

HB1147



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB1147

by Rep. Michael J. Madigan

SYNOPSIS AS INTRODUCED:

35 ILCS 120/6

from Ch. 120, par. 445

Amends the Retailers' Occupation Tax Act. Makes a technical change in a Section concerning credit memorandums and refunds.

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A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Retailers' Occupation Tax Act is amended by
5 changing Section 6 as follows:

6 (35 ILCS 120/6) (from Ch. 120, par. 445)

7 Sec. 6. Credit memorandum or refund. If it appears, after
8 claim therefor filed with the ~~the~~ Department, that an amount of
9 tax or penalty or interest has been paid which was not due
10 under this Act, whether as the result of a mistake of fact or
11 an error of law, except as hereinafter provided, then the
12 Department shall issue a credit memorandum or refund to the
13 person who made the erroneous payment or, if that person died
14 or became a person under legal disability, to his or her legal
15 representative, as such. For purposes of this Section, the tax
16 is deemed to be erroneously paid by a retailer when the
17 manufacturer of a motor vehicle sold by the retailer accepts
18 the return of that automobile and refunds to the purchaser the
19 selling price of that vehicle as provided in the New Vehicle
20 Buyer Protection Act. When a motor vehicle is returned for a
21 refund of the purchase price under the New Vehicle Buyer
22 Protection Act, the Department shall issue a credit memorandum
23 or a refund for the amount of tax paid by the retailer under

1 this Act attributable to the initial sale of that vehicle.
2 Claims submitted by the retailer are subject to the same
3 restrictions and procedures provided for in this Act. If it is
4 determined that the Department should issue a credit memorandum
5 or refund, the Department may first apply the amount thereof
6 against any tax or penalty or interest due or to become due
7 under this Act or under the Use Tax Act, the Service Occupation
8 Tax Act, the Service Use Tax Act, any local occupation or use
9 tax administered by the Department, Section 4 of the Water
10 Commission Act of 1985, subsections (b), (c) and (d) of Section
11 5.01 of the Local Mass Transit District Act, or subsections
12 (e), (f) and (g) of Section 4.03 of the Regional Transportation
13 Authority Act, from the person who made the erroneous payment.
14 If no tax or penalty or interest is due and no proceeding is
15 pending to determine whether such person is indebted to the
16 Department for tax or penalty or interest, the credit
17 memorandum or refund shall be issued to the claimant; or (in
18 the case of a credit memorandum) the credit memorandum may be
19 assigned and set over by the lawful holder thereof, subject to
20 reasonable rules of the Department, to any other person who is
21 subject to this Act, the Use Tax Act, the Service Occupation
22 Tax Act, the Service Use Tax Act, any local occupation or use
23 tax administered by the Department, Section 4 of the Water
24 Commission Act of 1985, subsections (b), (c) and (d) of Section
25 5.01 of the Local Mass Transit District Act, or subsections
26 (e), (f) and (g) of Section 4.03 of the Regional Transportation

1 Authority Act, and the amount thereof applied by the Department
2 against any tax or penalty or interest due or to become due
3 under this Act or under the Use Tax Act, the Service Occupation
4 Tax Act, the Service Use Tax Act, any local occupation or use
5 tax administered by the Department, Section 4 of the Water
6 Commission Act of 1985, subsections (b), (c) and (d) of Section
7 5.01 of the Local Mass Transit District Act, or subsections
8 (e), (f) and (g) of Section 4.03 of the Regional Transportation
9 Authority Act, from such assignee. However, as to any claim for
10 credit or refund filed with the Department on and after each
11 January 1 and July 1 no amount of tax or penalty or interest
12 erroneously paid (either in total or partial liquidation of a
13 tax or penalty or amount of interest under this Act) more than
14 3 years prior to such January 1 and July 1, respectively, shall
15 be credited or refunded, except that if both the Department and
16 the taxpayer have agreed to an extension of time to issue a
17 notice of tax liability as provided in Section 4 of this Act,
18 such claim may be filed at any time prior to the expiration of
19 the period agreed upon.

20 No claim may be allowed for any amount paid to the
21 Department, whether paid voluntarily or involuntarily, if paid
22 in total or partial liquidation of an assessment which had
23 become final before the claim for credit or refund to recover
24 the amount so paid is filed with the Department, or if paid in
25 total or partial liquidation of a judgment or order of court.
26 No credit may be allowed or refund made for any amount paid by

1 or collected from any claimant unless it appears (a) that the
2 claimant bore the burden of such amount and has not been
3 relieved thereof nor reimbursed therefor and has not shifted
4 such burden directly or indirectly through inclusion of such
5 amount in the price of the tangible personal property sold by
6 him or her or in any manner whatsoever; and that no
7 understanding or agreement, written or oral, exists whereby he
8 or she or his or her legal representative may be relieved of
9 the burden of such amount, be reimbursed therefor or may shift
10 the burden thereof; or (b) that he or she or his or her legal
11 representative has repaid unconditionally such amount to his or
12 her vendee (1) who bore the burden thereof and has not shifted
13 such burden directly or indirectly, in any manner whatsoever;
14 (2) who, if he or she has shifted such burden, has repaid
15 unconditionally such amount to his own vendee; and (3) who is
16 not entitled to receive any reimbursement therefor from any
17 other source than from his or her vendor, nor to be relieved of
18 such burden in any manner whatsoever. No credit may be allowed
19 or refund made for any amount paid by or collected from any
20 claimant unless it appears that the claimant has
21 unconditionally repaid, to the purchaser, any amount collected
22 from the purchaser and retained by the claimant with respect to
23 the same transaction under the Use Tax Act.

24 Any credit or refund that is allowed under this Section
25 shall bear interest at the rate and in the manner specified in
26 the Uniform Penalty and Interest Act.

1 In case the Department determines that the claimant is
2 entitled to a refund, such refund shall be made only from such
3 appropriation as may be available for that purpose. If it
4 appears unlikely that the amount appropriated would permit
5 everyone having a claim allowed during the period covered by
6 such appropriation to elect to receive a cash refund, the
7 Department, by rule or regulation, shall provide for the
8 payment of refunds in hardship cases and shall define what
9 types of cases qualify as hardship cases.

10 If a retailer who has failed to pay retailers' occupation
11 tax on gross receipts from retail sales is required by the
12 Department to pay such tax, such retailer, without filing any
13 formal claim with the Department, shall be allowed to take
14 credit against such retailers' occupation tax liability to the
15 extent, if any, to which such retailer has paid an amount
16 equivalent to retailers' occupation tax or has paid use tax in
17 error to his or her vendor or vendors of the same tangible
18 personal property which such retailer bought for resale and did
19 not first use before selling it, and no penalty or interest
20 shall be charged to such retailer on the amount of such credit.
21 However, when such credit is allowed to the retailer by the
22 Department, the vendor is precluded from refunding any of that
23 tax to the retailer and filing a claim for credit or refund
24 with respect thereto with the Department. The provisions of
25 this amendatory Act shall be applied retroactively, regardless
26 of the date of the transaction.

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1 (Source: P.A. 91-901, eff. 1-1-01.)