



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5422

by Rep. Natalie A. Manley

SYNOPSIS AS INTRODUCED:

35 ILCS 120/11

from Ch. 120, par. 450

65 ILCS 5/8-11-16

from Ch. 24, par. 8-11-16

Amends the Retailers' Occupation Tax Act and the Illinois Municipal Code. Provides that, upon resolution of a municipality, the Department shall permit any duly authorized officer or employee of the municipality, or any other person designated by that municipality, to examine all of the records reported to the Department pertaining to the collection of use and occupation taxes for the municipality by the Department. Provides that designated individuals, other than officers and employees of the municipality, must meet certain criteria before they are allowed to examine the records. Effective immediately.

LRB098 17773 HLH 52894 b

FISCAL NOTE ACT
MAY APPLY

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 11 as follows:

6 (35 ILCS 120/11) (from Ch. 120, par. 450)

7 Sec. 11. All information received by the Department from
8 returns filed under this Act, or from any investigation
9 conducted under this Act, shall be confidential, except for
10 official purposes, and any person who divulges any such
11 information in any manner, except in accordance with a proper
12 judicial order or as otherwise provided by law, shall be guilty
13 of a Class B misdemeanor.

14 Nothing in this Act prevents the Director of Revenue from
15 publishing or making available to the public the names and
16 addresses of persons filing returns under this Act, or
17 reasonable statistics concerning the operation of the tax by
18 grouping the contents of returns so the information in any
19 individual return is not disclosed.

20 Nothing in this Act prevents the Director of Revenue from
21 divulging to the United States Government or the government of
22 any other state, or any municipality ~~village that does not levy~~
23 ~~any real property taxes for village operations and that~~

1 ~~receives more than 60% of its general corporate revenue from~~
2 ~~taxes under the Use Tax Act, the Service Use Tax Act, the~~
3 ~~Service Occupation Tax Act, and the Retailers' Occupation Tax~~
4 ~~Act, or any designated officer, authorized agent, or agency~~
5 thereof, for exclusively official purposes, information
6 received by the Department in administering this Act, provided
7 that such other governmental agency agrees to divulge requested
8 tax information to the Department.

9 The Department's furnishing of information derived from a
10 taxpayer's return or from an investigation conducted under this
11 Act to the surety on a taxpayer's bond that has been furnished
12 to the Department under this Act, either to provide notice to
13 such surety of its potential liability under the bond or, in
14 order to support the Department's demand for payment from such
15 surety under the bond, is an official purpose within the
16 meaning of this Section.

17 The furnishing upon request of information obtained by the
18 Department from returns filed under this Act or investigations
19 conducted under this Act to the Illinois Liquor Control
20 Commission for official use is deemed to be an official purpose
21 within the meaning of this Section.

22 Notice to a surety of potential liability shall not be
23 given unless the taxpayer has first been notified, not less
24 than 10 days prior thereto, of the Department's intent to so
25 notify the surety.

26 The furnishing upon request of the Auditor General, or his

1 authorized agents, for official use, of returns filed and
2 information related thereto under this Act is deemed to be an
3 official purpose within the meaning of this Section.

4 Where an appeal or a protest has been filed on behalf of a
5 taxpayer, the furnishing upon request of the attorney for the
6 taxpayer of returns filed by the taxpayer and information
7 related thereto under this Act is deemed to be an official
8 purpose within the meaning of this Section.

9 When requested by resolution of the corporate authorities
10 of a municipality, the Department shall permit any duly
11 authorized officer or employee of the municipality, or any
12 other person designated by that municipality, to examine all of
13 the records reported to the Department pertaining to the
14 collection of use and occupation taxes for the municipality by
15 the Department pursuant to the Reciprocal Agreement on Exchange
16 of Information with the Department. The resolution shall
17 certify that the person designated by the resolution meets all
18 of the following conditions:

19 (1) the person has an existing contract with the
20 municipality to examine those use and occupation tax
21 records;

22 (2) the person is required by that contract to disclose
23 information contained in or derived from those records only
24 to an officer or employee of the municipality who is
25 authorized by the resolution to examine the information;

26 (3) the person is prohibited by the contract from

1 performing consulting services for any retailer during the
2 term of the contract; and

3 (4) the person is prohibited by the contract from
4 retaining the information contained in or derived from
5 those records after the contract has expired.

6 An officer or employee of the municipality is not required
7 to meet the criteria set forth in items (1) through (4).

8 This Section shall not be construed to allow any officer,
9 employee, or other person authorized or designated by a
10 municipality to examine use and occupation tax records, except
11 as specifically provided in this Section.

