

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 140 Section 140.1401 Claims for Credit – Limitations -- Procedures**

**TITLE 86: REVENUE**

**PART 140  
SERVICE OCCUPATION TAX**

**SUBPART N: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX**

**Section 140.1401 Claims for Credit -- Limitations -- Procedures**

a) Limitations Upon Claims

- 1) Where a taxpayer under the Service Occupation Tax Act pays to the Department an amount of tax or penalty or interest not due under the provisions of the Act, either as the result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. The Department cannot approve any claim for credit unless the proof submitted in support clearly establishes that the claimant has borne the burden of the tax erroneously paid or that he has unconditionally repaid the amount of the tax to his vendee from whom he has collected the amount. In the latter event, the claimant must also prove that his vendee has borne the burden of the amount or has unconditionally repaid persons to whom the vendee has shifted the burden of the amount (see Section 17 of the Act). In addition, no credit shall be allowed for any amount paid by or collected from any claimant unless it shall appear that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Service Use Tax Act. Claimant will be considered to have satisfied the unconditional repayment requirement where it provides its purchaser with an instrument upon which the customer can make a demand upon claimant for payment of the tax recovered if the claim is allowed. The claimant's provision of unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error would satisfy this requirement. The purpose of requiring the claimant to make an unconditional repayment to its purchasers is to prevent unjust enrichment on the part of the claimant. Therefore, in order to establish that it was not unjustly enriched, the claimant filing a claim for credit must be able to demonstrate that it gave unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error to the claimant. The Department cannot approve any claim for credit to the extent that the amount claimed is an amount which has been paid (voluntarily or involuntarily) in total or partial liquidation of an assessment which had become final before the claim for credit to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment, order or decree of court. Also, all claims for credit are subject to the following statute of limitations;

- 2) As to any claim for credit filed with the Department on and after January 1, but on or before June 30 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Act) more than 3 years prior to January 1 shall be credited, and as to any claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Act) more than 3 years prior to July 1 shall be credited, except that, if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of the Retailers' Occupation Tax Act, that claim may be filed at any time prior to the expiration of the period agreed upon.

b) Filing of Claims

- 1) Claims for credit shall be prepared and filed upon forms provided by the Department. Where the claimant is a corporation, the claim filed on behalf of the corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of the corporation.
- 2) A claim for credit shall be considered to have been filed with the Department on the date upon which it is received by the Department. Upon receipt of any claim for credit filed under the Act, any officer or employee of the Department, authorized in writing by the Director of Revenue to acknowledge receipt of the claims on behalf of the Department shall execute on behalf of the Department, and shall deliver or mail to the claimant or his duly authorized agent, a written receipt, acknowledging that the claim has been filed with the Department, describing the claim in sufficient detail to identify it and stating the date upon which the claim was received by the Department. The written receipt shall be prima facie evidence that the Department received the claim described and shall be prima facie evidence of the date when the claim was received by the Department. In the absence of a written receipt, the records of the Department as to when the claim was received by the Department, or as to whether or not the claim was received at all by the Department, shall be deemed to be prima facie correct upon these questions in the event of any dispute between the claimant (or his legal representative) and the Department concerning these questions. (See Section 17 of the Act.)

c) Procedure After Filing Of Claims

The Department will examine each claim for credit as soon as practicable after the claim is filed and will notify the claimant (or his legal representative, if the claim is filed by the legal representative, or if the claimant has died or become incompetent and the legal representative has notified the Department of his appointment and qualification as the legal representative, or if the Department, on its own motion, has substituted the legal representative in the proceeding for the deceased or incompetent claimant) of its Tentative Determination of the amount of credit, if any, to which the claimant or his legal representative is entitled. If the claimant, or the legal representative of a deceased or incompetent taxpayer, shall, within 60 days after the Department's Notice of Tentative Determination of Claim, file a protest and request a hearing, the

Department shall give notice to the claimant, or to the legal representative of a deceased or incompetent taxpayer, of the time and place fixed for the hearing, and shall hold a hearing in conformity with the provisions of the Act, and pursuant thereto shall issue its Final Determination of the amount of credit, if any, found to be due as a result of the hearing, to the claimant, or to the legal representative of a deceased or incompetent taxpayer. If a protest to the Department's Notice of Tentative Determination of Claim is not filed within 60 days and a request for a hearing is not made, the Notice shall become and operate as a "Final Determination". (See Section 18 of the Service Occupation Tax Act.)

d) Use of Credit Memoranda to Satisfy Prior Rights of Department

If, following the above procedure, a credit is found to be due, as evidence of a credit memorandum for the amount shall be issued in the name of the claimant. If there is an established unpaid assessment or an admitted unpaid liability, or unpaid penalty or unpaid amount of interest, against the claimant either under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985 [70 ILCS 3720/4], subsections (b), (c), and (d) of Section 5.01 of the Local Mass Transit District Act [70 ILCS 3610/5.01], or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03], the amount of the credit shall be credited against the tax or penalty or interest due or to become due under these Acts from the person who made the erroneous payment. If the credit is in an amount less than that of the unpaid liability, it shall be applied toward satisfaction of the unpaid liability. If the amount of the credit exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out the unpaid liability, a new credit memorandum shall be issued for an amount representing the difference between that of the original credit found to be due and that of the liability liquidated or paid, and the new credit memorandum shall be delivered to the person entitled to receive delivery, provided that no proceeding is pending against the claimant to establish an unpaid liability under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c), and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act. If a proceeding to establish such an unpaid liability is pending, the credit memorandum shall be held by the Department until the proceeding is concluded; and if the proceeding results in the issuance of an assessment which becomes final, the credit shall be applied by the Department, to the extent which may be necessary, in liquidation of the assessment, or any interest that may accrue, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of the liability), shall be issued in the form of a new credit memorandum and delivered to the person entitled to receive delivery.

(Source: Amended at 27 Ill. Reg. 768, effective January 3, 2003)