



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Text

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PROPOSED ORDINANCE AMENDMENT

UNIFORM PENALTIES, INTEREST AND PROCEDURES

NOW THEREFORE BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 34 - Taxation, Article III. Uniform Penalties, Interest and Procedures, Sections 34-64 through 34-91 be amended as follows:

Article III. Uniform Penalties, Interest and Procedures

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Sec. 34-64. - General powers.

- (a) In addition to the powers provided in other tax ordinances, the Director may adopt, promulgate, and enforce rules and regulations pertaining to the administration and enforcement of the provisions of this article and any tax ordinance.
- (b) The Director:
 - (1) May correct or amend any tax return or remittance return at any time.
 - (2) Is authorized to determine and assess any tax, interest or penalty due under this article, or under any tax ordinance, and may amend a tax determination and assessment at any time before it becomes final. Any tax determination and assessment, or amended tax determination and assessment, shall be deemed prima facie correct and the burden shall be on the person assessed to prove the contrary.
- (c) The Department is authorized to examine the books and records of any taxpayer or tax collector during business hours to verify the accuracy of any return made or, if no return was made, then to ascertain and assess the tax imposed by any tax ordinance.
- (d) In the course of any audit, investigation or other inquiry, the Director may require any taxpayer or tax collector to file information, electronically or otherwise, on a form prescribed and furnished by the Department.
- (e) The Director or designee may shall provide by rule for a conference between a taxpayer or tax collector and a representative of the Department to be held after the audit of the taxpayer or tax collector is completed, at least 20 calendar days but before the Tax Director issues a notice of tax determination and assessment; provided, however, that the Department shall not be required to hold a conference if:
 - (1) The Director determines, in the Director's discretion, that delay will jeopardize the collection of any unpaid taxes; or
 - (2) The taxpayer or tax collector will not agree to a date for holding the conference that is within 14 calendar days after the Department notifies the taxpayer or tax collector that the audit has been completed.

Conferences shall be held in person if deemed practicable by the Department or by telephone or virtual meeting.

- (f) The Director may compromise all disputes in connection with any tax, interest, or penalty due or any tax, interest or penalty assessed.

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Sec. 34-68. - Late penalties.

- (a) If a tax ordinance does not impose a penalty for late filing of a tax return or remittance return required by the ordinance and the return is not filed within the time or in the manner provided by the ordinance, a late filing penalty equal to ~~ten~~ five (5) percent of the total tax due applies for the period for which the return is being filed. This penalty does not apply if the failure to file penalty provided by Section 34-69 applies.
- (b) If a tax ordinance does not impose a penalty for late payment or remittance of the tax imposed by the ordinance and the tax is not paid or remitted within the time provided by this article, a late payment or remittance penalty equal to ~~ten~~ five (5) percent of the tax due and not timely paid or remitted applies. However, this penalty does not apply if a late filing penalty as provided in Subsection (a) of this section applies.
- (c) If the Director determines that the taxpayer or tax collector had reasonable cause for any of the following:
 - (1) Paying late;
 - (2) Remitting late;
 - (3) Underpaying the applicable tax;
 - (4) Filing a late or incomplete tax return; or
 - (5) Filing a late or incomplete remittance return, the applicable penalty shall be waived.

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Sec. 34-69. - Failure to file penalty.

If a tax ordinance does not impose a penalty for failure to file a tax remittance return required by the ordinance and no return is filed prior to the Department issuing a notice of tax deficiency or a notice of tax liability to the taxpayer or tax collector, a failure to file penalty equal to ~~25~~ 20 percent of the total tax due for the applicable reporting period applies, unless the Director determines that the failure to file a return was due to reasonable cause. This penalty may apply in addition to any late payment or remittance penalty provided by Section 34-68(b).

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Sec. 34-70. - Negligence or willfulness penalty.

- (a) If a tax ordinance does not impose a penalty for negligent or willful failure to pay or remit the tax imposed by the ordinance, a penalty equal to ~~25~~ 20 percent of the tax due and unpaid applies if the taxpayer or tax collector negligently or knowingly failed to pay or remit the tax.
- (b) This penalty may apply in addition to any late penalty provided by Section 34-68; but will not apply if a failure to file penalty as provided by Section 34-69 applies.

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Sec. 34-77. - Statute of limitations.

- (a) For all compliance actions, including but not limited to audits, bulk sales actions, and tax discoveries, that commence before January 1, 2024, except ~~Except~~ as otherwise provided in Subsections (cb), (de), and (ed) of this

section, the Director shall not issue any notice of tax determination and assessment for any period more than seven (7) years after the end of the calendar year in which the return for the period was filed with the Department or the end of the calendar year in which the return for the period was due, whichever is later.