12 The furnishing of financial information to a municipality
13 ~~home rule unit or non-home rule unit that has imposed a tax~~
14 ~~similar to that imposed by this Act pursuant to its home rule~~
15 ~~powers or the successful passage of a public referendum by a~~
16 ~~majority of the registered voters of the community, or to any~~
17 ~~village that does not levy any real property taxes for village~~
18 ~~operations and that receives more than 60% of its general~~
19 ~~corporate revenue from taxes under the Use Tax Act, the Service~~
20 ~~Use Tax Act, the Service Occupation Tax Act, and the Retailers'~~
21 ~~Occupation Tax Act, upon request of the corporate authorities~~
22 ~~Chief Executive thereof, is an official purpose within the~~
23 meaning of this Section, provided the corporate authorities of
24 the municipality agree ~~home rule unit, non-home rule unit with~~
25 ~~referendum approval, or village that does not levy any real~~
26 ~~property taxes for village operations and that receives more~~

1 ~~than 60% of its general corporate revenue from taxes under the~~
2 ~~Use Tax Act, the Service Use Tax Act, the Service Occupation~~
3 ~~Tax Act, and the Retailers' Occupation Tax Act agrees in~~
4 writing to the requirements of this Section.

5 ~~For a village that does not levy any real property taxes~~
6 ~~for village operations and that receives more than 60% of its~~
7 ~~general corporate revenue from taxes under the Use Tax Act,~~
8 ~~Service Use Tax Act, Service Occupation Tax Act, and Retailers'~~
9 ~~Occupation Tax Act, the officers eligible to receive~~
10 ~~information from the Department of Revenue under this Section~~
11 ~~are the village manager and the chief financial officer of the~~
12 ~~village.~~

13 Information so provided shall be subject to all
14 confidentiality provisions of this Section. The written
15 agreement shall provide for reciprocity, limitations on
16 access, disclosure, and procedures for requesting information.

17 The Department may make available to the Board of Trustees
18 of any Metro East Mass Transit District information contained
19 on transaction reporting returns required to be filed under
20 Section 3 of this Act that report sales made within the
21 boundary of the taxing authority of that Metro East Mass
22 Transit District, as provided in Section 5.01 of the Local Mass
23 Transit District Act. The disclosure shall be made pursuant to
24 a written agreement between the Department and the Board of
25 Trustees of a Metro East Mass Transit District, which is an
26 official purpose within the meaning of this Section. The

1 written agreement between the Department and the Board of
2 Trustees of a Metro East Mass Transit District shall provide
3 for reciprocity, limitations on access, disclosure, and
4 procedures for requesting information. Information so provided
5 shall be subject to all confidentiality provisions of this
6 Section.

7 The Director may make available to any State agency,
8 including the Illinois Supreme Court, which licenses persons to
9 engage in any occupation, information that a person licensed by
10 such agency has failed to file returns under this Act or pay
11 the tax, penalty and interest shown therein, or has failed to
12 pay any final assessment of tax, penalty or interest due under
13 this Act. The Director may make available to any State agency,
14 including the Illinois Supreme Court, information regarding
15 whether a bidder, contractor, or an affiliate of a bidder or
16 contractor has failed to collect and remit Illinois Use tax on
17 sales into Illinois, or any tax under this Act or pay the tax,
18 penalty, and interest shown therein, or has failed to pay any
19 final assessment of tax, penalty, or interest due under this
20 Act, for the limited purpose of enforcing bidder and contractor
21 certifications. The Director may make available to units of
22 local government and school districts that require bidder and
23 contractor certifications, as set forth in Sections 50-11 and
24 50-12 of the Illinois Procurement Code, information regarding
25 whether a bidder, contractor, or an affiliate of a bidder or
26 contractor has failed to collect and remit Illinois Use tax on

1 sales into Illinois, file returns under this Act, or pay the
2 tax, penalty, and interest shown therein, or has failed to pay
3 any final assessment of tax, penalty, or interest due under
4 this Act, for the limited purpose of enforcing bidder and
5 contractor certifications. For purposes of this Section, the
6 term "affiliate" means any entity that (1) directly,
7 indirectly, or constructively controls another entity, (2) is
8 directly, indirectly, or constructively controlled by another
9 entity, or (3) is subject to the control of a common entity.
10 For purposes of this Section, an entity controls another entity
11 if it owns, directly or individually, more than 10% of the
12 voting securities of that entity. As used in this Section, the
13 term "voting security" means a security that (1) confers upon
14 the holder the right to vote for the election of members of the
15 board of directors or similar governing body of the business or
16 (2) is convertible into, or entitles the holder to receive upon
17 its exercise, a security that confers such a right to vote. A
18 general partnership interest is a voting security.

19 The Director may make available to any State agency,
20 including the Illinois Supreme Court, units of local
21 government, and school districts, information regarding
22 whether a bidder or contractor is an affiliate of a person who
23 is not collecting and remitting Illinois Use taxes for the
24 limited purpose of enforcing bidder and contractor
25 certifications.

26 The Director may also make available to the Secretary of

1 State information that a limited liability company, which has
2 filed articles of organization with the Secretary of State, or
3 corporation which has been issued a certificate of
4 incorporation by the Secretary of State has failed to file
5 returns under this Act or pay the tax, penalty and interest
6 shown therein, or has failed to pay any final assessment of
7 tax, penalty or interest due under this Act. An assessment is
8 final when all proceedings in court for review of such
9 assessment have terminated or the time for the taking thereof
10 has expired without such proceedings being instituted.

