer or trailer retailer for the purpose of resale or (ii) a retailer of aircraft, watercraft, motor vehicles, or trailers transfers more than one aircraft, watercraft, motor vehicle, or trailer to a purchaser for use as a qualifying rolling stock as provided in Section 2-5 of this Act, then that seller may report the transfer of all aircraft, watercraft, motor vehicles or trailers involved in that transaction to the Department on the same uniform invoice-transaction reporting return form. For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act,[2] a personal watercraft, or any boat equipped with an inboard motor.

Any retailer who sells only motor vehicles, watercraft, aircraft, or trailers that are required to be registered with an agency of this State, so that all retailers' occupation tax liability is required to be reported, and is reported, on such transaction reporting returns and who is not otherwise required to file monthly or quarterly returns, need not file monthly or quarterly returns. However, those retailers shall be required to file returns on an annual basis.

The transaction reporting return, in the case of motor vehicles or trailers that are required to be registered with an agency of this State, shall be the same document as the Uniform Invoice referred to in Section 5-402 of The Illinois Vehicle Code[3] and must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 1 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of The Illinois Vehicle Code, and such other information as the Department may reasonably require.

The transaction reporting return in the case of watercraft or aircraft must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 1 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such transaction reporting return shall be filed not later than 20 days after the day of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so. The transaction reporting return and tax remittance or proof of exemption from the Illinois use tax may be transmitted to the Department by way of the State

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agency with which, or State officer with whom the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a use tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

No retailer's failure or refusal to remit tax under this Act precludes a user, who has paid the proper tax to the retailer, from obtaining his certificate of title or other evidence of title or registration (if titling or registration is required) upon satisfying the Department that such user has paid the proper tax (if tax is due) to the retailer. The Department shall adopt appropriate rules to carry out the mandate of this paragraph.

If the user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of the tax or proof of exemption made to the Department before the retailer is willing to take these actions and such user has not paid the tax to the retailer, such user may certify to the fact of such delay by the retailer and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 2.1% or 1.75% discount provided for in this Section being allowed. When the user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

Refunds made by the seller during the preceding return period to purchasers, on account of tangible personal property returned to the seller, shall be allowed as a deduction under subdivision 5 of his monthly or quarterly return, as the case may be, in case the seller had theretofore included the receipts from the sale of such tangible personal property in a return filed by him and had paid the tax imposed by this Act with respect to such receipts.

Where the seller is a corporation, the return filed on behalf of such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation.

Where the seller is a limited liability company, the return filed on behalf of the limited liability company shall be signed by a manager, member, or properly accredited agent of the limited liability company.

Except as provided in this Section, the retailer filing the return under this Section shall, at the time of filing such return, pay to the Department the amount of tax imposed by this Act less a discount of 2.1% prior to January 1, 1990 and 1.75% on and after January 1, 1990, or $5 per calendar year, whichever is greater, which is allowed to reimburse the retailer for the expenses incurred in keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. Any prepayment made pursuant to Section 2d of this Act shall be included in the amount on which such 2.1% or 1.75% discount is computed. In the case of retailers who report and pay the tax on a transaction by transaction basis, as provided in this Section, such discount shall be taken with each such tax remittance instead of when such retailer files his periodic return. The discount allowed under this Section is allowed only for returns that are filed in the manner required by this Act. The Department may disallow the discount for retailers whose certificate of registration is revoked at the time the return is filed, but only if the Department's decision to revoke the certificate of registration has become final.

Before October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act,[4] the Service Occupation Tax Act,[5] and the Service Use Tax Act,[6] excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was $10,000 or more during the preceding 4 complete calendar

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quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was $20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. If the month during which such tax liability is incurred began prior to January 1, 1985, each payment shall be in an amount equal to 1/4 of the taxpayer's actual liability for the month or an amount set by the Department not to exceed 1/4 of the average monthly liability of the taxpayer to the Department for the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability in such 4 quarter period). If the month during which such tax liability is incurred begins on or after January 1, 1985 and prior to January 1, 1987, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 27.5% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1987 and prior to January 1, 1988, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 26.25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1988, and prior to January 1, 1989, or begins on or after January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1989, and prior to January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year or 100% of the taxpayer's actual liability for the quarter monthly reporting period. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month. Before October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of $10,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $9,000, or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $10,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $10,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. On and after October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of $20,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $20,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $20,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term. If any such quarter monthly payment is not paid at the time or in the amount required by this Section, then the taxpayer shall be liable for penalties and interest on the difference between the minimum amount due as a payment and the amount of such quarter monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section. The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for taxpayers who file on other than a calendar monthly basis.

