



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Details (With Text)

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Title:	PROPOSED ORDINANCE AMENDMENT				

UNIFORM PENALTIES, INTEREST AND PROCEDURES

BE IT ORDAINED, by the Cook County Board of Commissioners that, Chapter 34, Finance, Article III, Uniform Penalties, Interest and Procedures, Section 74-60 through 74-119 of the Cook County Code shall be amended as follows:

ARTICLE III. UNIFORM PENALTIES, INTEREST AND PROCEDURES

Sec. 34-60. Short title.

This article shall be known and may be cited as the Uniform Penalties, Interest and Procedures Ordinance.

Sec. 34-61. Application; tax ordinances and franchise fees.

(a) This article shall supplement all other County tax ordinances administered by the Cook County Department of Revenue.

(b) All of the provisions of this article are applicable to the collection of franchise fees payable pursuant to Chapter 78, Article II of this Code, Cable Television.

(c) Provisions of this article shall apply to the extent that they are not inconsistent with the provisions of other applicable ordinances and to the extent other ordinances are silent.

Sec. 34-62. Definitions.

The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department or Department of Revenue means the Cook County Department of Revenue.

Director or Director of Revenue means the Director of Revenue of the County.

Franchise fee means any cable television franchise fee payable to the County pursuant to Chapter 7890, Article II, of this Code.

Hearing officer means an administrative law officer or administrative law judge appointed by the Director of the Department of Administrative Hearings, to conduct hearings and to make final determination regarding taxpayer or tax collector petitions and protests as to any issue arising under the provisions of this article or under any other ordinance that imposes a fee or tax administered by the Department.

Person means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, [estate, trust, partnership, association and any

other legal entity].

Processing Fee means all costs, incurred by the Department, associated with the Department's effort to search for or obtain information required to process incomplete or incorrect payment documents, remittance forms, tax returns, or other similar documents received from tax collectors, taxpayers or other County debtors.

Tax means any sum, other than interest, penalties or fines, payable pursuant to a tax ordinance administered by the Department.

Tax collector means any person required to collect and/or remit any tax payable to the Department. Tax ordinance means any ordinance passed by the County Board that imposes a fee or tax administered by the Department.

Tax remittance means all tax monies collected from taxpayers by a tax collector which are required to be paid to the Department.

Taxpayer means any person required to pay any tax and upon whom the legal incidence of the tax is placed.

Sec. 34-63. Tax as debt; books and records; duty to produce documents; burden of proof.

(a) Tax as debt. Any tax required to be collected by any tax collector under any tax ordinance and any tax in fact collected by a tax collector shall be collected in trust for the County and shall constitute a debt owed by the tax collector to the County.

(b) Maintaining books and records. Every taxpayer and tax collector shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transactions that gave rise, or may have given rise, to any tax liability, exemption or deduction or defense to liability. Books and records and other papers relating to transactions which occurred during any period with respect to which the Department is authorized to issue notices of tax liability as provided by Sections 34-64, and 34-65 and 34-75 shall be preserved until the expiration of such period unless the Department, in writing, authorizes their destruction or disposal prior to such expiration. All those books and records shall be kept in the English language and, at all times during business hours, shall be subject to and available for inspection or copying by the Department.

(c) Duty to produce documents.

(1) If, during an audit or investigation, any taxpayer or tax collector fails to make its books and records available for inspection by the Department, the Director may serve written notice by United States registered or certified mail or by personal service on the person being audited or investigated to produce the requested documents within 45 days from the date the notice is served. The Director may extend the 45-day time limit.

(2) If, the taxpayer or tax collector fails to provide the documents requested in Subsection (ab) of this section within the required time:

a. The Director may issue a tax determination and assessment based on the best estimate of the person's tax liability; or

b. The Director may issue a subpoena requiring the attendance of any person having personal knowledge of any relevant facts and may issue subpoenas duces tecum for the production of books, records, papers or memoranda. In addition, the Director may issue a citation for each day beyond the 45-day time limit, or extension thereof, that the documents are not tendered and may request the State's Attorney to bring, or cause to be brought, an action to impose fines for disobeying or refusing to comply with request made under this section. Fines shall be as provided for in Section 34-8592.

(d) Burden of proof. It shall be presumed that any tax, interest or penalty assessed by the Director is due and owing until the contrary is established. The person assessed has the burden of proving with

documentary evidence, books and records that any tax, interest or penalty assessed by the Director is not due and owing.

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 on a form prescribed and furnished by the Department.

(e) The Director may 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, but before the Tax Director issues a tax determination and assessment.

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

Sec. 34-65. Power to issue assessments.

The Director may determine and assess the amount of any tax due and unpaid, together with applicable interest and penalties, if it appears that:

(1) A person has violated any provision of this article, or any tax ordinance, or any rule or regulation promulgated under this article or any tax ordinance;

(2) The amount of any tax payment or remittance is incorrect because it does not include all taxes due and owing;

(3) Delay will jeopardize the collection of any accrued taxes that are not yet due or payable, and the Director declares these taxes to be immediately due and payable;

(4) The Director has made any final assessment which did not include all taxes, interest and penalties payable for the periods involved; or

(5) Any person by reason of any act or omission, or by operation of law, has become liable for the payment of any taxes, interest or penalties not originally incurred by that person.

Sec. 34-66. Application of payment.

For all periods after December 1, 2014, Any any payment or remittance received for a tax period will be applied first to penalties interest for the period, then to interest tax due for the period, and then to the tax penalties due for the period.

Sec. 34-67. Interest.

(a) If a tax ordinance does not impose an interest charge for late payment, underpayment or nonpayment of the tax imposed by the ordinance, an interest charge of 1.025 percent per month, or fraction thereof, shall apply to any late tax payment or tax remittance or unpaid or un-remitted tax liability.

(b) Notwithstanding Subsection (a) of this section, if the Department requests and obtains a taxpayer's or tax collector's written consent to extend the time to initiate or complete an audit of the taxpayer's or tax collector's books and records beyond the date when the statute of limitations would run on the Department's right to issue a tax determination and assessment, no interest shall accrue from the date written consent is received by the Department to the date the Department issues the notice of tax determination and assessment.

