

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 1) Heading of the Part: Illinois Gives Tax Credit Act
- 2) Code Citation: 86 Ill. Adm. Code 1050
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1050.100	New Section
1050.150	New Section
1050.200	New Section
1050.250	New Section
1050.300	New Section
1050.350	New Section
1050.400	New Section
1050.450	New Section
- 4) Statutory Authority: Section 170-35 of the Illinois Gives Tax Credit Act [35 ILCS 60/170-35]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the Illinois Gives Tax Credit Act adopted by Public Act 103-0592.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Fliflet

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Illinois Department of Revenue
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- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance:
General tax preparation and record keeping
 - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: No impact on small businesses
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

The full text of the Proposed Rule is identical to that of the text of the Emergency Rule for this Part, and begins in this issue of the Illinois Register on page:

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Section 1050.100 Definitions

"Act" means the Illinois Gives Tax Credit Act [35 ILCS 60].

"Business entity" means a corporation (including a Subchapter S corporation), trust, estate, partnership, limited liability company, or sole proprietorship.

"Credit-eligible endowment gift" means an endowment gift for which a taxpayer intends to apply for an income tax credit under this Part.

"Board" means the State Board of Education.

"Department" means the Department of Revenue.

"Donor advised fund" has the meaning given to that term in subsection (d) of Section 4966 of the Internal Revenue Code of 1986.

"Endowment gift" means an irrevocable contribution to a permanent endowment fund held by a qualified community foundation.

"Permanent endowment fund" means a fund that (i) is held by a qualified community foundation, (ii) provides charitable grants exclusively for the benefit of residents of the State or charities and charitable projects located in the State, (iii) is intended to exist into perpetuity, (iv) has an annual spending rate based on the foundation spending policy, but not to exceed 7%, and (v) is not a donor advised fund.

"Qualified community foundation" means a community foundation or similar publicly supported organization described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 that is organized or operating in this State and that substantially complies with the national standards for U.S. community foundations established by the Community Foundations National Standards, as determined by the Department.

"Taxpayer" means any individual or any business entity subject to the tax imposed under subsections (a) and (b) of Section 201 of the Illinois Income Tax Act.

Section 1050.150 Overview of Illinois Gives Tax Credit Act

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The Act authorizes taxpayers, subject to specific limitations and requirements, to receive an income tax credit for qualified contributions made to permanent endowment fund. Taxpayers wishing to make qualified contributions must first apply to the Department for approval to make qualified contributions. Once approved, taxpayers are issued contribution authorization certificates by the Department, which must be provided to the permanent endowment fund by taxpayers when making their qualified contributions. A permanent endowment fund must apply to the Department for approval before it can issue certificates of receipt to taxpayers making qualified contributions. Certificates of receipt issued to the taxpayer by a permanent endowment fund may be used to document the tax credit claimed by the taxpayer on the income tax return for the taxable year in which the qualified contribution is made.

Section 1050.200 Tax Credit Awards

- a) *For taxable years ending on or after December 31, 2025 and ending before January 1, 2030, the Department shall award, in accordance with this Act, income tax credits to taxpayers who provide an endowment gift to a permanent endowment fund during the taxable year and receive a certificate of receipt under Section 1050.350 for that gift. Subject to the limitations in this Section, the amount of the credit that may be awarded to a taxpayer by the Department under this Act is an amount equal to 25% of the endowment gift.*
- b) *The aggregate amount of all Illinois Gives tax credits awarded by the Department under this Act in any calendar year may not exceed \$5,000,000.*
- c) *The aggregate amount of all Illinois Gives tax credits that the Department may award to any taxpayer under this Act in any calendar year may not exceed \$100,000.*
- d) *The amount of contributions to any specific qualified community foundation that are eligible for Illinois Gives tax credits under this Section in any calendar year shall not exceed \$3,000,000.*
- e) *Of the annual amount available for tax credits, 25% must be reserved for endowment gifts that do not exceed the small gift maximum set forth in this subsection. The small gift maximum is \$25,000. For purposes of determining if a donation meets the small gift maximum, the amount of the contribution authorization certificate under Section 250 shall be used.*

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- f) *For the purpose of this Section, a credit is considered to be awarded on the date the Department issues an approved contribution authorization certificate under Section 250.*