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The provisions of this paragraph apply before October 1, 2001. Without regard to whether a taxpayer is required to make quarter monthly payments as specified above, any taxpayer who is required by Section 2d of this Act to collect and remit prepaid taxes and has collected prepaid taxes which average in excess of $25,000 per month during the preceding 2 complete calendar quarters, shall file a return with the Department as required by Section 2f and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. If the month during which such tax liability is incurred began prior to September 1, 1985 (the effective date of Public Act 84-221), each payment shall be in an amount not less than 22.5% of the taxpayer's actual liability under Section 2d. If the month during which such tax liability is incurred begins on or after January 1, 1986, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 27.5% of the taxpayer's liability for the same calendar month of the preceding calendar year. If the month during which such tax liability is incurred begins on or after January 1, 1987, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 26.25% of the taxpayer's liability for the same calendar month of the preceding year. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month filed under this Section or Section 2f, as the case may be. Once applicable, the requirement of the making of quarter monthly payments to the Department pursuant to this paragraph shall continue until such taxpayer's average monthly prepaid tax collections during the preceding 2 complete calendar quarters is $25,000 or less. If any such quarter monthly payment is not paid at the time or in the amount required, the taxpayer shall be liable for penalties and interest on such difference, except insofar as the taxpayer has previously made payments for that month in excess of the minimum payments previously due.

The provisions of this paragraph apply on and after October 1, 2001. Without regard to whether a taxpayer is required to make quarter monthly payments as specified above, any taxpayer who is required by Section 2d of this Act to collect and remit prepaid taxes and has collected prepaid taxes that average in excess of $20,000 per month during the preceding 4 complete calendar quarters shall file a return with the Department as required by Section 2f and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which the liability is incurred. Each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. The amount of the quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month filed under this Section or Section 2f, as the case may be. Once applicable, the requirement of the making of quarter monthly payments to the Department pursuant to this paragraph shall continue until the taxpayer's average monthly prepaid tax collections during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarters is less than $20,000. If any such quarter monthly payment is not paid at the time or in the amount required, the taxpayer shall be liable for penalties and interest on such difference, except insofar as the taxpayer has previously made payments for that month in excess of the minimum payments previously due.

If any payment provided for in this Section exceeds the taxpayer's liabilities under this Act, the Use Tax Act, the Service Occupation Tax Act and the Service Use Tax Act, as shown on an original monthly return, the Department shall, if requested by the taxpayer, issue to the taxpayer a credit memorandum no later than 30 days after the date of payment. The credit evidenced by such credit memorandum may be assigned by the taxpayer to a similar taxpayer under this Act, the Use Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations to be prescribed by the Department. If no such request is made, the taxpayer may credit such excess payment against tax liability subsequently to be remitted to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determined that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's 2.1% and 1.75% vendor's discount shall be reduced by 2.1% or 1.75% of the difference between the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on such difference.

If a retailer of motor fuel is entitled to a credit under Section 2d of this Act which exceeds the taxpayer's liability to the Department under this Act for the month which the taxpayer is filing a return, the Department shall issue the taxpayer a credit memorandum for the excess.

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Beginning January 1, 1990, each month the Department shall pay into the Local Government Tax Fund, a special fund in the State treasury which is hereby created, the net revenue realized for the preceding month from the 1% tax on sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, and insulin, urine testing materials, syringes and needles used by diabetics.

Beginning January 1, 1990, each month the Department shall pay into the County and Mass Transit District Fund, a special fund in the State treasury which is hereby created, 4% of the net revenue realized for the preceding month from the 6.25% general rate.

Beginning August 1, 2000, each month the Department shall pay into the County and Mass Transit District Fund 20% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of motor fuel and gasohol. Beginning September 1, 2010, each month the Department shall pay into the County and Mass Transit District Fund 20% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of sales tax holiday items.

Beginning January 1, 1990, each month the Department shall pay into the Local Government Tax Fund 16% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property.

Beginning August 1, 2000, each month the Department shall pay into the Local Government Tax Fund 80% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of motor fuel and gasohol. Beginning September 1, 2010, each month the Department shall pay into the Local Government Tax Fund 80% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of sales tax holiday items.

Beginning October 1, 2009, each month the Department shall pay into the Capital Projects Fund an amount that is equal to an amount estimated by the Department to represent 80% of the net revenue realized for the preceding month from the sale of candy, grooming and hygiene products, and soft drinks that had been taxed at a rate of 1% prior to September 1, 2009 but that are now taxed at 6.25%.

Beginning July 1, 2011, each month the Department shall pay into the Clean Air Act Permit Fund 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of sorbents used in Illinois in the process of sorbent injection as used to comply with the Environmental Protection Act or the federal Clean Air Act, but the total payment into the Clean Air Act Permit Fund under this Act and the Use Tax Act shall not exceed $2,000,000 in any fiscal year.

