

**Illinois Department of Revenue
Regulations**

Title 86 Part 450 Section 450.120 Claims for Credit or Refund

TITLE 86: REVENUE

**PART 450
CIGARETTE USE TAX ACT**

Section 450.120 Claims for Credit or Refund

- a) If it appears, after claim is filed with the Department, that an amount of tax or penalty has been paid that was not due under the Cigarette Use Tax Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person has died or become incompetent, to his legal representative.
- b) If it is determined that the Department should issue a credit or refund under the Act, the Department may first apply the amount against any amount of tax or penalty due under the Cigarette Use Tax Act or under the Cigarette Tax Act from the person entitled to the credit or refund. For this purpose, if proceedings are pending to determine whether or not any tax or penalty is due under the Cigarette Use Tax Act or under the Cigarette Tax Act from the person, the Department may withhold issuance of the credit or refund pending the final disposition of the proceedings and may apply the credit or refund against any amount found to be due to the Department under the Cigarette Use Tax Act or under the Cigarette Tax Act as a result of the proceedings. The balance, if any, of the credit or refund shall be issued to the person entitled.
- c) *If no tax or penalty is due and no proceeding is pending to determine whether the taxpayer is indebted to the Department for tax or penalty, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) may be assigned and set over by the lawful holder, subject to reasonable rules of the Department, to any other person who is subject to the Cigarette Use Tax Act or the Cigarette Tax Act, and the amount thereof shall be applied by the Department against any tax or penalty due or to become due under the Cigarette Use Tax Act or under the Cigarette Tax Act from the assignee. [35 ILCS 135/14a]*
- d) As to any claim filed under this Section with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty under the Act) more than 3 years prior to January 1 and July 1, respectively, shall be credited or refunded.
- e) In case the Department determines that the claimant is entitled to a refund, the refund shall be made only from the 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 the appropriation to elect to receive a cash refund, the Department will make 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 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.

- f) If the Department approves a claim for credit for cigarette tax stamps, the Department (subject to the same limitations as those provided for in this regulation) may issue an assignable credit memorandum or refund to the claimant or to the claimant's legal representative.
- g) The provisions of Sections 6a, 6b and 6c of the Retailers' Occupation Tax Act, that are not inconsistent with the Cigarette Use Tax Act, shall apply, as far as practicable, to the subject matter of this Part to the same extent as if such provisions were included in the Cigarette Use Tax Act.

(Source: Amended 27 Ill. Reg. 1647, effective January 15, 2003)