Section 1050.250 Contribution Authorization Certificates

- a) *The taxpayer shall apply to the Department using the electronic application form on the MyTax Illinois webpage for a contribution authorization certificate. A taxpayer who makes more than one credit-eligible endowment gift must make a separate application for each contribution authorization certificate. Applications under this subsection shall be reviewed by the Department and shall either be approved or denied. Each approved contribution authorization certificate shall be sent to the taxpayer within 3 business days after the certificate is approved. The Department shall maintain on its website a running total of: (i) the total amount of credits remaining under this Act for which taxpayers may apply for a contribution authorization certificate issued in the calendar year; (ii) the total amount of credits allocated during the calendar year for each specific community foundation; and (iii) the total amount remaining for the calendar year under the small gift maximum set forth in Section 200. Those running totals shall be updated every business day.*
- b) *The taxpayer shall make the endowment gift to the permanent endowment fund either prior to or within 10 business days after the taxpayer receives the approved contribution authorization certificate under subsection (a). The qualified community foundation shall, within 30 business days after receipt of an endowment gift for which a contribution authorization certificate has been approved by the Department under subsection (a), issue to the taxpayer a written certificate of receipt as provided in Section 1050.350. No receipt shall be issued for amounts that are not actually received by the qualified community foundation within 10 business days after the taxpayer receives the approved contribution authorization certificate.*

Section 1050.300 Approval to Issue Certificates of Receipt

- a) *A qualified community foundation shall submit an application for approval to issue certificates of receipt. Each application shall be submitted electronically and shall be signed and verified by an officer or board member. Each application shall include:*

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- 1) a copy of the letter issued by the Internal Revenue Service to the qualified community foundation that it has been granted an exemption from taxation under Section 501(c)(3) of the Internal Revenue Code;
 - 2) certification *that the qualified community foundation meets the qualifications under Section 170(b)(1)(A)(vi) and substantially complies with the standards established by Community Foundations National Standards;*
 - 3) *certification that the qualified community foundation holds a permanent endowment fund meeting the criteria in Section 1050.100;*
 - 4) *a list of the names and addresses of all members of the governing board of the qualified community foundation;*
 - 5) *a copy of the most recent financial audit of the qualified community foundation's accounts and records conducted by an independent certified public accountant in accordance with auditing standards generally accepted in the United States, government auditing standards, and rules adopted by the Department;*
 - 6) the primary email address to which notices and other documents provided for under the Act shall be sent; and
 - 7) the beginning and ending dates of the qualified community foundation's fiscal and taxable years.
- b) *The Department shall review and either approve or deny each application to issue certificates of receipt. Applicants shall be notified of the Department's determination within 30 business days after the application is received. Applications for renewal shall be made on an annual basis. If the application is denied, the Department will notify the qualified community foundation of the reason for the denial of the application. A new application may be submitted in a timely manner.*

Section 1050.350 Certificates of Receipt

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- a) *No qualified community foundation shall issue a certificate of receipt for any qualified contribution made by a taxpayer unless that qualified community foundation has been approved to issue certificates of receipt pursuant to Section 1050.300.*
- b) *No qualified community foundation shall issue a certificate of receipt for a contribution made by a taxpayer unless the taxpayer has been issued a contribution authorization certificate by the Department and the qualified community foundation has received a copy of the contribution authorization certificate. The contribution must be made by the person whose name appears on the contribution authorization certificate. If a check or credit card is used to make a contribution, the name that appears on the check or credit card must be the name of the person whose name appears on the contribution authorization certificate. If a contribution is made using stock or negotiable securities, the stock or negotiable securities must be in the name of, or held in the name of, the person whose name appears on the contribution authorization certificate.*

EXAMPLE 1 Individual A is the beneficiary of a trust. The trust obtains a contribution authorization certificate from the Department. Individual A instructs the trust to make a contribution to a qualified community foundation in the amount of \$1,000. The qualified community foundation must issue the certificate of receipt in the name of the trust.

EXAMPLE 2: Individual A is the beneficiary of a trust. Individual A obtains a contribution authorization certificate from the Department. The trust makes a contribution to a qualified community foundation in the amount of \$1,000. The qualified community foundation shall not issue a certificate of receipt to the trust because the contribution authorization certificate is in the name of Individual A. The qualified community foundation shall not issue the certificate of receipt to Individual A because the contribution was made by the trust. The individual must make the contribution to receive the certificate of receipt.

- c) *If a taxpayer makes a contribution to a qualified community foundation prior to the date by which the authorized contribution shall be made as provided in Section 1050.250, the qualified community foundation shall, within 30 business days after receipt of the contribution authorization certificate, issue to the taxpayer a written certificate of receipt.*

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- d) *If a taxpayer fails to make all or a portion of a contribution prior to the date by which such authorized contribution is required to be made, the taxpayer shall not be entitled to a certificate of receipt for that portion of the authorized contribution not made.*

EXAMPLE: A contribution authorization certificate in the amount of \$1000 is issued by the Department to the taxpayer on April 1. The taxpayer has 10 business days from the date of the contribution authorization certificate to make the authorized contribution. On April 7, the taxpayer sends the contribution authorization certificate and a check in the amount of \$500 to the qualified community foundation. The qualified community foundation receives the check on April 9. The qualified community foundation must provide a certificate of receipt to the taxpayer in the amount of \$500 no later than May 21 (excluding weekends). On April 16, the taxpayer sends another check in the amount of \$250 to the qualified community foundation. The qualified community foundation cannot issue the taxpayer a certificate of receipt for the \$250 contribution because the payment was made more than 10 business days after the issuance of the contribution authorization certificate.

