**Section 850.115 Participation in the Certified Audit Pilot Program**

a) Municipality, County, and Third Party Participation.

1) The Department shall provide financial information to a municipality or county for review pursuant to Section 11 of the Retailers' Occupation Tax Act.

2) Municipalities or counties may provide this financial information to registered third parties to perform the review of local retailers' and service occupation taxes, if all requirements set forth in this Part are met. Based on this review, if a municipality or county discovers that a taxpayer may have underpaid local retailers' or service occupation taxes, then it may refer the matter to the Department for audit consideration.

3) Third parties must be registered with the Department pursuant to Section 850.130 before referring a taxpayer to the Department for audit consideration.

4) *Tax compliance referrals may be made only by a municipality, county, or third party and shall be made in the form and manner required by the Department, including any requirement that the referral be submitted electronically. The tax compliance referral shall, at a minimum, include:*

A) *proof of registration as a third party,* if the referral was made by a third party,

B) *a copy of a contract between the third party and the county or municipality,* if the referral was made by a third party,

C) *the taxpayer's name, Department account identification number, mailing address, and business location, and*

D) *the specific reason for the tax compliance referral, including as much detail as possible.* [50 ILCS 355/10-30(b)]

5) *With respect to taxes administered by the Department, units of local government and third parties with which they contract are prohibited from doing the following:*

A) *engaging in an audit of any taxpayer;*

B) *assessing tax against any taxpayer;*

C) *engaging in collection actions against any taxpayer for the tax; or*

D) *engaging in any other action related to such taxes that is assigned by law to the Department.* [50 ILCS 355/5-50(d)]

6) *Upon entering into a contract with a municipality or county, a third party shall be prohibited from communicating directly or indirectly in any manner with a taxpayer known or believed to be operating within that municipality or county about any matters directly or indirectly related to, or covered by, the contract.* [50 ILCS 355/5-50(a)] The Act also prohibits *a local government from sharing financial information with another local government or another third party. A local government also may not share the findings of a third party with another local government or another third party.* [50 ILCS 355/5-50(e)]

7) *A contracting municipality or county shall refuse to provide any information, including financial information, to any third party who violates this Act or rules adopted pursuant to this Act or the Retailers' Occupation Tax Act or rules adopted pursuant to the Retailers' Occupation Tax Act.* [50 ILCS 355/5-40(a)]

8) A third party must annually provide the local government with a final summary of its review for publication. The third party is responsible for ensuring that the summary contains no personal or identifiable taxpayer information. The summary can only aggregate amounts by tax type and can make no claim of specific tax savings or revenue generation. *No aggregated data may be published that includes taxpayer information for 4 or fewer taxpayers.* (See 50 ILCS 355/5-30).

9) *Under no circumstances may a person, including a municipality or county or third party, other than the person audited and his or her attorney, have any right to participate in an appeal or other proceeding regarding the audit, participate in settlement negotiations, challenge the validity of any settlement between the Department and any person, or review any materials, other than financial information as otherwise provided in this Act, that are subject to the confidentiality provisions of the underlying tax Act. In addition, the Department's determination of whether to audit a taxpayer or the result of the audit creates no justiciable cause of action, and any adjudication related to this program is limited to the taxpayer's rights in an administrative hearing held by the Department, an administrative hearing held by the Illinois Independent Tax Tribunal, or related to payments made under protest as provided in Section 2a.1 of the State Officers and Employees Money Disposition Act, as appropriate.* [50 ILCS 355/10-40(d)]

b) Department Participation.

*The Department shall complete its evaluation of all audit referrals under* subsection (a) *within 90 days after receipt of the referral and shall handle all audit referrals as follows:*

1) *The Department shall evaluate the referral to determine whether it is sufficient to warrant further action based on the information provided in the referral, any other information the Department possesses, and audit selection procedures of the Department.*

2) *If the Department determines that the referral is not actionable, then the Department shall notify the local government that it has evaluated the referral and has determined that no action is deemed necessary and provide the local government with an explanation for that decision, including, but not limited to,* the following explanations:

A) *the Department has previously conducted an audit;*

B) *the Department is in the process of conducting an investigation or other examination of the taxpayer's records;*

C) *the taxpayer has already been referred to the Department* under the Act *and the Department determined that an audit referral is not actionable;*

D) *the Department or a qualified practitioner has previously conducted an audit* under the Act; or

E) *for just cause.*

3) *If the Department determines that the referral is actionable, then it shall determine whether the taxpayer is currently under audit or scheduled for audit by the Department.* *If the taxpayer is not currently under audit by the Department or scheduled for audit by the Department, the Department shall determine whether it will schedule the taxpayer for audit.*

A) if the tax payer is under audit or is scheduled for audit, the Department shall notify the taxpayer pursuant to established audit procedures and not as provided in subsection (b)(3)(C).