Beginning July 1, 2013, each month the Department shall pay into the Underground Storage Tank Fund from the proceeds collected under this Act, the Use Tax Act, the Service Use Tax Act, and the Service Occupation Tax Act an amount equal to the average monthly deficit in the Underground Storage Tank Fund during the prior year, as certified annually by the Illinois Environmental Protection Agency, but the total payment into the Underground Storage Tank Fund under this Act, the Use Tax Act, the Service Use Tax Act, and the Service Occupation Tax Act shall not exceed $18,000,000 in any State fiscal year. As used in this paragraph, the "average monthly deficit" shall be equal to the difference between the average monthly claims for payment by the fund and the average monthly revenues deposited into the fund, excluding payments made pursuant to this paragraph.

Beginning July 1, 2015, of the remainder of the moneys received by the Department under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and this Act, each month the Department shall deposit $500,000 into the State Crime Laboratory Fund.

Of the remainder of the moneys received by the Department pursuant to this Act, (a) 1.75% thereof shall be paid into the Build Illinois Fund and (b) prior to July 1, 1989, 2.2% and on and after July 1, 1989, 3.8% thereof shall be paid into the Build Illinois Fund; provided, however, that if in any fiscal year the sum of (1) the aggregate of 2.2% or 3.8%, as the case may be, of the moneys received by the Department and required to be paid into the Build Illinois Fund pursuant to this Act, Section 9 of the Use Tax Act,[7] Section 9 of the Service Use Tax Act,[8] and Section 9 of the Service Occupation Tax Act,[9] such Acts being hereinafter called the "Tax Acts" and such aggregate of 2.2% or 3.8%, as the case may be,

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of moneys being hereinafter called the "Tax Act Amount", and (2) the amount transferred to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall be less than the Annual Specified Amount (as hereinafter defined), an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; the "Annual Specified Amount" means the amounts specified below for fiscal years 1986 through 1993:

Fiscal Year	Annual Specified Amount
1986	$54,800,000
1987	$76,650,000
1988	$80,480,000
1989	$88,510,000
1990	$115,330,000
1991	$145,470,000
1992	$182,730,000
1993	$206,520,000;

and means the Certified Annual Debt Service Requirement (as defined in Section 13 of the Build Illinois Bond Act) or the Tax Act Amount, whichever is greater, for fiscal year 1994 and each fiscal year thereafter; and further provided, that if on the last business day of any month the sum of (1) the Tax Act Amount required to be deposited into the Build Illinois Bond Account in the Build Illinois Fund during such month and (2) the amount transferred to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall have been less than 1/12 of the Annual Specified Amount, an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; and, further provided, that in no event shall the payments required under the preceding proviso result in aggregate payments into the Build Illinois Fund pursuant to this clause (b) for any fiscal year in excess of the greater of (i) the Tax Act Amount or (ii) the Annual Specified Amount for such fiscal year. The amounts payable into the Build Illinois Fund under clause (b) of the first sentence in this paragraph shall be payable only until such time as the aggregate amount on deposit under each trust indenture securing Bonds issued and outstanding pursuant to the Build Illinois Bond Act is sufficient, taking into account any future investment income, to fully provide, in accordance with such indenture, for the defeasance of or the payment of the principal of, premium, if any, and interest on the Bonds secured by such indenture and on any Bonds expected to be issued thereafter and all fees and costs payable with respect thereto, all as certified by the Director of the Bureau of the Budget (now Governor's Office of Management and Budget). If on the last business day of any month in which Bonds are outstanding pursuant to the Build Illinois Bond Act, the aggregate of moneys deposited in the Build Illinois Bond Account in the Build Illinois Fund in such month shall be less than the amount required to be transferred in such month from the Build Illinois Bond Account to the Build Illinois Bond Retirement and Interest Fund pursuant to Section 13 of the Build Illinois Bond Act, an amount equal to such deficiency shall be immediately paid from other moneys received by the Department pursuant to the Tax Acts to the Build Illinois Fund; provided, however, that any amounts paid to the Build Illinois Fund in any fiscal year pursuant to this sentence shall be deemed to constitute payments pursuant to clause (b) of the first sentence of this paragraph and shall reduce the amount otherwise payable for such fiscal year pursuant to that clause (b). The moneys received by the Department pursuant to this Act and required to be deposited into the Build Illinois Fund are subject to the pledge, claim and charge set forth in Section 12 of the Build Illinois Bond Act.

Subject to payment of amounts into the Build Illinois Fund as provided in the preceding paragraph or in any amendment thereto hereafter enacted, the following specified monthly installment of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority provided under Section 8.25f of the State Finance Act, but not in excess of sums designated as "Total Deposit", shall be deposited in the aggregate from collections under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act into the McCormick Place Expansion Project Fund in the specified fiscal years.

