

**Illinois Department of Revenue
Regulations**

Title 86 Part 420 Section 420.20 Claims to Recover Erroneously Paid Tax

**TITLE 86: REVENUE
PART 420
LIQUOR CONTROL ACT**

Section 420.20 Claims to Recover Erroneously Paid Tax

a) Requirements Generally:

- 1) Where a manufacturer or importing distributor pays, to the Department, an amount of liquor gallonage tax not due under the provisions of Article VIII of the Liquor Control Act of 1934, either as the result of a mistake of fact or an error of law, such taxpayer may file a claim for credit with the Department. 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 such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation.
- 2) As to any liquor gallonage tax claim filed with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded.

b) Procedure After Filing of Claims:

The Department will examine each claim for credit as soon as practicable after such claim is filed and will notify the claimant (or his legal representative, if the claim is filed by such legal representative, or if the claimant has died or become incompetent and such legal representative has notified the Department of his appointment and qualification as such legal representative, or if the Department, on its own motion, has substituted such 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 such 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 thereon, the Department shall give notice to such claimant, or to the legal representative of a deceased or incompetent taxpayer, of the time and place fixed for such hearing, and shall hold a hearing in conformity with the provisions of the Act, and shall issue its Final Determination of the amount of credit, if any, found to be due as a result of such hearing, to such 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.

c) Use Of Credit Memoranda To Satisfy Prior Rights of Department:

If, following the above procedure, a credit is found to be due, as evidence thereof a credit memorandum for such 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, the amount of the credit shall be credited against such tax or penalty due. If the credit is in an amount less than that of the unpaid liability, it shall be applied pro tanto. If the amount of the credit exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out such 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 as aforesaid, and such new credit memorandum shall be delivered to the person entitled to receive delivery thereof, provided that no proceeding is pending against the claimant to establish an unpaid liability under the Act. If a proceeding to establish such an unpaid liability is pending, the credit memorandum shall be held by the Department until such proceeding is concluded; and if such proceeding results in the issuance of an assessment which becomes final under the Act, the credit shall be applied by the Department, to the extent which may be necessary, in liquidation of such assessment, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of said assessment), shall be issued in the form of a new credit memorandum and delivered to the person entitled to receive delivery thereof.

d) Assignment of Credit Memoranda:

Credit memoranda issued in accordance with the provisions of the Act may be assigned or transferred only after a request for that purpose is filed with the Department upon forms prescribed and furnished by it, and subject to the following conditions:

- 1) That the assignment is made to a person who is subject to the tax imposed by Article VIII of the Liquor Control Act of 1934;
- 2) that there is no proceeding pending to establish an unpaid liability against the assignor pursuant to notice given of the Department's proposal to assess an amount against him; and
- 3) that there is no established assessment or admitted liability unpaid by the assignor: Provided, that if the amount of the credit memorandum must first be applied, in whole or in part, against an established unpaid assessment which has been issued to the claimant-assignor, or in total or partial liquidation of an unpaid admitted tax liability, or unpaid penalty, of the claimant-assignor, notice to this effect shall be given the claimant-assignor by the Department. If any balance is due such claimant-assignor, after application of the credit memorandum in the manner and to the purposes aforesaid, such balance may be assigned upon receipt by the Department of instructions to that effect. If there are no unpaid established assessments or unpaid admitted tax liabilities, or unpaid penalties, and if there are no pending proceedings as hereinabove outlined, and if the contemplated assignee is a person who is subject to the tax imposed by Article VIII of the Act, the request for leave to assign shall be approved. The original credit memorandum shall be canceled, and a new credit memorandum shall be issued to the assignee in the amount shown on the

canceled memorandum. However, before a credit memorandum is issued to the assignee, the amount of such credit shall be applied, to the extent that may be necessary, in liquidation of any established unpaid assessment which has been issued to such assignee, or in liquidation of any unpaid penalty, or in liquidation of any unpaid admitted liability of the assignee, and a credit memorandum for the balance of the credit, if any, shall then be issued to the assignee: Provided that there is no proceeding pending against the assignee to establish an unpaid liability against him. If a proceeding to establish such an unpaid liability is pending, the credit memorandum shall be held by the Department until such proceeding is concluded; and if such proceeding results in the issuance of an assessment which becomes final under the Act, the credit shall be applied by the Department, to the extent which may be necessary, in liquidation of such assessment, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of said assessment), shall be issued in the form of a new credit memorandum and delivered to the assignor for transmittal to the assignee.

e) Submission of Credit Memoranda With Tax Returns:

Credit memoranda, in the hands either of the original claimant or of his assignee, may be claimed on the monthly tax returns, as payment of liquor gallonage tax liability incurred by the holder of such credit memoranda. If, after applying any such credit memorandum against the amount of tax shown to be due by the tax return with which the credit memorandum is submitted, there is a balance of the credit memorandum in favor of the taxpayer, the Department will issue and deliver to such taxpayer a new credit memorandum for such balance. This process will be followed until the credit, to which such taxpayer is entitled, is exhausted. However, any new credit memorandum, which is issued as provided in this paragraph for a balance of credit due the taxpayer after applying the amount of a credit memorandum to the payment of current taxes, is subject to the prior rights of the Department to the same extent that such prior rights take precedence when a credit memorandum is first issued (see subsection (c) of this Section) or when leave to assign a credit memorandum is requested (see subsection (d) of this Section).

f) Refunds:

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum). The two most likely situations where this would be the case are the situation in which the claimant has discontinued business and the situation in which the claimant will have a small volume of liability to the Department in the foreseeable future, but receives a large credit memorandum which it therefore might take the claimant a long time to liquidate by using it to pay current taxes. In these instances, the claimant probably would have to sell the credit memorandum at a loss in order to realize anything from it within any reasonable period of time.

(Source: Amended at 27 Ill. Reg. 830, effective January 3, 2003)