B) if the taxpayer is not under audit or scheduled for audit, and the Department schedules the taxpayer for audit, it shall provide notice to the taxpayer pursuant to established audit procedures. The reasons why the Department may decide to retain an actionable referral for audit by the Department includes, but are not limited to, the following:

i) the taxpayer has not filed required returns for another Illinois tax;

ii) the taxpayer has outstanding liens or is otherwise the subject of collection action by the Department; and

iii) the taxpayer has delinquent final liabilities for a tax the Department administers (this does not include taxpayers currently on a payment plan approved by the Department's Collection Program Area to satisfy a delinquent final liability).

C) *if the Department decides under* subsection (b)(3)(B) *not to schedule the taxpayer for audit by the Department, then the Department shall notify the taxpayer that the Department has received an actionable audit referral on the taxpayer and issue a notice to the taxpayer as provided under* subsection (b)(4). [50 ILCS 355/10-30]

4) If the Department notifies the taxpayer as provided in subsection (b)(3)(B), the notice shall include, but not be limited to, the following:

A) that the Department has received an actionable audit referral on the taxpayer;

B) *that the taxpayer must either engage a qualified practitioner, at the taxpayer's expense, to complete a certified audit, limited in scope to the taxpayer's Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax liability, and the taxpayer's liability for any local retailers' or service occupation tax administered by the Department; or be subject to audit by the Department;*

C) *that, as an incentive, for taxpayers who agree to* engage a qualified practitioner to perform *a limited-scope certified audit, the Department shall abate penalties as provided in Section* 850.195 [50 ILCS 355/10-30]; and

D) a statement as set out in Section 10-30(d)(3) of the Act. [50 ILCS 355/10-30(d)(3)].

5) Upon receipt of an engagement notice from a qualified practitioner, the Department must determine whether to authorize the engagement. The Department shall not authorize an engagement unless the taxpayer has received notification from the Department that it has received an actionable audit referral on the taxpayer. A taxpayer that has received notice of an audit referral from the Department but has not been issued a written notice of intent to conduct an audit shall be a participating taxpayer under the Act. The Department shall notify the qualified practitioner regarding its authorization in writing within 10 days after receipt of the engagement notice. The Department may exclude a taxpayer from a certified audit or may limit the taxes or periods subject to the certified audit. (See 50 ILCS 355/10-35).

6) After the conducting of a certified audit by a qualified practitioner, and upon receipt of a qualified practitioner’s report made on behalf of a participating taxpayer, the Department shall do the following:

A) *the Department shall review the* qualified practitioner’s *report of the certified audit and shall accept it when it is determined to be complete*.

B) *the Department* shall then issue a notice of proposed assessment reflecting the determination of any additional liability reflected in the report and *shall provide the taxpayer with all the normal payment, protest, and appeal rights with respect to the liability, including the right to a review by the Informal Conference Board.* *In cases in which the report indicates an overpayment has been made, the taxpayer shall submit a properly executed claim for credit or refund to the Department.* [50 ILCS 355/10-40]

7) A Certified Audit Report is a final and conclusive determination with respect to the tax and period covered. Absent a showing of fraud or material misrepresentation, the Department shall not make any additional assessment for the specific taxes and reporting periods referenced in the report. This determination does not prevent the Department from collecting liabilities not covered by the report or from conducting an audit or investigation and making an assessment for additional tax, penalty, or interest for any tax or reporting period not covered by the report.

c) Qualified Practitioner Participation.