Fiscal Year	Total Deposit
1993	$0

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1994	53,000,000
1995	58,000,000
1996	61,000,000
1997	64,000,000
1998	68,000,000
1999	71,000,000
2000	75,000,000
2001	80,000,000
2002	93,000,000
2003	99,000,000
2004	103,000,000
2005	108,000,000
2006	113,000,000
2007	119,000,000
2008	126,000,000
2009	132,000,000
2010	139,000,000
2011	146,000,000
2012	153,000,000
2013	161,000,000
2014	170,000,000
2015	179,000,000
2016	189,000,000
2017	199,000,000
2018	210,000,000
2019	221,000,000
2020	233,000,000
2021	246,000,000
2022	260,000,000
2023	275,000,000
2024	275,000,000
2025	275,000,000
2026	279,000,000
2027	292,000,000
2028	307,000,000
2029	322,000,000
2030	338,000,000
2031	350,000,000
2032 and each fiscal year thereafter that bonds are outstanding under Section 13.2. of the Metropolitan Pier and Exposition Authority Act, but not after fiscal year 2060.	350,000,000

Beginning July 20, 1993 and in each month of each fiscal year thereafter, one-eighth of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority for that fiscal year, less the amount deposited into the McCormick Place Expansion Project Fund by the State Treasurer in the respective month under subsection (g) of Section 13 of the Metropolitan Pier and Exposition Authority Act, plus cumulative deficiencies in the deposits required under this Section for previous months and years, shall be deposited into the McCormick Place Expansion Project Fund, until the full amount requested for the fiscal year, but not in excess of the amount specified above as "Total Deposit", has been deposited.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments

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thereto hereafter enacted, beginning July 1, 1993 and ending on September 30, 2013, the Department shall each month pay into the Illinois Tax Increment Fund 0.27% of 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning with the receipt of the first report of taxes paid by an eligible business and continuing for a 25-year period, the Department shall each month pay into the Energy Infrastructure Fund 80% of the net revenue realized from the 6.25% general rate on the selling price of Illinois-mined coal that was sold to an eligible business. For purposes of this paragraph, the term "eligible business" means a new electric generating facility certified pursuant to Section 605-332 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.

Subject to payment of amounts into the Build Illinois Fund, the McCormick Place Expansion Project Fund, the Illinois Tax Increment Fund, and the Energy Infrastructure Fund pursuant to the preceding paragraphs or in any amendments to this Section hereafter enacted, beginning on the first day of the first calendar month to occur on or after August 26, 2014 (the effective date of Public Act 98-1098), each month, from the collections made under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act, the Department shall pay into the Tax Compliance and Administration Fund, to be used, subject to appropriation, to fund additional auditors and compliance personnel at the Department of Revenue, an amount equal to 1/12 of 5% of 80% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of the Department under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and associated local occupation and use taxes administered by the Department.

Of the remainder of the moneys received by the Department pursuant to this Act, 75% thereof shall be paid into the State Treasury and 25% shall be reserved in a special account and used only for the transfer to the Common School Fund as part of the monthly transfer from the General Revenue Fund in accordance with Section 8a of the State Finance Act.

The Department may, upon separate written notice to a taxpayer, require the taxpayer to prepare and file with the Department on a form prescribed by the Department within not less than 60 days after receipt of the notice an annual information return for the tax year specified in the notice. Such annual return to the Department shall include a statement of gross receipts as shown by the retailer's last Federal income tax return. If the total receipts of the business as reported in the Federal income tax return do not agree with the gross receipts reported to the Department of Revenue for the same period, the retailer shall attach to his annual return a schedule showing a reconciliation of the 2 amounts and the reasons for the difference. The retailer's annual return to the Department shall also disclose the cost of goods sold by the retailer during the year covered by such return, opening and closing inventories of such goods for such year, costs of goods used from stock or taken from stock and given away by the retailer during such year, payroll information of the retailer's business during such year and any additional reasonable information which the Department deems would be helpful in determining the accuracy of the monthly, quarterly or annual returns filed by such retailer as provided for in this Section.

If the annual information return required by this Section is not filed when and as required, the taxpayer shall be liable as follows:

(i) Until January 1, 1994, the taxpayer shall be liable for a penalty equal to 1/6 of 1% of the tax due from such taxpayer under this Act during the period to be covered by the annual return for each month or fraction of a month until such return is filed as required, the penalty to be assessed and collected in the same manner as any other penalty provided for in this Act.

(ii) On and after January 1, 1994, the taxpayer shall be liable for a penalty as described in Section 3-4 of the Uniform Penalty and Interest Act.