(c) Notwithstanding Subsection (a) of this section, if a hearing is held pursuant to Section 34-80 in connection with a tax determination and assessment, and the director does not issue a final assessment within 90 days of the latest of the following:

- (1) The conclusion of the hearing;
- (2) The latest date (including extensions) on which any motion, brief or memorandum became due;
- (3) The latest date on which the protesting party filed any motion, brief or memorandum; or
- (4) The date on which the transcript of the hearing is delivered to the Department, no interest shall accrue on the tax liability from the end of the applicable 90-day period to the date that the Director issues the final assessment.

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 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 34-8269 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 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.

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 deficiency or a notice of tax

liability to the taxpayer or tax collector, a failure to file penalty equal to 25 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).

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 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.

Sec. 34-71. Failure to remit collected taxes penalty.

(a) If a tax collector:

(1) Collects any tax imposed by any tax ordinance; and

(2) Knowingly fails to remit the tax collected to the Department before the Department issues a notice of tax deficiency or notice of tax liability, a penalty equal to 50 percent of the total tax collected and not remitted applies, unless the Director determines that the failure to remit collected taxes was due to reasonable cause.

(b) This penalty may apply in addition to the failure to file penalty provided by Section 34-6982 or, if the tax collector negligently or willfully failed to remit the tax, this penalty applies in addition to the negligence or willfulness penalty provided by Section 34-7083.

(c) For any tax liability to which the failure to remit collected taxes penalty applies, the late penalties provided by Section 34-68 do not apply.

Sec. 34-72. Failure to file no liability return penalty and failure to comply with the Assumed Business Name Act.

(a) If a registered tax collector fails to file a return and the Department issues a notice of tax delinquency but subsequently determines no tax is due, a penalty of \$200.00 shall apply.

(b) It shall be a violation to this Article for any tax collector required to register pursuant to the Assumed Business Name Act, 805 ILCS 405/0.01 et seq. to fail to do so. A penalty of \$1,000.00 shall apply.

Sec. 34-73. Incomplete; incorrect return or remittance penalty.

For Tax Collectors who file an incomplete or incorrect tax return or remittance document, a penalty of \$200.00 shall apply.

Sec. 34-74. Processing fees.

A processing fee, as described in Section 34-62 of this article, in the amount of \$25.00, shall apply to each incomplete or incorrect remittance documents received.

Sec. 34-75. Nonsufficient funds check provision.

If payment or remittance of any tax is made by check and if the financial institution on which the check is drawn refuses to honor the check, it shall be treated as if no tax payment or remittance was made and, in addition, a nonsufficient funds check processing fee in an amount provided by rule applies. This fee shall be in addition to any fine, penalties or interest provided by this article or any tax Ordinance.

Sec. 34-76. Reasonable cause standards.

The Director may promulgate standards for determining reasonable cause. If the Director does not promulgate standards, the reasonable cause determination shall be made by applying the reasonable cause criteria of the United States Internal Revenue Service, as these standards may be amended.

Sec. 34-77. Statute of limitations.

(a) Except as otherwise provided in Subsections (b), (c), and (d) of this section, the Director shall not issue any notice of tax determination and assessment for any period more than seven 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) 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.

(c) If for any tax, during any seven-year period 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.

(d) If an amended return was filed for any tax period, the seven-year period shall commence at the end of the calendar year in which the amended return was filed. However, the Department shall not issue a notice of tax determination more than six years after the original return was filed.

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

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, 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.

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) Actually Physically received by the Department on or before the due date; or
- (2) Received in an envelope or wrapper displaying a valid, readable United States mail postmark dated on or before the due date, properly addressed to the Department, with adequate postage prepaid.; or
- (3) If mailed but not received by the Department, or if received but without a cancellation mark or with the cancellation mark illegible or erroneous, if the sender established by competent evidence that the writing or payment was deposited, properly addressed, in the United States mail on or before the date on which it was required or authorized to be filed or was due. In cases in which the writing or payment was mailed but not received, the sender must also file with, or pay to, the Department a duplicate writing or payment within 30 days after written notification is given by the Department to the person claiming to have sent the writing or payment, of its non-receipt of the writing or payment. If a writing or payment is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Postal Service of such registration, certification or certificate shall be considered competent evidence that the writing or payment was mailed. The date of registration, certification or certificate shall be deemed the postmarked date.

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 days of mailing 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-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.

Sec. 34-81. Hearing procedures.

- (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.

Sec. 34-82. Officer and employee liability.

(a) Any officer or employee of any taxpayer or tax collector who controls, supervises, or is responsible for filing tax returns or remittance returns or who is responsible for paying or remitting any tax imposed by any tax ordinance, and who willfully fails to file any applicable return or willfully fails to pay or remit any applicable tax, interest or penalty shall be personally liable for a penalty equal to all those amounts due and owing.

(b) The personal liability of any person described in Subsection (a) of this section shall survive the dissolution of the taxpayer or tax collector.

Sec. 34-83. Determination of officer and employee liability.

(a) The Department shall determine a penalty due under this section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this section. Proof of such determination by the Department shall be made at any hearing before it or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the certificate of the Director. The reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the penalty due, as shown thereon. The Department shall in every case issue a notice of penalty liability for the amount claimed by the Department pursuant to this section. Procedures for protest and review of a notice of penalty liability issued under this section and assessment of the penalty due hereunder shall be the same as those prescribed for protest and review of a notice of tax liability and the assessment of tax liability under this article as set forth in Sections 34-65, 34-8094 and 34-8195. No notice of penalty liability shall be issued after the expiration of four years after the date all proceedings in court for the review of any final or revised final assessments issued against a taxpayer or tax collector which constitute the basis of such penalty liability have terminated or the time for the taking thereof has expired without such proceedings being instituted or after the expiration of four years after the date any return is filed with the Department by a taxpayer or tax collector in cases where the return constitutes the basis of such liability. Interest shall accrue on that portion of the penalty imposed by this section which represents the tax unpaid by the taxpayer or tax collector at the same rate and in the same amount as interest accrued on the tax unpaid by the taxpayer or tax collector.