(b) For all compliance actions, including but not limited to audits, bulk sales actions, and tax discoveries, that commence on or after January 1, 2024, except as otherwise provided in Subsections (c), (d), and (e) of this section, the Director shall not issue any notice of tax determination and assessment for any period more than six (6) years after the end of the calendar year in which the return for the period was filed with the Department or the end of the calendar year in which the return for the period was due, whichever is later.

(c) No statute of limitations applies if:

- (1) A fraudulent tax return or remittance return was filed;
- (2) No tax return or remittance return was filed;
- (3) No tax payment or tax remittance was paid or if a payment or remittance was made, the amount paid or remitted was less than 75 percent of the tax due; or
- (4) The person agrees to waive the applicable statute of limitations.

(d) If for any tax, during any seven-year period or six-year period, whichever is applicable under subsections (a) and (b) of this section, for which the Director may issue a notice of tax determination and assessment, the tax paid or remitted was less than 75 percent of the tax due for that period, no statute of limitations applies to that tax and the Director may issue a notice of tax determination and assessment for any and all past periods.

(e) If an amended return was filed for any tax period, the seven-year period or six-year year period, whichever is applicable under subsections (a) and (b) of this section, shall commence at the end of the calendar year in which the amended return was filed.

(f) ~~This time limitation on the issuance of notices of tax determination and assessment shall apply only to returns filed or payments due after April 1, 1993.~~

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Sec. 34-78. - Notice.

(a) Unless otherwise provided, when the Department or the Director is required to give notice under this article, or under any County tax ordinance, notice may be given by:

- (1) United States registered, certified or first class mail, or via FedEx or other commercial mail delivery service, addressed to the person concerned at the person's last known address; or
- (2) Personal service.

(b) Unless otherwise provided, whenever notice is required to be given, it shall be given not less than seven calendar days prior to the day fixed for any hearing or the doing of any act by the Department, the Director, or any agent or employee of the Department.

(c) Any person who is entitled to notice under this article or under any County tax ordinance, who, after due diligence, cannot be located by the Department shall be deemed to appoint the County Clerk as agent for the service of notice or process in any matter arising under this article or under any tax ordinance. Notice or process shall be

served by the Department on the County Clerk by leaving at the office of the County Clerk, at least 15 days prior to the event specified in the notice, a true and certified copy thereof, and by sending to the person by registered or certified mail, postage prepaid, a like and true certified copy, with an endorsement thereof of service on the County Clerk, addressed to the person's last known address. Service of notice or process in this manner shall have the same force and validity as if served on the person personally.

(d) Notices for tax determination and assessment may be given via electronic mail (email).

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Sec. 34-79. - Postmark rule.

Unless otherwise provided, any notice, payment, remittance, or other filing required to be made with the Department under this article, or under any County tax ordinance, shall be considered late unless it is either:

(~~1~~a) Physically or electronically received by the Department on or before the due date; or

(~~2~~b) Received in an envelope or wrapper sent through United States Mail, FedEx or other commercial mail delivery service, displaying a valid, readable United States mail postmark or date sent, dated on or before the due date, properly addressed to the Department, with adequate postage prepaid.

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Sec. 34-80. - Right to protest tax determination and assessment.

(a) Any person to whom the Director issues a tax determination and assessment shall be given written notice of the tax determination and assessment along with written demand for payment.

The person named in the tax determination and assessment may file with the Department a written protest and petition for hearing. The written protest and petition must be filed within ~~20~~ 30 days of mailing or emailing the notice of tax determination and assessment by the Department.

(b) If a timely written protest and petition for hearing is filed, the Director shall fix the time and place for the hearing and shall give written notice thereof.

(c) If a written protest and petition for hearing is not filed within the ~~20~~30-day period, the tax determination and assessment shall become a final assessment without further notice and without the necessity of a final assessment being issued the day after the last date for which a protest can be filed;

(d) In the event that a tax determination and assessment is amended, the Department shall give the affected person written notice and an opportunity to be heard with respect to the amendment.

(f) If a protest and petition for hearing is filed with the Department and later withdrawn, the Department of Administrative Hearings shall retain jurisdiction, and, upon motion of the Department, the hearing officer may enter a decision finding that the taxpayer or tax collector has violated the ordinance in the same manner and procedure as allowed for in section 34-81 of this article.