The chief executive officer, proprietor, owner or highest ranking manager shall sign the annual return to certify the accuracy of the information contained therein. Any person who willfully signs the annual return containing false or inaccurate information shall be guilty of perjury and punished accordingly. The annual return form prescribed by the Department shall include a warning that the person signing the return may be liable for perjury.

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The provisions of this Section concerning the filing of an annual information return do not apply to a retailer who is not required to file an income tax return with the United States Government.

As soon as possible after the first day of each month, upon certification of the Department of Revenue, the Comptroller shall order transferred and the Treasurer shall transfer from the General Revenue Fund to the Motor Fuel Tax Fund an amount equal to 1.7% of 80% of the net revenue realized under this Act for the second preceding month. Beginning April 1, 2000, this transfer is no longer required and shall not be made.

Net revenue realized for a month shall be the revenue collected by the State pursuant to this Act, less the amount paid out during that month as refunds to taxpayers for overpayment of liability.

For greater simplicity of administration, manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, and who wish to do so, may assume the responsibility for accounting and paying to the Department all tax accruing under this Act with respect to such sales, if the retailers who are affected do not make written objection to the Department to this arrangement.

Any person who promotes, organizes, provides retail selling space for concessionaires or other types of sellers at the Illinois State Fair, DuQuoin State Fair, county fairs, local fairs, art shows, flea markets and similar exhibitions or events, including any transient merchant as defined by Section 2 of the Transient Merchant Act of 1987, is required to file a report with the Department providing the name of the merchant's business, the name of the person or persons engaged in merchant's business, the permanent address and Illinois Retailers Occupation Tax Registration Number of the merchant, the dates and location of the event and other reasonable information that the Department may require. The report must be filed not later than the 20th day of the month next following the month during which the event with retail sales was held. Any person who fails to file a report required by this Section commits a business offense and is subject to a fine not to exceed $250.

Any person engaged in the business of selling tangible personal property at retail as a concessionaire or other type of seller at the Illinois State Fair, county fairs, art shows, flea markets and similar exhibitions or events, or any transient merchants, as defined by Section 2 of the Transient Merchant Act of 1987, may be required to make a daily report of the amount of such sales to the Department and to make a daily payment of the full amount of tax due. The Department shall impose this requirement when it finds that there is a significant risk of loss of revenue to the State at such an exhibition or event. Such a finding shall be based on evidence that a substantial number of concessionaires or other sellers who are not residents of Illinois will be engaging in the business of selling tangible personal property at retail at the exhibition or event, or other evidence of a significant risk of loss of revenue to the State. The Department shall notify concessionaires and other sellers affected by the imposition of this requirement. In the absence of notification by the Department, the concessionaires and other sellers shall file their returns as otherwise required in this Section.

Credits

Laws 1933, p. 924, § 3, eff. July 1, 1933. Amended by Laws 1933-34, 4th Sp.Sess., p. 3, § 1, eff. July 1, 1935; Laws 1935, p. 1200, § 1, eff. July 1, 1935; Laws 1935-36, 2nd Sp.Sess., p. 82, § 1, eff. Dec. 11, 1936; Laws 1937, p. 1023, § 1, eff. July 1, 1937; Laws 1937, p. 1058, § 1, eff. April 11, 1937; Laws 1939, p. 1005, § 1, eff. July 1, 1939; Laws 1939, p. 1013, § 1, eff. Jan. 31, 1939; Laws 1943, vol. 1, p. 1121, § 1, eff. July 1, 1943; Laws 1947, p. 1458, § 1, eff. July 21, 1947; Laws 1949, p. 1321, § 1, eff. July 1, 1949; Laws 1951, p. 2035, § 1, eff. Aug. 3, 1951; Laws 1955, p. 2037, § 1, eff. July 14, 1955; Laws 1957, p. 2022, § 1, eff. July 14, 1957; Laws 1959, p. 398, § 1, eff. July 1, 1959; Laws 1959, p. 415, § 1, eff. July 1, 1959; Laws 1961, p. 1557, § 1, eff. July 1, 1961; Laws 1963, p. 78, § 1, eff. March 8, 1963; Laws 1963, p. 88, § 1, eff. March 8, 1963; Laws 1963, p. 1191, § 1, eff. July 1, 1963; Laws 1963, p. 1743, § 1, eff. July 10, 1963; Laws 1963, p. 1749, § 1, eff. July 16, 1963; Laws 1965, p. 137, § 1, eff. July 1, 1965; Laws 1965, p. 1193, § 1, eff. July 1, 1965; Laws 1965, p. 2816, § 1, eff. Jan. 1, 1966; Laws 1967, p. 376, § 1, eff. July 1, 1967; Laws 1967, p. 1067, § 1, eff. July 1, 1967; Laws 1967, p. 1124, § 1, eff. July 1, 1967; Laws 1968, p. 387, §