(b) In addition to any other remedy provided for by the laws of this State, and provided that no hearing or proceedings for review provided by this article which is pending, any section of this article which provides a means for collection of taxes shall in the same manner and to the same extent provide a means for the collection of the penalty imposed by this section. The procedures for the filing of an action for collection of the penalty imposed by this section shall be the same as those prescribed for the filing of an action for collection of the tax assessed. The time limitation period on the Department's right to bring suit to recover the amount of tax, or portion thereof, or penalty or incompetent to file a claim thereof against their estate, shall not run during:

(1) Any period of time in which the order of any court has the effect of enjoining or restraining the Department from bringing a suit or claim against the officer or employee;

(2) Any period of time in which the order of any court has the effect of enjoining or restraining the Department from bringing suit or initiating other proper proceedings for the collection of those amounts from the taxpayer or tax collector; or

(3) Any period of time the officer or employee departs from and remains out of the State; but the foregoing provisions concerning absence from the State shall not apply to any case in which, at the time when a tax or penalty becomes due under this division, the person allegedly liable therefor is not a resident of this State.

Sec. 34-84. Survival of liability.

If a deceased person owes any tax, penalty, or interest to the County, the Director may request that a claim against the decedent's estate be made.

Sec. 34-85. Fines.

(a) Any person found guilty of violating, neglecting, disobeying or refusing to comply with any of the provisions of this article, or of any tax ordinance, shall be subject to a fine of \$1,000.00 for the first offense and \$2,000.00 for the second and each subsequent offense. All actions seeking the imposition of fines only shall be filed as quasi-criminal actions subject to the provisions of the Code of Civil Procedure (735 ILCS 5/1-101 et seq.).

(b) Any person found guilty of more than three repeated offenses with any 180-day period shall, in addition to the fines provided in Subsection (a) of this section, be subject to punishment by incarceration for a term not to exceed six months as provided by the Code of Criminal Procedure of 1964 (725 ILCS 5/100-1 et seq.).

(c) A separate and distinct offense is committed for each day a person continues any violation or permits any violation to exist, after having actual notice thereof.

Sec. 34-86. Suit to enforce payment.

If any person fails to pay or remit any tax, interest or penalties, upon request of the Department, the State's Attorney may bring, or cause to be brought, an action to enforce payment.

Sec. 34-87. License suspension and revocation.

(a) Any license, permit, registration or franchise issued by the County may be suspended or revoked by the issuing authority if it is determined after a hearing that the licensee, or any person controlled by the licensee, has willfully failed to pay or remit any tax, interest or penalty due. No license shall be suspended or revoked under this subsection if, within ten days after the issuance of a license suspension or revocation order, the total tax liability, including interest and penalties, is paid.

(b) Written notice of the hearing shall be given to the licensee at the licensee's last known address not less than seven days before the hearing is to be held.

(c) No action taken under this section shall release or discharge any person who is responsible for paying or remitting any tax from civil liability or from prosecution for any violation of this article or any tax ordinance.

Sec. 34-88. Liens and right to levy.

(a) To secure payment of any final assessment of any tax, interest or penalty due from a final assessee, the County shall have a lien upon all the real and personal property of the person assessed, which is located or found within the County, including all real or personal property acquired after the date on which any final assessment was issued.

(b) A tax lien shall not be effective against any bona fide purchaser for value of any item purchased in the usual and ordinary course of business from a person's stock in trade. The Department shall file a tax lien upon the property to be encumbered:

(1) For real property, with the Recorder of Deeds of the County, or similar jurisdiction, in which the real property is located;

(2) For personal property, with the Recorder of Deeds of the County and with the Secretary of State of the State. At least ten days prior to filing a lien, the Department shall give notice to the final assessee of its intent to file the lien.

(c) Nothing in Subsection (a) of this section shall be construed to give the County a preference over the rights of any bona fide purchaser, mortgagee, judgment creditor or other lien holder who perfected its lien prior to the filing of the Department's lien.

(d) In addition to any other remedy provided by this article or otherwise by law, the County may foreclose on its lien on real or personal property to the same extent and in the same manner as in the enforcement of other liens. No proceedings to foreclose shall be instituted more than seven years after the filing of the Department's lien, except that this period shall not run:

(1) For the period of time in assessment that forms the basis for the lien; or

(2) For the duration of any judicial order enjoining or restraining the Department for instituting foreclosure proceedings.

(e) All fees for the recording of notices of liens or release of liens shall be added to the sum payable by the final assessed.

Sec. 34-89. Survival of liability.Financial Hardship.

The Director may provide a process for taxpayers or tax collectors to apply for abatement of tax liabilities. Any communication, recommendation, action or decision of the Director regarding the financial hardship process or any application shall be within the sole discretion of the Director.

If a deceased person owes any tax, penalty, or interest to the County, the Director may request that a claim against the decedent's estate be made.

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, hHowever, 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, Nno 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.

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 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 34-8170.

(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.

Sec. 34-92. Bulk sales or transfers.

(a) Seller's/transferor's notice requirement.

(1) If a taxpayer or tax collector conducts a business or activity that requires filing a tax return or remittance return with the Department on any periodic basis and the taxpayer or tax collector:

a. Sells or transfers the business or activity that required the person to pay or remit a tax to the County;

b. Sells or transfers a major part of the assets of the business or activity; or

c. Sells or transfers, other than in the ordinary and usual course of business, a major part of any one or more of the following assets:

1. The stock of goods or inventory of the taxpayer or tax collector;

2. Furniture or fixtures;

3. Machinery or equipment; or

4. Real property, the taxpayer or tax collector shall file with the Department written notice of the intended sales or transfer.

(2) The taxpayer's or tax collector's written notice shall be filed with the department at least 45 days prior to the date of sale or transfer on a form provided by the Department. The written notice shall set forth:

- a. The name of the seller or transferor;
- b. The name of the purchaser or transferee;
- c. A description of the property or business or activity to be sold;
- d. The purchase or transfer price;
- e. The date of sale or transfer;
- f. Any other information the Department may reasonably require.

(3) Within 30 days after sale or transfer, the seller or transferor shall file any tax returns or remittance returns and pay or remit to the Department any taxes, interest or penalties due or accrued, and not paid or remitted, through the date of the sale or transfer.

(b) Purchaser's/transferee's notice requirement.

(1) At least 45 days prior to the date of sale or transfer, the purchaser or transferee shall file with the Department written notice of the intended sale or transfer on the form provided for in Subsection (a)(2) of this section.