(g) If a protest and petition for hearing is filed with the Department and later stricken or dismissed, the Department of Administrative Hearings shall retain jurisdiction, and, upon motion of the Department, the hearing officer may enter a decision finding that the taxpayer or tax collector has violated the ordinance in the same manner and procedure as allowed for in section 34-81 of this article. ~~In such a case, the Department shall not be required to perform the steps set forth in this article.~~

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Sec. 34-81. Hearing procedures.

(a) Hearings on final assessments.

- (1) If a taxpayer or tax collector fails to pay an assessment that has become final, the Department may institute an action in the Department of Administrative Hearings to obtain a determination that the taxpayer or tax collector has violated the ordinance that gave rise to the assessment and that the assessment is a debt due and owing to the County that may be enforced.
- (2) Prior to instituting an action pursuant to this section, the Department shall provide notice to the taxpayer or tax collector which shall state:
 - a. the amount of the final assessment, including a description of any tax, interest, penalties or non-tax debt due,
 - b. that a hearing officer appointed by the Department of Administrative Hearings may issue a determination that the taxpayer or tax collector has violated the ordinance giving rise to the assessment and that the assessment is a debt due and owing to the County that may be enforced pursuant to this article, and
 - c. the date, time, and location the taxpayer or tax collector must appear to contest the action.
- (3) If the taxpayer or tax collector fails to appear on the date provided on the notice, the taxpayer or tax collector shall be deemed to have waived the opportunity for a hearing and a hearing officer of the Department of Administrative Hearings shall enter a decision finding that the taxpayer or tax collector has violated the ordinance that gave rise to the assessment and that the assessment is a debt due and owing to the County.
- (4) At any hearing held pursuant to subsection (1) of this section, the department shall present a copy of the final assessment. The taxpayer or tax collector's defenses shall be limited to whether and to what extent the final assessment has been paid, whether the taxpayer or tax collector is in fact the assessee and whether the taxpayer or tax collector was afforded proper notice of the assessment before it became final. The taxpayer or tax collector shall not be entitled to raise any defenses related to the taxpayer or tax collector's liability for the unpaid tax which gave rise to the final assessment.
- (5) After the conclusion of a hearing, the hearing officer shall make a final determination as to whether the taxpayer or tax collector has violated the ordinance giving rise to the final assessment and has a debt due and owing the County. If the hearing officer finds that the taxpayer or tax collector was not afforded proper notice of the assessment or the right to protest the assessment, then the hearing officer shall afford the taxpayer or tax collector 30 days to file a protest of the assessment with the Department of Administrative Hearings.
 - a. If the taxpayer or tax collector files a timely protest, then the hearing officer shall schedule and conduct a hearing.
 - b. If the taxpayer or tax collector fails to file a timely protest, then the hearing officer shall prepare a final decision finding that the taxpayer or tax collector violated the ordinance giving rise to the assessment and has a debt due and owing to the County. The taxpayer or tax collector shall be given written notice of the decision and final assessment.
- (6) Nothing in this section shall prevent the County from seeking any remedy using any court proceeding or other means authorized by applicable law, including an action to enforce payment of any tax, interest, penalties or nontax debt.

(b) Hearings on protests and petitions for hearing.

(1) When a taxpayer or tax collector files a timely written protest and petition for hearing, the Director shall refer the case to the Department of Administrative Hearings who shall conduct the hearing. The hearing officer is authorized to conduct hearings concerning any matter covered by this article or any tax ordinance administered by the Department and may determine the factual and legal matters raised by the parties to the hearing. However, the hearing officer shall not hear or decide any claim that any ordinance is unconstitutional on its face or that the County Board did not have authority to enact the ordinance.

(2) The hearing officer may:

- a. Examine any books, papers, records, or memoranda bearing upon the business or activities of the taxpayer or tax collector;
- b. Request the Circuit Court to issue subpoenas requiring the attendance of any person having personal knowledge of any contested issue;
- c. Request the Circuit Court to issue subpoenas duces tecum for the production of books, records, papers, or memoranda;
- d. Administer oaths;
- e. Take testimony;
- f. Make rulings as to the admissibility of evidence; and
- g. Take any other action as may be required for the expeditious conduct of the hearing.

(3) The hearing officer is not bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony or receiving evidence shall invalidate any order, decision, ruling or recommendation of the hearing officer or decision or final assessment of the Director.

(4) The Department's books, papers, records and memoranda or parts thereof may be proved in any hearing or legal proceeding by the original documents or by reproduced copy under the certificate of the Director. Without further proof, the original documents or reproduced copy shall be admissible into evidence before the Department.