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1, eff. July 1, 1969; P.A. 76-248, § 1, eff. July 1, 1969; P.A. 76-364, § 1, eff. July 1, 1969; P.A. 76-2250, § 1, eff. July 1, 1970; P.A. 77-1082, § 1, eff. Aug. 17, 1971; P.A. 78-736, § 1, eff. Sept. 10, 1973; P.A. 79-839, § 1, eff. Sept. 8, 1975; P.A. 79-1339, § 2, eff. Oct. 1, 1976; P.A. 79-5, 6th Sp.Sess., § 1, eff. Nov. 1, 1976; P.A. 80-473, § 2, eff. Sept. 3, 1977; P.A. 80-474, § 2, eff. Sept. 3, 1977; P.A. 80-1364, § 56, eff. Aug. 13, 1978; P.A. 81-3, 2nd Sp.Sess., § 6, eff. Sept. 19, 1979; P.A. 81-390, § 2, eff. Jan. 1, 1980; P.A. 81-606, § 1, eff. Sept. 14, 1979; P.A. 81-1086, § 2, eff. Jan. 1, 1980; P.A. 81-1509, Art. I, § 79, eff. Sept. 26, 1980; P.A. 83-14, Art. III, §§ 3-4, eff. July 2, 1983; P.A. 83-195, § 1, eff. Jan. 1, 1984; P.A. 83-1080, § 1, eff. March 1, 1984; P.A. 83-1129, § 9, eff. Sept. 1, 1984; P.A. 83-1362, Art. II, § 138, eff. Sept. 11, 1984; P.A. 83-1416, § 6, eff. Jan. 1, 1985; P.A. 83-1528, Art. II, § 43, eff. Jan. 17, 1985; P.A. 83-1537, § 4, eff. Jan. 29, 1985; P.A. 84-111, Art. I, § 23, eff. July 25, 1985; P.A. 84-221, Art. I, § 8, eff. Sept. 1, 1985; P.A. 84-1012, § 1, eff. Jan. 1, 1986; P.A. 84-1027, Art. I, § 5, eff. Nov. 15, 1985; P.A. 84-1027, Art. VI, § 6, eff. Nov. 15, 1985; P.A. 84-1112, Art. I, § 5, eff. Feb. 28, 1986; P.A. 84-1307, § 3, eff. Aug. 22, 1986; P.A. 84-1308, Art. II, § 159, eff. Aug. 25, 1986; P.A. 85-977, § 1, eff. July 1, 1988; P.A. 85-1135, Art. II, § 11, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 5, eff. Sept. 1, 1988; P.A. 85-1222, § 14, eff. Aug. 30, 1988; P.A. 85-1372, § 2, eff. Sept. 1, 1988; P.A. 86-16, Art. 2, § 6, eff. June 30, 1989; P.A. 86-17, § 5, eff. July 2, 1989; P.A. 86-44, Art. 2, § 2-4, eff. July 13, 1989; P.A. 86-820, Art. II, § 2-13, eff. Sept. 7, 1989; P.A. 86-905, Art. 1, § 1, eff. Jan. 1, 1990; P.A. 86-928, Art. 1, § 4, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 9, eff. Jan. 1, 1990; P.A. 86-953, § 8, eff. Nov. 30, 1989; P.A. 87-14, Art. 3, § 3-4, eff. Oct. 1, 1991; P.A. 87-205, Art. 4, § 4-14, eff. Jan. 1, 1994; P.A. 87-733, § 1-7, eff. July 1, 1992; P.A. 87-838, § 248, eff. Jan. 24, 1992; P.A. 87-876, § 6, eff. Jan. 1, 1993; P.A. 87-895, Art. 4, § 4-15, eff. Aug. 14, 1992; P.A. 87-1132, § 3, eff. Sept. 16, 1992; P.A. 87-1246, § 5, eff. Dec. 24, 1992; P.A. 87-1258, § 5, eff. Jan. 3, 1993; P.A. 88-45, Art. II, § 2-23, eff. July 6, 1993; P.A. 88-116, Art. 2, § 2-20, eff. July 23, 1993; P.A. 88-194, § 10, eff. Jan. 1, 1994; P.A. 88-480, § 30, eff. Jan. 1, 1994; P.A. 88-547, § 10, eff. June 30, 1994; P.A. 88-660, § 40, eff. Sept. 16, 1994; P.A. 88-669, Art. 90, § 90-2.7, eff. Nov. 29, 1994; P.A. 88-670, Art. 2, § 2-23, eff. Dec. 2, 1994; P.A. 89-89, § 30, eff. June 30, 1995; P.A. 89-235, Art. 2, § 2-55, eff. Aug. 4, 1995; P.A. 89-379, § 20, eff. Jan. 1, 1996; P.A. 89-626, Art. 2, § 2-24, eff. Aug. 9, 1996; P.A. 90-491, § 35, eff. Jan. 1, 1999; P.A. 90-612, § 25, eff. July 8, 1998; P.A. 91-37, § 25, eff. July 1, 1999. Re-enacted by P.A. 91-51, § 135, eff. June 30, 1999. Amended by P.A. 91-101, § 25, eff. July 12, 1999; P.A. 91-541, § 25, eff. Aug. 13, 1999; P.A. 91-872, Fourth Sp. Sess., § 20, eff. July 1, 2000; P.A. 91-901, § 25, eff. Jan. 1, 2001; P.A. 92-12, § 935, eff. July 1, 2001; P.A. 92-16, § 36, eff. June 28, 2001; P.A. 92-208, § 30, eff. Aug. 2, 2001; P.A. 92-484, § 15, eff. Aug. 23, 2001; P.A. 92-492, § 30, eff. Jan. 1, 2002; P.A. 92-600, Art. 5, § 5-24, eff. June 28, 2002; P.A. 92-651, § 28, eff. July 11, 2002; P.A. 93-22, § 5, eff. June 20, 2003; P.A. 93-24, Art. 50, § 50-25, eff. June 20, 2003; P.A. 93-840, Art. 20, § 20-25, eff. July 30, 2004; P.A. 93-926, § 5, eff. Aug. 12, 2004; P.A. 93-1057, § 5, eff. Dec. 2, 2004. Reenacted by P.A. 94-1074, § 25, eff. Dec. 26, 2006. Amended by P.A. 95-331, § 400, eff. Aug. 21, 2007; P.A. 96-34, § 925, eff. July 13, 2009; P.A. 96-38, § 20, eff. July 13, 2009; P.A. 96-898, § 25, eff. May 28, 2010; P.A. 96-1012, § 15, eff. July 7, 2010; P.A. 97-95, § 15, eff. July 12, 2011; P.A. 97-333, § 130, eff. Aug. 12, 2011; P.A. 98-24, § 5-55, eff. June 19, 2013; P.A. 98-109, § 5-40, eff. July 25, 2013; P.A. 98-496, § 30, eff. Jan. 1, 2014; P.A. 98-756, § 190, eff. July 16, 2014; P.A. 98-1098, § 35, eff. Aug. 26, 2014; P.A. 99-352, § 20-129, eff. Aug. 12, 2015; P.A. 99-858, § 20, eff. Aug. 19, 2016; P.A. 99-933, § 5-100, eff. Jan. 27, 2017; P.A. 100-303, § 20, eff. Aug. 24, 2017.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 442.