(2) The purchaser or transferee may give written notice in conjunction with the seller's or transferor's written notice.

(3) If the purchaser or transferee fails to file notice as required above, the purchaser or transferee shall be jointly and severally liable with the seller or transferor for the amount of taxes, interest or penalties owed by the seller or transferor to the County, but not exceeding the fair market value of the property acquired by the purchaser or transferee.

(c) Department's response to notice.

(1) If a timely written notice as required by this section is filed, the Department shall:

a. Perform an audit of the seller's or transferor's books and records or otherwise determine all taxes, interest or penalties due or accrued through the date of sale or transfer; and

b. At least 15 days prior to the date of sale or transfer, give written notice in the manner provided by Section 34-7867 to both the seller (transferor) and the purchaser (transferee) of the amount to be withheld from the purchase or transfer price to cover all unpaid or unremitted taxes, interest or penalties due or accrued and not paid or remitted, through the date of sale or transfer.

(2) Upon receiving timely written notice from the Department of the amount to be withheld, the purchaser or transferee shall withhold this amount from the purchase or transfer price or, if payment of money or property is not involved, the purchaser or transferee shall withhold the performance that constitutes consideration for the sale or transfer, until the seller or transferor produces:

a. A receipt from the Department showing that all taxes, interest and penalties have been paid or remitted; or

b. A certificate from the Department showing no tax, interest or penalties are due.

(3) If the department fails to provide timely written notice to the purchaser or transferee as provided by Subsection (c)(1)b. of this section, the purchaser or transferee shall be relieved of any duty to withhold from the purchase or transfer price and shall have no liability for taxes, interest or penalties due from the seller or transferor through the date of sale or transfer.

(4) If the Department provides timely written notice to the purchaser or transferee of the amount to be withheld from the purchase or transfer price and that amount is withheld, the purchaser's or transferee's liability for any taxes, interest and penalties through the date of sale or transfer shall be limited to the amount withheld.

(5) If the purchaser or transferee fails to withhold from the purchase or transfer price the amount requested by the Department, the purchaser or transferee shall be jointly and severally liable with the seller or transferor for all taxes, interest and penalties owed by the seller or transferor to the County, but not exceeding the lesser of the fair market value of the property acquired or the amount requested by the Department.

(6) The purchaser or transferee shall pay to the Department upon the Department's written demand any amount withheld under this section.

(d) Seller's/transferor's continuing liability. Nothing in this section shall be construed to relieve the seller or transferor of liability for outstanding taxes, interest or penalties, except that any payments received from the purchaser or transferee pursuant to this section shall reduce the seller's or transferor's liability to the County.

(e) The statute of limitations provided by Section 34-77 shall apply with respect to the issuance of a notice of tax determination and assessment to the purchaser or transferee in a bulk sale.

Sec. 34-93. Voluntary disclosure program.

The director shall issue written guidelines setting forth the terms and conditions for participation in the Department's Voluntary Disclosure Program which permits unregistered tax collectors and taxpayers required to remit tax directly to the Department, to whom the Department has not issued a notice of tax audit or tax investigation, to self-assess and pay their outstanding tax liabilities and interest in exchange for the waiver of all penalties for tax liabilities arising during the four-year period immediately prior to the date on which a tax collector or taxpayer applies to participate in the program.

Sec. 34-94. Confidentiality.

(a) All information that the Department receives from returns or reports, from any investigation, or from any hearing conducted under this article or under any County tax ordinance, shall be confidential and shall be used for official purposes only. Any person who divulges confidential information in any manner and for any purpose, except in accordance with a proper judicial order, or as otherwise provided by law, shall be subject to a term of incarceration not to exceed six months or a fine not to exceed \$500.00 or both.

(b) Nothing in this section shall prevent the Director from publishing or making available to the public the names and addresses of persons filing returns or reports under this article, or under any tax ordinance, or from publishing or making available reasonable statistics concerning the operation of a tax by grouping the contents of returns so that the information in any individual return is not disclosed.

(c) Nothing in this chapter shall prevent the Director from furnishing to the United States Government, to the government of any state, to any Federal or State officer or agency or to any municipality, for exclusively official purposes, information received by the Department in administering this article or any County tax ordinance, if the other government or governmental officer or agency agrees to furnish tax information requested by the Department.

(d) Furnishing information to a seller or purchaser under Section 34-77 is an official purpose within the meaning of this section. Furnishing returns, reports or information to the County Auditor, or

authorized agent is an official purpose within the meaning of this section.

Sec. 34-95. Department tip line reward program.

(a) Reward Tip Line Program. The Director of Revenue shall establish a Tip Line Reward Program enabling any person, as described in this Article, to report to the Department any Home Rule Tax Ordinance violation and receive a reward from the total amount of the proceeds collected by the Department after final adjudication of the reported violation. Such violations shall be reported in accordance with rules promulgated by the Director of Revenue.

(b) Conviction and reward. Any person who reports a violation that leads to a conviction and collection of the outstanding tax liability, fees or penalties, shall be entitled to a reward, in accordance with rules promulgated by the Director of Revenue, not exceeding \$1,000.00.

(c) Ineligible Persons. Employees of Cook County, independently elected officials, their family members and any person who shares such an employee's home or domicile of record, shall not be eligible for any reward authorized by this section.

Sec. 34-96. Alternative methods of transmitting payment.

The Director may authorize by rule that taxpayers or tax collectors pay or remit any tax by electronic or other means.

Sec. 34-97. Filing and publication of rules and regulations.

(a) Any rules or regulation promulgated under this article or under any tax ordinance shall be filed in the Department's principal office and shall be available for public inspection. Copies shall be made available upon request and payment of a reasonable fee determined by the Department, to cover to cost of providing the copy.

(b) The Department may publish any rule or regulation in book or pamphlet form and may make a reasonable charge to cover the cost of publication of the book or pamphlet.

Secs. 34-98-34-119. Reserved.