(5) If the Circuit Court issues a subpoena or a subpoena duces tecum, the following rules shall apply:

- a. Service shall be made as provided by the Code of Civil Procedure, (735 ILCS 5/1-101 et seq.);
- b. Fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the Circuit Court of Cook County and shall be paid after the witness is excused from further attendance;
- c. When a subpoena or subpoena duces tecum is issued at the instance of either party, the hearing officer may require that party to bear the cost of service and witness fees. The hearing officer may require a deposit to cover the cost of service and witness fees.

(6) Any party to a hearing may apply to any judge of the Circuit Court of this State for enforcement of any subpoena or subpoena duces tecum issued by a hearing officer holding a hearing authorized by this article.

(7) The following provisions shall apply to hearings:

- a. At any hearing held under this article, the tax determination and assessment shall be prima facie correct and the protesting party shall have the burden of proving with books, records and other documentary evidence that [it] is incorrect.
- b. At the conclusion of a hearing, the hearing officer shall issue a final determination.
- c. The protesting party shall be given written notice of the hearing officer's decision and final determination. This notice shall contain the Director's statement of the cost of certifying the record to the Circuit Court of Cook County, computed at the rate of \$0.20 per page. The party seeking judicial review of the hearing officer's decision and final determination shall bear the cost of certification. If the protesting party prevails on appeal, the Department shall reimburse that party for cost of certification.
- d. Items constituting the record may include notices and demands; the initial and any amended tax determinations and assessments; the written protest and petition for hearing; all relevant pleadings, briefs and memoranda of law; evidence admitted at the hearing; the transcribed testimony given at the hearing; and the decision and final assessment of the hearing officer.

(8) Nothing in this Ordinance shall limit the powers and duties of the hearing officers, as authorized by Chapter 2, Article IX, of the Code of Ordinances of Cook County.

- (a) ~~When a taxpayer or tax collector files a timely written protest and petition for hearing, the Director shall refer the case to the Department of Administrative Hearings who shall conduct the hearing. The hearing officer is authorized to conduct hearings concerning any matter covered by this article or any tax ordinance administered by the Department and may determine the factual and legal matters raised by the parties to the hearing. However, the hearing officer shall not hear or decide any claim that any ordinance is unconstitutional on its face or that the County Board did not have authority to enact the ordinance.~~
- (b) ~~The hearing officer may:~~
 - (1) ~~Examine any books, papers, records or memoranda bearing upon the business or activities of the taxpayer or tax collector;~~
 - (2) ~~Request the Circuit Court to issue subpoenas requiring the attendance of any person having personal knowledge of any contested issue;~~
 - (3) ~~Request the Circuit Court to issue subpoenas duces tecum for the production of books, records, papers, or memoranda;~~
 - (4) ~~Administer oaths;~~
 - (5) ~~Take testimony;~~
 - (6) ~~Make rulings as to the admissibility of evidence; and~~
 - (7) ~~Take any other action as may be required for the expeditious conduct of the hearing.~~
- (c) ~~The hearing officer is not bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony or receiving evidence shall invalidate any order, decision, ruling or recommendation of the hearing officer or decision or final assessment of the Director.~~

(d) The Department's books, papers, records and memoranda or parts thereof may be proved in any hearing or legal

proceeding by the original documents or by reproduced copy under the certificate of the Director. Without further proof, the original documents or reproduced copy shall be admissible into evidence before the Department.

- (e) If the Circuit Court issues a subpoena or a subpoena duces tecum, the following rules shall apply:
 - (1) Service shall be made as provided by the Code of Civil Procedure, (735 ILCS 5/1-101 et seq.);
 - (2) Fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the Circuit Court of Cook County and shall be paid after the witness is excused from further attendance;
 - (3) When a subpoena or subpoena duces tecum is issued at the instance of either party, the hearing officer may require that party to bear the cost of service and witness fees. The hearing officer may require a deposit to cover the cost of service and witness fees.
- (f) Any party to a hearing may apply to any judge of the Circuit Court of this State for enforcement of any subpoena or subpoena duces tecum issued by a hearing officer holding a hearing authorized by this article.
- (g) The following provisions shall apply to hearings:
 - (1) At any hearing held under this article, the tax determination and assessment shall be prima facie correct and the protesting party shall have the burden of proving with books, records and other documentary evidence that [it] is incorrect.
 - (2) At the conclusion of a hearing, the hearing officer shall issue a final assessment.
 - (3) The protesting party shall be given written notice of the hearing officer's decision and final assessment. This notice shall contain the Director's statement of the cost of certifying the record to the Circuit Court of Cook County, computed at the rate of \$0.20 per page. The party seeking judicial review of the hearing officer's decision and final assessment shall bear the cost of certification. If the protesting party prevails on appeal, the Department shall reimburse that party for cost of certification.
 - (4) Items constituting the record may include notices and demands; the initial and any amended tax determinations and assessments; the written protest and petition for hearing; all relevant pleadings, briefs and memoranda of law; evidence admitted at the hearing; the transcribed testimony given at the hearing; and the decision and final assessment of the hearing officer.
- (h) Nothing in this Ordinance shall limit the powers and duties of the hearing officers, as authorized by Chapter 2, Article IX, of the Cook County Code.