1) The scope of the qualified practitioner's sales and use tax compliance review may include only the following:

A) *whether the taxpayer is reporting receipts in the proper jurisdiction;*

B) *whether tangible personal property purchases that were used or consumed by the taxpayer were taxed properly;*

C) *an evaluation of sales reported as exempt from tax;*

D) *whether the proper tax rate was charged;*

E) whether the tax was properly reported as Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax; and

F) *any other factor that impacts the Department's allocation of sales and use tax revenues to the jurisdiction in which the taxpayer reports sales or use tax.*  [50 ILCS 355/10-20]

2) A qualified practitioner is responsible for the following:

A) *planning a certified audit when performing work that involves determining the objectives, scope, and methodology of the certified audit, when establishing criteria to evaluate matters subject to the review as part of the certified audit, when gathering information used in planning the certified audit, or when coordinating the certified audit with the Department;*

B) *directing a certified audit when the work involves supervising the efforts or reviewing the work of others to determine whether it is properly accomplished and complete;*

C) *conducting a certified audit when performing tests and procedures or field audit work necessary to accomplish the audit objectives in accordance with applicable professional standards;*

D) *reporting on a participating taxpayer's tax compliance in a certified audit when determining report contents and substance or reviewing reports for technical content and substance prior to issuance; and*

E) *answering questions of the Department’s review staff, answering questions raised by the Informal Conference Board, and testifying in any administrative or court proceeding regarding the audit or report.* [50 ILCS 355/10-25]

3) *The certified audit must not be a contingent-fee engagement and must be completed in accordance with* the Act. [50 ILCS 355/10-30(f)]

4) Notice of Engagement of Certified Audit. A qualified practitioner hired by a taxpayer who elects to perform a certified audit shall notify the Department to confirm the taxpayer is not already under audit and to establish the basic nature of the taxpayer's business and the taxpayer's potential exposure to Illinois retailers' occupation and use tax laws. The notice shall identify the taxpayer and the specific occupation and use taxes and reporting periods proposed to be covered by the engagement for the certified audit. The notice shall provide the information required by Section 850.155 and be signed and verified by both the qualified practitioner and taxpayer.

5) The qualified practitioner must contact the Department within 30 days of receiving notice from the Department that the taxpayer qualifies as a participating taxpayer and submit a proposed audit plan and procedures for the Department’s review and agreement. *The Department may extend the time for submission of the plan and procedures for reasonable cause. The qualified practitioner shall initiate action to advise the Department that amendment or modification of the plan and procedures is necessary if the qualified practitioner's inspection reveals that the taxpayer's circumstances or exposure to the revenue laws is substantially different from those described in the engagement notice.* [50 ILCS 355/10-35(c)]

6) After completion of the certified audit, the qualified practitioner must submit to the Department a report of the certified audit made on behalf of a participating taxpayer. The Certified Audit Report submitted for review must include:

A) an affirmation of the completion of the agreed-upon procedures;

B) all documents required by the procedures; and

C) all documents supporting the audit findings.

d) Taxpayer Participation.

1) Within 90 days after receiving notice that the Department has received an actionable audit referral on the taxpayer (pursuant to subsection (b)(3)), *the taxpayer must respond by stating in writing whether it will or will not arrange for the performance of a certified audit under the Act.*

2) *If the taxpayer states that it will arrange for the performance of a certified audit, then it must do so within 60 days after responding to the Department or within 90 days after notice by the Department, whichever comes first.* [50 ILCS 355/10-30(e)]

3) To participate in the audit, the taxpayer must:

A) have no delinquent final liabilities for any tax that the Department administers (this does not include taxpayers currently on a payment plan approved by the Department's Collection Program Area to satisfy a delinquent final liability);

B) have no voluntary disclosure agreements in place or pending for occupation or use tax for the audit period under consideration for the Certified Audit Pilot Program;

C) not have been issued a notice of an upcoming occupation or use tax audit by the Department;

D) have complete records available for the entire audit period under consideration for the Certified Audit Pilot Program (See 86 Ill. Adm. Code 130, Subpart H for records requirements);

4) During the performance of the certified audit, the taxpayer must produce books and records for inspection and examination by the qualified practitioner upon request and must assist with the audit in the same manner as an audit conducted by the Department. (See 86 Ill. Adm. Code 130.801)

5) *If the taxpayer states that it will not arrange for the performance of a certified audit or if the taxpayer does not arrange for the performance of a certified audit within 180 days after notice by the Department, then the Department may schedule the taxpayer for audit by the Department.* [50 ILCS 355/10-30(e)]