Effective date: This ordinance shall be in effect immediately upon adoption

Sponsors: TONI PRECKWINKLE (President), JOHN P. DALEY

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
12/17/2014	1	Board of Commissioners	approve	Pass
12/17/2014	1	Finance Committee	recommend for approval as amended	Pass
11/19/2014	1	Board of Commissioners	waive the rules	Pass
11/19/2014	1	Board of Commissioners	refer	Pass

PROPOSED ORDINANCE AMENDMENT

UNIFORM PENALTIES, INTEREST AND PROCEDURES

BE IT ORDAINED, by the Cook County Board of Commissioners that, Chapter 34, Finance, Article III, Uniform Penalties, Interest and Procedures, Section 74-60 through 74-119 of the Cook County Code shall be amended as follows:

ARTICLE III. UNIFORM PENALTIES, INTEREST AND PROCEDURES

Sec. 34-60. Short title.

This article shall be known and may be cited as the Uniform Penalties, Interest and Procedures Ordinance.

Sec. 34-61. Application; tax ordinances and franchise fees.

(a) This article shall supplement all other County tax ordinances administered by the Cook County Department of Revenue.

(b) All of the provisions of this article are applicable to the collection of franchise fees payable pursuant to Chapter 78, Article II of this Code, Cable Television.

(c) Provisions of this article shall apply to the extent that they are not inconsistent with the provisions of other applicable ordinances and to the extent other ordinances are silent.

Sec. 34-62. Definitions.

The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department or *Department of Revenue* means the Cook County Department of Revenue.

Director or *Director of Revenue* means the Director of Revenue of the County.

Franchise fee means any cable television franchise fee payable to the County pursuant to Chapter ~~78~~90, Article II, of this Code.

Hearing officer means an administrative law officer or administrative law judge appointed by the Director of the Department of Administrative Hearings, to conduct hearings and to make final determination regarding taxpayer or tax collector petitions and protests as to any issue arising under the provisions of this article or under any other ordinance that imposes a fee or tax administered by the Department.

Person means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, [estate, trust, partnership, association and any other legal entity].

Processing Fee means all costs, incurred by the Department, associated with the Department's effort to search for or obtain information required to process incomplete or incorrect payment documents, remittance forms, tax returns, or other similar documents received from tax collectors, taxpayers or other County debtors.

Tax means any sum, other than interest, penalties or fines, payable pursuant to a tax ordinance administered by the Department.

Tax collector means any person required to collect and/or remit any tax payable to the Department.

Tax ordinance means any ordinance passed by the County Board that imposes a fee or tax administered by the Department.

Tax remittance means all tax monies collected from taxpayers by a tax collector which are required to be paid to the Department.

Taxpayer means any person required to pay any tax and upon whom the legal incidence of the tax is placed.

Sec. 34-63. Tax as debt; books and records; duty to produce documents; burden of proof.

(a) *Tax as debt.* Any tax required to be collected by any tax collector under any tax ordinance and any tax in fact collected by a tax collector shall be collected in trust for the County and shall constitute a debt owed by the tax collector to the County.

(b) *Maintaining books and records.* Every taxpayer and tax collector shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transactions that gave rise, or may have given rise, to any tax liability, exemption or deduction or defense to liability. Books and records and other papers relating to transactions which occurred during any period with respect to which the Department is authorized to issue notices of tax liability as provided by Sections 34-64, and 34-65 ~~and 34-75~~ shall be preserved until the expiration of such period unless the Department, in writing, authorizes their destruction or disposal prior to such expiration. All those books and records shall be kept in the English language and, at all times during business hours, shall be subject to and available for inspection or copying by the Department.

(c) *Duty to produce documents.*

(1) If, during an audit or investigation, any taxpayer or tax collector fails to make its books and records available for inspection by the Department, the Director may serve written notice by United States registered or certified mail or by personal service on the person being audited or investigated to produce the requested documents within 45 days from the date the notice is served. The Director may extend the 45-day time limit.

(2) If, the taxpayer or tax collector fails to provide the documents requested in Subsection (a**b**) of this section within the required time:

- a. The Director may issue a tax determination and assessment based on the best estimate of the person's tax liability; or
- b. The Director may issue a subpoena requiring the attendance of any person having personal knowledge of any relevant facts and may issue subpoenas duces tecum for the production of books, records, papers or memoranda. In addition, the Director may issue a citation for each day beyond the 45-day time limit, or extension thereof, that the documents are not tendered and may request the State's Attorney to bring, or cause to be brought, an action to impose fines for disobeying or refusing to comply with request made under this section. Fines shall be as provided for in Section 34-~~85~~92.

(d) *Burden of proof.* It shall be presumed that any tax, interest or penalty assessed by the Director is due and owing until the contrary is established. The person assessed has the burden of proving with documentary evidence, books and records that any tax, interest or penalty assessed by the Director is not due and owing.

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 on a form prescribed and furnished by the Department.

(e) The Director may 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, but before the Tax Director issues a tax determination and assessment.

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

Sec. 34-65. Power to issue assessments.

The Director may determine and assess the amount of any tax due and unpaid, together with applicable interest and penalties, if it appears that:

- (1) A person has violated any provision of this article, or any tax ordinance, or any rule or regulation promulgated under this article or any tax ordinance;
- (2) The amount of any tax payment or remittance is incorrect because it does not include all taxes due and owing;
- (3) Delay will jeopardize the collection of any accrued taxes that are not yet due or payable, and the Director declares these taxes to be immediately due and payable;
- (4) The Director has made any final assessment which did not include all taxes, interest and penalties payable for the periods involved; or
- (5) Any person by reason of any act or omission, or by operation of law, has become liable for the payment of any taxes, interest or penalties not originally incurred by that person.

Sec. 34-66. Application of payment.

For all periods after December 1, 2014, Any any payment or remittance received for a tax period will be applied first to ~~penalties~~ interest for the period, then to ~~interest~~ tax due for the period, and then to the ~~tax~~ penalties due for the period.

Sec. 34-67. Interest.

(a) If a tax ordinance does not impose an interest charge for late payment, underpayment or nonpayment of the tax imposed by the ordinance, an interest charge of 1.025 percent per month, or fraction thereof, shall apply to any late tax payment or tax remittance or unpaid or un-remitted tax liability.

(b) Notwithstanding Subsection (a) of this section, if the Department requests and obtains a taxpayer's or tax collector's written consent to extend the time to initiate or complete an audit of the taxpayer's or tax collector's books and records beyond the date when the statute of limitations would run on the Department's right to issue a tax determination and assessment, no interest shall accrue from the date written consent is received by the Department to the date the Department issues the notice of tax determination and assessment.

