

HB1519



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB1519

Introduced 2/17/2021, by Rep. Emanuel Chris Welch

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.

LRB102 03535 HLH 13548 b

A BILL FOR

1 AN ACT concerning revenue.

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

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

1 Transportation Authority Act, and the amount thereof applied
2 by the Department against any tax or penalty or interest due or
3 to become due under this Act or under the Use Tax Act, the
4 Service Occupation Tax Act, the Service Use Tax Act, any local
5 occupation or use tax administered by the Department, Section
6 4 of the Water Commission Act of 1985, subsections (b), (c) and
7 (d) of Section 5.01 of the Local Mass Transit District Act, or
8 subsections (e), (f) and (g) of Section 4.03 of the Regional
9 Transportation Authority Act, from such assignee. However, as
10 to any claim for credit or refund filed with the Department on
11 and after each January 1 and July 1 no amount of tax or penalty
12 or interest erroneously paid (either in total or partial
13 liquidation of a tax or penalty or amount of interest under
14 this Act) more than 3 years prior to such January 1 and July 1,
15 respectively, shall be credited or refunded, except that if
16 both the Department and the taxpayer have agreed to an
17 extension of time to issue a notice of tax liability as
18 provided in Section 4 of this Act, such claim may be filed at
19 any time prior to the expiration of 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
12 or her vendee (1) who bore the burden thereof and has not
13 shifted such burden directly or indirectly, in any manner
14 whatsoever; (2) who, if he or she has shifted such burden, has
15 repaid unconditionally such amount to his own vendee; and (3)
16 who is not entitled to receive any reimbursement therefor from
17 any other source than from his or her vendor, nor to be
18 relieved of such burden in any manner whatsoever. No credit
19 may be allowed or refund made for any amount paid by or
20 collected from any claimant unless it appears that the
21 claimant has unconditionally repaid, to the purchaser, any
22 amount collected from the purchaser and retained by the
23 claimant with respect to the same transaction under the Use
24 Tax Act.

25 Any credit or refund that is allowed under this Section
26 shall bear interest at the rate and in the manner specified in

1 the Uniform Penalty and Interest Act.

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

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

1 with respect thereto with the Department. The provisions of
2 this amendatory Act shall be applied retroactively, regardless
3 of the date of the transaction.

4 (Source: P.A. 101-10, eff. 6-5-19.)