Notes of Decisions (40)

Footnotes

1 35 ILCS 105/3-85.

2 625 ILCS 45/3-2.

3 625 ILCS 5/5-402.

4 35 ILCS 105/1 et seq.

5 35 ILCS 115/1 et seq.

6 35 ILCS 110/1 et seq.

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7 35 ILCS 105/9.

8 35 ILCS 110/9.

9 35 ILCS 115/9.

35 I.L.C.S. 120/3, IL ST CH 35 § 120/3
Current through P.A. 100-585 of the 2018 Reg. Sess.

End of Document

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Illinois Department of Revenue
Regulations

Title 86 Part 130 Section 130.610 Sales of Property Originating in Other States

TITLE 86: REVENUE

PART 130
RETAILERS' OCCUPATION TAX

Section 130.610 Sales of Property Originating in Other States

a) Preliminary Comments

1) In all examples set out herein below, there are three basic facts which will not be restated in the examples in the interest of avoiding repetition, but which will be assumed to be present in each of the examples. These assumed facts are the following:

A) That the property which is involved is located outside Illinois at the time of its sale (or subsequently will be produced outside Illinois);

B) that the purchaser or his representative (not an independent carrier engaged in the business of transporting property for hire) first receives the physical possession of the property in Illinois; it is immaterial that the purchaser or his representative subsequently takes or sends the property out of Illinois for use outside Illinois or for use in the conduct of interstate commerce after receiving physical possession of the property in Illinois, and

C) that the sale is at retail and is not made as a necessary and incidental part of a transaction in which the seller is engaged in a tax-exempt service occupation.