(c) Notwithstanding Subsection (a) of this section, if a hearing is held pursuant to Section 34-80 in connection with a tax determination and assessment, and the director does not issue a final assessment within 90 days of the latest of the following:

- (1) The conclusion of the hearing;
- (2) The latest date (including extensions) on which any motion, brief or memorandum became due;
- (3) The latest date on which the protesting party filed any motion, brief or memorandum; or
- (4) The date on which the transcript of the hearing is delivered to the Department, no interest shall accrue on the tax liability from the end of the applicable 90-day period to the date that the Director issues the final assessment.

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 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 34-8269 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 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.

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 deficiency or a notice of tax liability to the taxpayer or tax collector, a failure to file penalty equal to 25 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).

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 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.

Sec. 34-71. Failure to remit collected taxes penalty.

(a) If a tax collector:

(1) Collects any tax imposed by any tax ordinance; and

(2) Knowingly fails to remit the tax collected to the Department before the Department issues a notice of tax deficiency or notice of tax liability, a penalty equal to 50 percent of the total tax collected and not remitted applies, unless the Director determines that the failure to remit collected taxes was due to reasonable cause.

(b) This penalty may apply in addition to the failure to file penalty provided by Section 34-~~69~~⁸² or, if the tax collector negligently or willfully failed to remit the tax, this penalty applies in addition to the negligence or willfulness penalty provided by Section 34-~~70~~⁸³.

(c) For any tax liability to which the failure to remit collected taxes penalty applies, the late penalties provided by Section 34-68 do not apply.

Sec. 34-72. Failure to file no liability return penalty and failure to comply with the Assumed Business Name Act.

(a) If a registered tax collector fails to file a return and the Department issues a notice of tax delinquency but subsequently determines no tax is due, a penalty of \$200.00 shall apply.

(b) It shall be a violation to this Article for any tax collector required to register pursuant to the Assumed Business Name Act, 805 ILCS 405/0.01 et seq. to fail to do so. A penalty of \$1,000.00 shall apply.

Sec. 34-73. Incomplete; incorrect return or remittance penalty.

For Tax Collectors who file an incomplete or incorrect tax return or remittance document, a penalty of \$200.00 shall apply.

Sec. 34-74. Processing fees.

A processing fee, as described in Section 34-62 of this article, in the amount of \$25.00, shall apply to each incomplete or incorrect remittance documents received.

Sec. 34-75. Nonsufficient funds check provision.

If payment or remittance of any tax is made by check and if the financial institution on which the check is drawn refuses to honor the check, it shall be treated as if no tax payment or remittance was made and, in addition, a nonsufficient funds check processing fee in an amount provided by rule applies. This fee shall be in addition to any fine, penalties or interest provided by this article or any tax Ordinance.

Sec. 34-76. Reasonable cause standards.

The Director may promulgate standards for determining reasonable cause. If the Director does not promulgate standards, the reasonable cause determination shall be made by applying the reasonable cause criteria of the United States Internal Revenue Service, as these standards may be amended.

Sec. 34-77. Statute of limitations.

(a) Except as otherwise provided in Subsections (b), (c), and (d) of this section, the Director shall not issue any notice of tax determination and assessment for any period more than seven 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) 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.

(c) If for any tax, during any seven-year period 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.

(d) If an amended return was filed for any tax period, the seven-year period shall commence at the end of the calendar year in which the amended return was filed. However, the Department shall not issue a notice of tax determination more than six years after the original return was filed.

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

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, 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.

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) ~~Actually~~ Physically received by the Department on or before the due date; or
- (2) Received in an envelope or wrapper displaying a valid, readable United States mail postmark dated on or before the due date, properly addressed to the Department, with adequate postage prepaid; ~~or~~
- (3) ~~If mailed but not received by the Department, or if received but without a cancellation mark or with the cancellation mark illegible or erroneous, if the sender established by competent evidence that the writing or payment was deposited, properly addressed, in the United States mail on or before the date on which it was required or authorized to be filed or was due. In cases in which the writing or payment was mailed but not received, the sender must also file with, or pay to, the Department a duplicate writing or payment within 30 days after written notification is given by the Department to the person claiming to have sent the writing or payment, of its non-receipt of the writing or payment. If a writing or payment is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Postal Service of such registration, certification or certificate shall be considered competent evidence that the writing or payment was mailed. The date of registration, certification or certificate shall be deemed the postmarked date.~~

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 days of mailing 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-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.

Sec. 34-81. Hearing procedures.

(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.

Sec. 34-82. Officer and employee liability.

(a) Any officer or employee of any taxpayer or tax collector who controls, supervises, or is responsible for filing tax returns or remittance returns or who is responsible for paying or remitting any tax imposed by any tax ordinance, and who ~~willfully~~ fails to file any applicable return or ~~willfully~~ fails to pay or remit any applicable tax, interest or penalty shall be personally liable for a penalty equal to all those amounts due and owing.

(b) The personal liability of any person described in Subsection (a) of this section shall survive the dissolution of the taxpayer or tax collector.

Sec. 34-83. Determination of officer and employee liability.

(a) The Department shall determine a penalty due under this section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this section. Proof of such determination by the Department shall be made at any hearing before it or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the certificate of the Director. The reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the penalty due, as shown thereon. The Department shall in every case issue a notice of penalty liability for the amount claimed by the Department pursuant to this section. Procedures for protest and review of a notice of penalty liability issued under this section and assessment of the penalty due hereunder shall be the same as those prescribed for protest and review of a notice of tax liability and the assessment of tax liability under this article as set forth in Sections 34-65, 34-~~80~~94 and 34-~~81~~95. No notice of penalty liability shall be issued after the expiration of four years after the date all proceedings in court for the review of any final or revised final assessments issued against a taxpayer or tax collector which constitute the basis of such penalty liability have terminated or the time for the taking thereof has expired without such proceedings being instituted or after the expiration of four years after the date any return is filed with the Department by a taxpayer or tax collector in cases where the return constitutes the basis of such liability. Interest shall accrue on that portion of the penalty imposed by this section which represents the tax unpaid by the taxpayer or tax collector at the same rate and in the same amount as interest accrued on the tax unpaid by the taxpayer or tax collector.