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Sec. 34-90. - Credit and refunds.

- (a) If it appears that an amount of tax, interest or penalty has been paid or remitted in error to the Department, the taxpayer or tax collector may file a claim for credit or refund; provided, however, no person shall be eligible for a credit or refund unless the person paid or remitted the tax, interest, or penalty directly to the Department.
- (b) Any claim for a credit or refund must be filed in writing on forms provided by the Department not later than four years from the date on which payment or remittance in error was made.
- (c) The Department shall allow a claim for credit or refund only for sums paid or remitted through a mistake of fact, an error of law or as provided by Subsection (d) of this section.

- (d) No credit or refund shall be allowed for any amount paid or remitted in error unless:
- (1) In the case of a claim for credit or refund by a taxpayer, the taxpayer either:
 - a. Bore the burden of paying the tax and did not shift the burden to another person; or
 - b. Shifted the burden of paying the tax to another person; but has unconditionally repaid the tax to that person.
 - (2) In the case of a claim for credit or refund by a tax collector, the tax collector has unconditionally repaid the tax collected to the person from whom it was collected.
 - (3) For all tax periods after December 31, 2014, in the event that a court of competent jurisdiction has declared a tax unconstitutional and the judgment of constitutional invalidity is final and all rights to appeal open to the Department have expired or have been exhausted, then the Department shall allow a claim for credit or refund but only if the claim is filed by a taxpayer or tax collector who, at the time of payment or remittance (1) paid or remitted the tax under written protest, or (2) paid or remitted the tax into an escrow account established by administrative order.
- (e) Except as provided in Section 34-80 of this Chapter or by order of Court, no credit or refund shall be allowed for any sum paid or remitted in satisfaction of, or in settlement of, any claim for taxes, interest or penalties asserted by the Department.
- (f) A claim for credit or refund shall be acknowledged in writing by the Director. The written acknowledgement shall identify the claim and state the date upon which it was received.
- (g) No credit or refund shall be allowed if the taxpayer or tax collector has an outstanding amount due to the County. In that instance, the approved refund amount will be applied to the outstanding amount due.

Sec. 34-91. - Disposition of claims.

- (a) As soon as practicable after a claim for credit or refund is filed, the Director shall examine the credit or refund request and determine the amount of credit or refund due, if any, and shall issue a written notice to the claimant of a tentative determination.
- (b) The tentative determination of claim shall be prima facie correct and the claimant has the burden of proving with books, records, or other documentary evidence that the determination is incorrect.
- (c) If the claimant disagrees with the tentative determination, the claimant may file with the Department a written protest. The written protest must be filed within ~~20~~ 30 days of mailing the written notice of tentative determination of claim.
- (d) Upon the receipt of a timely protest, the Director shall fix the time and place for hearing, by giving written notice to the claimant.
- (e) Any hearing held under this section shall be governed by the procedures set forth in Section 34-~~708~~1(b).
- (f) Upon conclusion of the hearing, the hearing officer shall make a recommendation to the Director. The Director shall adopt, reject or modify the recommendation based on a review of the record and shall issue a final determination. Written notice of the Director's final determination shall be given to the claimant.
- (g) If the claimant fails to file a timely written protest, the tentative determination shall become final without further

notice the day after the last day for protest.

- (h) The Director may issue to a claimant a letter of credit if the director determines that a claimant may be able to use the credit in the foreseeable future or may issue a refund certificate, in lieu of a letter of credit, on application by a claimant who cannot use, sell or assign a letter of credit. Refund certificates shall be numbered serially as issued and shall be paid in the order of issuance from funds appropriated for that purpose.

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Effective date: This ordinance shall be in effect on April 1, 2024.