- e) *Each certificate of receipt shall state:*
- 1) *the name and address of the issuing qualified community foundation;*
 - 2) *the taxpayer's name and address;*
 - 3) *the taxpayer's identification number (SSN or FEIN)*
 - 4) *the date of each qualified contribution;*
 - 5) *the amount of each qualified contribution;*
 - 6) *the total qualified contribution amount; and*
 - 7) *the unique identifier for the contribution authorization certificate provided to the qualified community foundation for the qualified contribution.*
- f) *Upon issuance of a certificate of receipt, the issuing qualified community foundation shall notify the Department within 10 business days that a certificate of receipts has been issued. The notification shall be made electronically and shall contain the following information:*

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- 1) *the taxpayer's name and address;*
 - 2) the taxpayer's identification number (SSN or FEIN)
 - 3) *the date of the issuance of a certificate of receipt;*
 - 4) the date and amount of each qualified contribution;
 - 5) *the total qualified contribution listed on such certificates;*
 - 6) *the issuing qualified community foundation's name and address; and*
 - 7) the unique identifier for the contribution authorization certificate provided to the qualified community foundation for the qualified contribution.
- g) *Any portion of a contribution that a taxpayer fails to make by the date indicated on the contribution authorization certificate shall no longer be deducted from the cap prescribed in Section 170-10 of the Act. [35 ILCS 60/170-25] (See Section 1050.200.) The Department will restore the amounts previously deducted after the last date has passed by which the qualified community foundation must notify the Department of the issuance of a certificate of receipt for any given contribution authorization certificate.*
- h) Taxpayers may make, and qualified community foundations may receive, contributions in the form of cash, stocks, and negotiable securities. If a qualified community foundation receives a contribution in stock or negotiable securities, the qualified community foundation must convert the stock and negotiable securities to cash and receive the cash proceeds prior to issuing the certificate of receipt to the taxpayer. The amount of the certificate of receipt issued to the taxpayer shall not exceed the net amount received in cash from the sale and available to the qualified community foundation for awarding grants. If a qualified community foundation maintains a brokerage account dedicated to liquidating and receiving the proceeds from the sale of stock and negotiable securities received from taxpayers as contributions, the funds are received when the proceeds from the sale of the stock or negotiable securities are placed in the dedicated brokerage account. Prior to making a contribution to a

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qualified community foundation with stock or negotiable securities, the taxpayer must acknowledge that, if the amount received by the qualified community foundation from the sale of the stock or negotiable securities exceeds the amount of the contribution authorization certificate issued to the taxpayer by the Department, the qualified community foundation will issue a certificate of receipt to the taxpayer in the amount of the contribution authorization certificate, the qualified community foundation will be able to use the excess funds for its charitable purposes, and the taxpayer will not receive a tax credit under the Act for the excess funds. The qualified community foundation must notify the taxpayer of the amount that exceeds the contribution authorization certificate.

EXAMPLE 1: A taxpayer has a contribution authorization certificate to contribute \$100,000 to a qualified community foundation. The taxpayer owns 100 shares of XYZ stock valued at \$95 per share on the day the shares are contributed to the qualified community foundation. The qualified community foundation has 30 business days to issue a certificate of receipt to the taxpayer. On Day 28, the qualified community foundation's broker sells the stock. After deducting a commission, the broker remits \$90,000 to the qualified community foundation on Day 29. The qualified community foundation issues a certificate of receipt to the taxpayer in the amount of \$90,000 on Day 30.

EXAMPLE 2: A taxpayer has a contribution authorization certificate to contribute \$100,000 to a qualified community foundation. The taxpayer owns 100 shares of XYZ stock valued at \$95 per share on the day the shares are contributed to the qualified community foundation. The qualified community foundation has 30 business days to issue a certificate of receipt to the taxpayer. On Day 17, the qualified community foundation's broker sells the stock. After deducting a commission, the broker remits \$105,000 to the qualified community foundation on Day 19. The amount of the certificate of receipt to be issued by the qualified community foundation to the taxpayer cannot exceed \$100,000. The qualified community foundation must notify the taxpayer that it received \$5,000 more than the contribution authorization certificate from the sale of the stock, that it will use the excess funds for a charitable purpose, and that the taxpayer will not receive a tax credit under the Act for the excess funds.