11 The Director shall make available for public inspection in
12 the Department's principal office and for publication, at cost,
13 administrative decisions issued on or after January 1, 1995.
14 These decisions are to be made available in a manner so that
15 the following taxpayer information is not disclosed:

16 (1) The names, addresses, and identification numbers
17 of the taxpayer, related entities, and employees.

18 (2) At the sole discretion of the Director, trade
19 secrets or other confidential information identified as
20 such by the taxpayer, no later than 30 days after receipt
21 of an administrative decision, by such means as the
22 Department shall provide by rule.

23 The Director shall determine the appropriate extent of the
24 deletions allowed in paragraph (2). In the event the taxpayer
25 does not submit deletions, the Director shall make only the
26 deletions specified in paragraph (1).

1 The Director shall make available for public inspection and
2 publication an administrative decision within 180 days after
3 the issuance of the administrative decision. The term
4 "administrative decision" has the same meaning as defined in
5 Section 3-101 of Article III of the Code of Civil Procedure.
6 Costs collected under this Section shall be paid into the Tax
7 Compliance and Administration Fund.

8 Nothing contained in this Act shall prevent the Director
9 from divulging information to any person pursuant to a request
10 or authorization made by the taxpayer or by an authorized
11 representative of the taxpayer.

12 (Source: P.A. 93-25, eff. 6-20-03; 93-939, eff. 8-13-04;
13 94-1074, eff. 12-26-06.)

14 Section 10. The Illinois Municipal Code is amended by
15 changing Section 8-11-16 as follows:

16 (65 ILCS 5/8-11-16) (from Ch. 24, par. 8-11-16)

17 Sec. 8-11-16. The Department of Revenue shall submit to
18 each municipality each year a list of those persons within that
19 municipality who are registered with the Department under the
20 Retailers' Occupation Tax Act.

21 The list shall indicate the street address of each retail
22 outlet operated in the municipality by the persons so
23 registered and the name under which the retailer conducts
24 business, if different from the corporate name. Any duly

1 authorized officer or employee of the municipality, or any
2 designated authorized agent ~~The municipal clerk~~ shall forward
3 any changes or corrections to the list to the Department within
4 6 months. The Department shall update and correct its records
5 to reflect such changes, or notify the municipality in writing
6 that the suggested changes are erroneous, within 90 days. The
7 Department shall also provide monthly updates to each
8 municipality showing additions or deletions to the list of
9 retail outlets within the municipality. The Department shall
10 provide a copy of the annual listing herein provided for
11 contiguous jurisdictions when a municipality so requests. The
12 list required by this Section shall contain only the names and
13 street addresses of persons who are registered with the
14 Department and shall not include the amount of tax paid by such
15 persons. The list required by this Section shall be provided to
16 each municipality no later than September 1 annually.

17 When certifying the amount of a monthly disbursement to a
18 municipality under Section 8-11-1, 8-11-5, 8-11-6 of this Act
19 or Section 6z-18 of "An Act in relation to State finance", the
20 Department shall increase or decrease such amount by an amount
21 necessary to offset any misallocation of previous
22 disbursements. The offset amount shall be the amount
23 erroneously disbursed within the previous 6 months from the
24 time a misallocation is discovered.

25 The Department of Revenue must upon the request of any
26 municipality received pursuant to the provisions of this

1 paragraph furnish to such municipality data setting forth the
2 aggregate amount of retailers' occupation tax collected on
3 behalf of such municipality from any shopping center identified
4 in such request and located within such municipality for each
5 month beginning with the first month following the month within
6 which such a request is received by the Department, provided
7 that such data may be provided only with respect to shopping
8 centers (1) which consist of 50 or more persons registered with
9 the Department to pay Retailers' Occupation Tax, and (2) where
10 the developers or owners thereof or their predecessors in
11 interest have entered into written agreements with the
12 municipality to transfer property to or perform services for or
13 on behalf of such municipality in exchange for payments based
14 solely or in part on the amount of retailers' occupation tax
15 collected on behalf of the municipality from persons within
16 such shopping centers. Data given pursuant to this paragraph
17 shall not identify by amounts the individual sources of such
18 taxes. A request for data pursuant to this paragraph shall
19 first be submitted to the Department of Revenue by the
20 Municipal Clerk, City Council or Village Board of Trustees. The
21 Department of Revenue shall review each such request to
22 determine whether the requirements of item (2) of the first
23 sentence of this paragraph have been met and, within 30 days
24 following its receipt of such a request, shall either certify
25 that the request meets such requirements, or notify the person
26 submitting the request that the request does not meet such

1 requirements.

2 As used in this Section, "Municipal" or "Municipality"
3 means or refers to a city, village or incorporated town,
4 including an incorporated town which has superseded a civil
5 township, and "shopping center" means a group of retail stores
6 and other business and service establishments in an integrated
7 building arrangement operated under common ownership or
8 diverse ownership under unified control involving common
9 parking areas and mutual easements.

10 (Source: P.A. 91-51, eff. 6-30-99.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.