(b) In addition to any other remedy provided for by the laws of this State, and provided that no hearing or proceedings for review provided by this article which is pending, any section of this article which provides a means for collection of taxes shall in the same manner and to the same extent provide a means for the collection of the penalty imposed by this section. The procedures for the filing of an action for collection of the penalty imposed by this section shall be the same as those prescribed for the filing of an action for collection of the tax assessed. The time limitation period on the Department's right to bring suit to recover the amount of tax, or portion thereof, or penalty or incompetent to file a claim thereof against their estate, shall not run during:

(1) Any period of time in which the order of any court has the effect of enjoining or restraining the Department from bringing a suit or claim against the officer or employee;

(2) Any period of time in which the order of any court has the effect of enjoining or restraining the Department from bringing suit or initiating other proper proceedings for the collection of those amounts from the taxpayer or tax collector; or

(3) Any period of time the officer or employee departs from and remains out of the State; but the foregoing provisions concerning absence from the State shall not apply to any case in which, at the time when a tax or penalty becomes due under this division, the person allegedly liable therefor is not a resident of this State.

Sec. 34-84. Survival of liability.

If a deceased person owes any tax, penalty, or interest to the County, the Director may request that a claim against the decedent's estate be made.

Sec. 34-85. Fines.

(a) Any person found guilty of violating, neglecting, disobeying or refusing to comply with any of the provisions of this article, or of any tax ordinance, shall be subject to a fine of \$1,000.00 for the first offense and \$2,000.00 for the second and each subsequent offense. All actions seeking the imposition of fines only shall be filed as quasi-criminal actions subject to the provisions of the Code of Civil Procedure (735 ILCS 5/1-101 et seq.).

(b) Any person found guilty of more than three repeated offenses with any 180-day period shall, in addition to the fines provided in Subsection (a) of this section, be subject to punishment by incarceration for a term not to exceed six months as provided by the Code of Criminal Procedure of 1964 (725 ILCS 5/100-1 et seq.).

(c) A separate and distinct offense is committed for each day a person continues any violation or permits any violation to exist, after having actual notice thereof.

Sec. 34-86. Suit to enforce payment.

If any person fails to pay or remit any tax, interest or penalties, upon request of the Department, the State's Attorney may bring, or cause to be brought, an action to enforce payment.

Sec. 34-87. License suspension and revocation.

(a) Any license, permit, registration or franchise issued by the County may be suspended or revoked by the issuing authority if it is determined after a hearing that the licensee, or any person controlled by the licensee, has willfully failed to pay or remit any tax, interest or penalty due. No license shall be suspended or revoked under this subsection if, within ten days after the issuance of a license suspension or revocation order, the total tax liability, including interest and penalties, is paid.

(b) Written notice of the hearing shall be given to the licensee at the licensee's last known address not less than seven days before the hearing is to be held.

(c) No action taken under this section shall release or discharge any person who is responsible for paying or remitting any tax from civil liability or from prosecution for any violation of this article or any tax ordinance.

Sec. 34-88. Liens and right to levy.

(a) To secure payment of any final assessment of any tax, interest or penalty due from a final assessee, the County shall have a lien upon all the real and personal property of the person assessed, which is located or found within the County, including all real or personal property acquired after the date on which any final assessment was issued.

(b) A tax lien shall not be effective against any bona fide purchaser for value of any item purchased in the usual and ordinary course of business from a person's stock in trade. The Department shall file a tax lien upon the property to be encumbered:

(1) For real property, with the Recorder of Deeds of the County, or similar jurisdiction, in which the real property is located;

(2) For personal property, with the Recorder of Deeds of the County and with the Secretary of State of the State.

At least ten days prior to filing a lien, the Department shall give notice to the final assessee of its intent to file the lien.

(c) Nothing in Subsection (a) of this section shall be construed to give the County a preference over the rights of any bona fide purchaser, mortgagee, judgment creditor or other lien holder who perfected its lien prior to the filing of the Department's lien.

(d) In addition to any other remedy provided by this article or otherwise by law, the County may foreclose on its lien on real or personal property to the same extent and in the same manner as in the enforcement of other liens. No proceedings to foreclose shall be instituted more than seven years after the filing of the Department's lien, except that this period shall not run:

- (1) For the period of time in assessment that forms the basis for the lien; or
- (2) For the duration of any judicial order enjoining or restraining the Department for instituting foreclosure proceedings.

(e) All fees for the recording of notices of liens or release of liens shall be added to the sum payable by the final assessee.

Sec. 34-89. ~~Survival of liability.~~ Financial Hardship.

The Director may provide a process for taxpayers or tax collectors to apply for abatement of tax liabilities. Any communication, recommendation, action or decision of the Director regarding the financial hardship process or any application shall be within the sole discretion of the Director.

~~If a deceased person owes any tax, penalty, or interest to the County, the Director may request that a claim against the decedent's estate be made.~~

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.

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 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-~~81~~70.

(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.

Sec. 34-92. Bulk sales or transfers.

(a) *Seller's/transferor's notice requirement.*

(1) If a taxpayer or tax collector conducts a business or activity that requires filing a tax return or remittance return with the Department on any periodic basis and the taxpayer or tax collector:

- a. Sells or transfers the business or activity that required the person to pay or remit a tax to the County;
- b. Sells or transfers a major part of the assets of the business or activity; or

c. Sells or transfers, other than in the ordinary and usual course of business, a major part of any one or more of the following assets:

1. The stock of goods or inventory of the taxpayer or tax collector;
2. Furniture or fixtures;
3. Machinery or equipment; or
4. Real property, the taxpayer or tax collector shall file with the Department written notice of the intended sales or transfer.

(2) The taxpayer's or tax collector's written notice shall be filed with the department at least 45 days prior to the date of sale or transfer on a form provided by the Department. The written notice shall set forth:

- a. The name of the seller or transferor;
- b. The name of the purchaser or transferee;
- c. A description of the property or business or activity to be sold;
- d. The purchase or transfer price;
- e. The date of sale or transfer;
- f. Any other information the Department may reasonably require.

(3) Within 30 days after sale or transfer, the seller or transferor shall file any tax returns or remittance returns and pay or remit to the Department any taxes, interest or penalties due or accrued, and not paid or remitted, through the date of the sale or transfer.

(b) Purchaser's/transferee's notice requirement.