EXAMPLE 3: A taxpayer has a contribution authorization certificate to contribute \$100,000 to a qualified community foundation. The taxpayer owns 100 shares of XYZ stock valued at \$95 per share on the day the shares are contributed to the qualified community foundation. The qualified community foundation has 30

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business days to issue a certificate of receipt to the taxpayer. On Day 30, the qualified community foundation's broker sells the stock. After deducting a commission, the broker remits \$90,000 to the qualified community foundation on Day 31. The contribution authorization certificate has lapsed, and the qualified community foundation cannot issue a certificate of receipt to the taxpayer for any amount realized from the sale of the stock.

- i) If a taxpayer makes a contribution to a qualified community foundation using a credit card and the credit card company charges a processing fee, the qualified community foundation shall issue a certificate of receipt to the taxpayer in the amount of the contribution less the amount of the processing fee. If the qualified community foundation is unable to determine the amount of the processing fee prior to issuing a certificate of receipt to the taxpayer for the contribution, the qualified community foundation may use a reasonable method of allocating processing fees to contributions.
 - 1) The qualified community foundation may collect an amount equal to the processing fee from the taxpayer. If the qualified community foundation collects the amount of the processing fee from the taxpayer, the qualified community foundation may issue the taxpayer a certificate of receipt to the taxpayer in the amount of the contribution received from the taxpayer.

EXAMPLE: The taxpayer has a contribution authorization certificate in the amount of \$1,000 and makes a \$1,000 contribution using a credit card. The credit card company remits \$970 to the qualified community foundation. The taxpayer subsequently pays \$30 to the qualified community foundation to cover the processing fee. The qualified community foundation will issue a certificate of receipt indicating the two contributions made in the amount of \$970 and \$30.

- 2) The qualified community foundation may issue a certificate of receipt to the taxpayer in the amount of the contribution and treat the processing fee as an administrative expense.

EXAMPLE: The taxpayer has a contribution authorization certificate in the amount of \$1,000 and makes a \$1,000 contribution using a credit card. The credit card company remits \$970 to the qualified community foundation. The qualified community foundation uses 95% of the funds (\$950) for making grants and 5% of the funds (\$50) for administrative

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costs. The qualified community foundation pays the \$30 processing fee out of the 5% for administrative costs. The qualified community foundation may issue a certificate of receipt to the taxpayer in the amount of \$1,000.

- j) Without the consent of the taxpayer, a qualified community foundation may not disclose to any person the contents of a taxpayer's contribution authorization certificate, the amount of contributions made by the taxpayer, nor the contents of a certificate of receipt issued to the taxpayer.
- k) If a taxpayer rescinds a contribution, the qualified community foundation shall notify the Department within 10 business days, and the certificate of receipt shall be canceled.

Section 1050.400 Electronic Notice and Filing Requirements; Books and Records

- a) Unless otherwise provided, all applications, notices, filings, certificates, or other documents required by this Part to be submitted to or issued by the Department shall be made by electronic means.
- b) Permanent endowment funds and taxpayers shall maintain books and records under this Part and make them available upon request by the Department.
- c) Permanent endowment funds shall maintain their books and records for no less than three years. Taxpayers shall maintain their books and records in accordance with the Illinois Income Tax Act and regulations promulgated thereunder.

Section 1050.450 Annual Recertification; Revocation

- a) Each qualified community foundation that receives approval to issue certificates of receipt shall file an application for recertification on an annual basis. The application for recertification shall be in the form and manner prescribed in Section 1050.300 and shall include:
 - 1) certification that the qualified community foundation has complied with and continues to comply with the requirements of the Act; and
 - 2) a copy of the organization's current financial statements.

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- b) The Department may revoke the approval of a qualified community foundation to issue certificates of receipt upon a finding that the organization has violated the Act or this Part. These violations shall include, but need not be limited to, any of the following:
- 1) failure to meet the requirements of the Act;
 - 2) failure to maintain full and adequate records with respect to the receipt of qualified contributions;
 - 3) failure to supply these records to the Department;
 - 4) failure to provide notice to the Department of the issuance of certificates of receipt pursuant to Section 170-25 of the Act; or
 - 5) failure to provide notice to the Department that a contribution has been rescinded pursuant to subsection (k) of Section 1050.350.
- c) Within 5 business days after the determination to deny recertification or to revoke approval, the Department shall provide notice of the determination to the qualified community foundation and information regarding the process to request a hearing to appeal the determination. A qualified community foundation whose recertification was denied or approval revoked may, within 20 days after the notice of the determination, protest the Department's determination by making a written request for a hearing. After receipt of the request for a hearing, the Department shall give notice to the qualified community foundation of the time and place fixed for the hearing, shall hold a hearing, and shall issue its final administrative decision to the qualified community foundation. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.