2) Each type of sale will be considered on its own facts. If the sale is made by or through an Illinois place of business at which the seller is sometimes makes intrastate retail sales, refer to Subsection (b) below. If the sale is made by or through an Illinois place of business at which the seller does not make any intrastate retail sales, refer to Subsection (c) below. If the sale is made by or through the seller's place of business outside Illinois, refer to Subsection (d).

b) Sales made by or Through an Illinois Place of Business at Which the Seller Sometimes Makes Intrastate Retail Sales

The seller incurs Retailers' Occupation Tax liability with respect to his receipts from a particular sale if the sale is made by or through an Illinois place of business at which the seller sometimes makes intrastate retail sales. This happens, for example, if such a place of business either

1) makes a complete and unconditional offer to sell, which is accepted without modification by the purchaser so as to create a contract, or

2) receives an offer or counteroffer to purchase (regardless of where the seller accepts such offer or counteroffer), or

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3) accepts (i.e., approves so as to create a contract) an offer or counteroffer to purchase, or

4) Makes final delivery of the property in Illinois to the purchaser. (the reference, immediately above, to the making of final delivery of the property in Illinois does not include the delivery of the property by the seller outside Illinois to an independent carrier for transportation directly to the purchaser.)

c) Sales Made by or Through an Illinois Place of Business at Which the Seller Makes No Intrastate Retail Sales

1) The seller may incur Retailers' Occupation Tax liability when the sale is made by or through an Illinois place of business at which he does not make any intrastate retail sales. This is the case, for example, where such a place of business either

A) accepts the contract of sale for the seller, or

B) receives an offer to counteroffer to purchase, which under authority granted by the seller, can be accepted for the seller by someone in Illinois so as to create a contract (whether such authority is exercised in a particular case or not), or

C) makes a complete and unconditional offer to sell which offer is accepted without modification by the purchaser so as to create a contract, or

D) receives an order subject to acceptance by the seller outside Illinois, but the seller transfers title to the property in Illinois to the purchaser, or the seller or his representative makes final delivery of the property in Illinois to the purchaser. (The reference, immediately above, to the making of final delivery of the property in Illinois does not include the delivery of the property by the seller outside Illinois to an independent carrier for transportation directly to the purchaser.)

2) The seller's maintenance, in Illinois, of a place of business at which the seller makes no intrastate retail sales does not make the seller taxable in a particular case merely because such place of business engaged in promotional activities in Illinois and receives an order which is subject to acceptance outside Illinois by the seller. However, for information concerning the application of the Use Tax to mere solicitation in Illinois by the seller, see Subpart B of the Use Tax Regulations, (86 Ill. Adm. Code Part 150)

d) Sales Made by or Through a Place of Business Outside Illinois

1) No Retailers' Occupation Tax liability will be incurred in the following situations:

A) Where a representative of the seller who reports directly to an out-of-State place of business of the seller, and who is not connected in any way with any Illinois place of business of the seller, receives, in Illinois, an order which is subject to acceptance by the seller outside Illinois;

B) where the seller, from a point outside Illinois, makes an offer directly to the purchaser who transmits his acceptance directly to the seller outside Illinois, or

C) where the purchaser sends an offer or counteroffer to purchase directly to the seller outside Illinois and the seller accepts the offer or counteroffer outside Illinois.

2) In these situations, it is immaterial where title to the property passes to the purchaser. It is also immaterial how or by whom delivery of the property is made,

provided that final delivery is not made by or through an Illinois place of business at which the seller does some intrastate retail selling.

3) If the following situations where the sale is made by or through an out-of-State place of business of the seller, Retailers' Occupation Tax liability will, nevertheless, be incurred:

A) Where the seller or his authorized representative accepts an order in Illinois so as to create a contract, or

B) where the order is received in Illinois on behalf of the seller and someone in Illinois has authority to accepted such order so as to create a contract (whether such authority is exercised in the particular case or not).

4) Even though the seller's out-of-State place of business is involved in the transaction in some way, Subsection (b) or Subsection (c) of this Section, rather than Subsection (d), applies if an Illinois place of business of the seller receives the offer or counteroffer to purchase, or accepts the offer or counteroffer to purchase so as to create a contract, or transmits a complete and unconditional offer to sell to the purchaser, or makes the final delivery of the property in Illinois to the purchaser. In that event, the answer to the question of whether Subsection (b) or Subsection (c) applies depends on whether or not such Illinois place of business at which the seller does some intrastate retail selling in Illinois.

(Source: Amended and effective August 2, 1971)

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms with the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of filing/certificate of service, and those matters to be included in the supplementary appendix under Rule 342(a), is 14,741 words.

s/Julian N. Henriques, Jr.
Julian N. Henriques, Jr., Attorney

CERTIFICATE OF FILING/CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 3, 2018, I filed the foregoing brief and supplemental appendix with the Supreme Court of Illinois using the court's electronic filing system, and served all parties to this case that are listed with that system. On May 3, 2018, I also served each party by emailing the brief and supplemental appendix directly to one of its attorneys at the email address specified below.

BY: s/Julian N. Henriques, Jr.
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