(1) At least 45 days prior to the date of sale or transfer, the purchaser or transferee shall file with the Department written notice of the intended sale or transfer on the form provided for in Subsection (a)(2) of this section.

(2) The purchaser or transferee may give written notice in conjunction with the seller's or transferor's written notice.

(3) If the purchaser or transferee fails to file notice as required above, the purchaser or transferee shall be jointly and severally liable with the seller or transferor for the amount of taxes, interest or penalties owed by the seller or transferor to the County, but not exceeding the fair market value of the property acquired by the purchaser or transferee.

(c) Department's response to notice.

(1) If a timely written notice as required by this section is filed, the Department shall:

- a. Perform an audit of the seller's or transferor's books and records or otherwise determine all taxes, interest or penalties due or accrued through the date of sale or transfer; and
- b. At least 15 days prior to the date of sale or transfer, give written notice in the manner provided by Section 34-7867 to both the seller (transferor) and the purchaser (transferee) of the amount to be withheld from the

purchase or transfer price to cover all unpaid or unremitted taxes, interest or penalties due or accrued and not paid or remitted, through the date of sale or transfer.

(2) Upon receiving timely written notice from the Department of the amount to be withheld, the purchaser or transferee shall withhold this amount from the purchase or transfer price or, if payment of money or property is not involved, the purchaser or transferee shall withhold the performance that constitutes consideration for the sale or transfer, until the seller or transferor produces:

- a. A receipt from the Department showing that all taxes, interest and penalties have been paid or remitted; or
- b. A certificate from the Department showing no tax, interest or penalties are due.

(3) If the department fails to provide timely written notice to the purchaser or transferee as provided by Subsection (c)(1)b. of this section, the purchaser or transferee shall be relieved of any duty to withhold from the purchase or transfer price and shall have no liability for taxes, interest or penalties due from the seller or transferor through the date of sale or transfer.

(4) If the Department provides timely written notice to the purchaser or transferee of the amount to be withheld from the purchase or transfer price and that amount is withheld, the purchaser's or transferee's liability for any taxes, interest and penalties through the date of sale or transfer shall be limited to the amount withheld.

(5) If the purchaser or transferee fails to withhold from the purchase or transfer price the amount requested by the Department, the purchaser or transferee shall be jointly and severally liable with the seller or transferor for all taxes, interest and penalties owed by the seller or transferor to the County, but not exceeding the lesser of the fair market value of the property acquired or the amount requested by the Department.

(6) The purchaser or transferee shall pay to the Department upon the Department's written demand any amount withheld under this section.

(d) *Seller's/transferor's continuing liability.* Nothing in this section shall be construed to relieve the seller or transferor of liability for outstanding taxes, interest or penalties, except that any payments received from the purchaser or transferee pursuant to this section shall reduce the seller's or transferor's liability to the County.

(e) The statute of limitations provided by Section 34-77 shall apply with respect to the issuance of a notice of tax determination and assessment to the purchaser or transferee in a bulk sale.

Sec. 34-93. Voluntary disclosure program.

The director shall issue written guidelines setting forth the terms and conditions for participation in the Department's Voluntary Disclosure Program which permits unregistered tax collectors and taxpayers required to remit tax directly to the Department, to whom the Department has not issued a notice of tax audit or tax investigation, to self-assess and pay their outstanding tax liabilities and interest in exchange for the waiver of all penalties for tax liabilities arising during the four-year period immediately prior to the date on which a tax collector or taxpayer applies to participate in the program.

Sec. 34-94. Confidentiality.

(a) All information that the Department receives from returns or reports, from any investigation, or from any hearing conducted under this article or under any County tax ordinance, shall be confidential and shall be used for official purposes only. Any person who divulges confidential information in any manner and for any purpose, except in accordance with a proper judicial order, or as otherwise provided by law, shall be subject to a term of incarceration not to exceed six months or a fine not to exceed \$500.00 or both.

(b) Nothing in this section shall prevent the Director from publishing or making available to the public the names and

addresses of persons filing returns or reports under this article, or under any tax ordinance, or from publishing or making available reasonable statistics concerning the operation of a tax by grouping the contents of returns so that the information in any individual return is not disclosed.

(c) Nothing in this chapter shall prevent the Director from furnishing to the United States Government, to the government of any state, to any Federal or State officer or agency or to any municipality, for exclusively official purposes, information received by the Department in administering this article or any County tax ordinance, if the other government or governmental officer or agency agrees to furnish tax information requested by the Department.

(d) Furnishing information to a seller or purchaser under Section 34-77 is an official purpose within the meaning of this section. Furnishing returns, reports or information to the County Auditor, or authorized agent is an official purpose within the meaning of this section.

Sec. 34-95. Department ~~tip-line~~ reward program.

(a) *Reward ~~Tip Line~~ Program.* The Director of Revenue shall establish a ~~Tip Line~~ Reward Program enabling any person, as described in this Article, to report to the Department any Home Rule Tax Ordinance violation and receive a reward from the total amount of the proceeds collected by the Department after final adjudication of the reported violation. Such violations shall be reported in accordance with rules promulgated by the Director of Revenue.

(b) *Conviction and reward.* Any person who reports a violation that leads to a conviction and collection of the outstanding tax liability, fees or penalties, shall be entitled to a reward, in accordance with rules promulgated by the Director of Revenue, not exceeding \$1,000.00.

(c) *Ineligible Persons.* Employees of Cook County, independently elected officials, their family members and any person who shares such an employee's home or domicile of record, shall not be eligible for any reward authorized by this section.

Sec. 34-96. Alternative methods of transmitting payment.

The Director may authorize by rule that taxpayers or tax collectors pay or remit any tax by electronic or other means.

Sec. 34-97. Filing and publication of rules and regulations.

(a) Any rules or regulation promulgated under this article or under any tax ordinance ~~shall be filed in the Department's principal office and~~ shall be available for public inspection. Copies shall be made available upon request and payment of a reasonable fee determined by the Department, to cover to cost of providing the copy.

(b) The Department may publish any rule or regulation in book or pamphlet form and may make a reasonable charge to cover the cost of publication of the book or pamphlet.

Secs. 34-98-34-119. Reserved.

Effective date: This ordinance shall be in effect immediately upon adoption