

**Audit Procedures Chapter Index****Purpose**

This chapter is meant to cover general audit procedures that auditors should use on sales/use tax and miscellaneous tax audits.

**Disclaimer**

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist Illinois Department of Revenue (“Department” or “IDOR”) auditors in the completion of their audits. The contents of this audit manual must not be relied upon for decision making or as a substitute for the official text of statutes, administrative rules, and case law. This manual does not carry the weight or effect of law and is only informational in nature. Auditors must conduct audits in accordance with the pertinent statutes, administrative rules, and case law.

Citations to statutes, regulations, or case law are included to assist the auditors in locating the relevant legal authority as a basis for conducting audits. The manual may be amended at any time without notice by the Department. Nothing in this manual shall contradict the official text of statutes, administrative rules, or case law. In case of any unintended inconsistency, the official text of statutes, administrative rules, and case law controls and must be followed. The Department’s Director, General Counsel, and Legal Services Bureau do not sanction any deviation by the Department staff from the official text of statutes, administrative rules, or case law in the performance of job functions.

This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

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*“As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information.” (35 ILCS 120/4)*

*In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information. (35 ILCS 120/5)*

The auditors' primary purpose and objective is to determine if tax has been correctly reported and paid to the Department. This should be done efficiently and should create the least possible inconvenience for taxpayers.

### **Five essential elements necessary for auditors to meet the audit objective:**

#### **1. Taxpayer Relations:**

The benefit derived from developing a good relationship with a taxpayer is two-fold benefiting both the auditor and the taxpayer. Taxpayer relations are referenced in [Audit Manual Chapter 1](#).

#### **2. Planning Activities:**

Planning an audit begins when an audit assignment is received from a Revenue Audit Supervisor (RAS).

#### **3. Examination of Records:**

Gathering and evaluating sufficient records to provide an adequate basis for determining the accuracy of the tax returns filed.

#### **4. Application of the Law:**

An auditor must be familiar with the requirements of the laws being administered (i.e., Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, Service Use Tax Act, Uniform Penalty and Interest Act, etc.). Regulations (which are often referred to as rules) are the Department's interpretation of the law. The regulations are written and amended for each tax type administered by the Department. Prior to being issued, the regulations are reviewed and approved by the Joint Committee on Administrative Rules (JCAR). (i.e., Part 130, Part 131, Part 140, Part 150, Part 151, etc.)

#### **5. Documentation:**

Auditors use documentation to note pertinent audit evidence discovered during an audit. A well-documented audit will consist of a complete record of evidence examined by the auditor to support any findings. Also, they document any communications with the taxpayer which may be important to support the audit findings.

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Audits are set up by Audit Planning for a variety of reasons. Some audits may be created from random selection; a mandatory selection (e.g., taxpayer's business, tax compliance status, registration status, etc.); a referral from a business or taxpayer; a taxpayer's request, etc. After the audit has been created, it is assigned to an audit supervisor for assignment to an auditor.

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Audit periods typically range from 3 to 3 ½ years for Retailers' Occupation Tax (35 ILCS 120/6) and Service Occupation Tax and 6 to 6 ½ years for Use Tax and Service Use Tax. Effective June 25, 2021, Public Act (PA) 102-0040 automatically extended the statute of limitations by 6 months for credit and/or refund claims filed within 6 months or less of statute remaining at the time of filing. The purpose of the legislation was to provide the Department the opportunity to issue the Notice of Tax Liability or Notice of Deficiency (NTL/NOD) for other issues with the return beyond the claim issue(s), as opposed to merely verifying or reducing the claim(s). Refer to Chapter 8.

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Upon assignment, it is the auditor's responsibility to protect the statute of limitations on the original audit period, as well as the expanded audit period, as determined by management. A statute waiver is used to extend the statute of limitations deadline that would normally apply to audit liabilities and credits. The rules for the statute of limitations are similar across all sales and miscellaneous tax types. The Audit Waiver Case allows for the creation, processing, and tracking of the IDR-191-C, Statute of Limitations Waiver through GenTax. The case also systematically updates the statute date when the signed waiver is accepted. When generated, the taxpayer will be able to view and sign the waiver via their MyTax Illinois account.

Upon receipt of the taxpayer's signature, the auditor and supervisor will verify that the waiver letter was signed by an Authorized Person. If the signature is not valid, the auditor or supervisor will request a valid signature. When the signature is verified by the supervisor, the statute date on the Audit springboard will be automatically updated from the statute waiver case. This change does not affect the procedures for including the waiver in the audit file. A copy of the waiver signed by both the taxpayer and supervisor must be included in the audit .zip file.

Time requirements have been established for the timely completion of all assigned audits (except unregistered accounts). A Waiver Reminder work item is created from the waiver case when the statute date is within 120 days. Similarly, a Waiver Warning is created when the statute date is within 60 days from the statute expiration. If waivers cannot be secured before expiration of the statute, audits should be transmitted to the technical review section in Springfield.

Waivers signed for the Department's Convenience must have the Director's signature affixed by the Assistant Division Managers. In addition, the Assistant Division Managers are required to document the reasons for the decision to sign the waiver for the Department's convenience. This documentation must be included in the case.

Waivers signed for the taxpayer's convenience may still have the Director's signature affixed by the supervisor or another member of Regional management.

Audits are assigned by the supervisor. Auditors should not begin any audit work on a taxpayer without an audit assignment. Audits may also be referred by other sources; most common are referrals from other auditors and the Bureau of Criminal Investigation. Several policies have been developed regarding audit assignments. They include the following:

- To ensure that audits get a fresh perspective and to ensure a high level of professional objectivity, auditors will generally not be assigned to perform an audit of the same taxpayer for more than two consecutive cycles; however, depending on auditor availability, taxpayer preferences, etc. an auditor may be assigned an audit for the same taxpayer more than twice. This is a case-by-case situation.
- Audit assignments regarding refund claims which are initiated as a result of a prior audit will be assigned to the same auditor who performed the original audit. Also, if during an Administrative Hearing or Tax Tribunal case, a judge orders a re-audit or bring-up audit it will normally be assigned to the same auditor.
- Auditors will not be assigned an audit if there is a conflict of interest with the taxpayer.

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After verifying the address, the auditor is ready to begin the audit. The auditor will issue the Notice of Audit Initiation letter (EDA-135) along with other audit letters. The EDA-135 is used for both field and in-house audits to notify the taxpayer they have been selected for audit and identify the periods the audit will cover.

For sales tax audits, the Sales and Use Tax Pre-audit Questionnaire (EDA-159) is one of the letters which is system generated and issued with the EDA-135. The EDA-159 has been designed to ask the taxpayer questions regarding the business that will assist the auditor in planning their audit approach. If the EDA-159 is sent, it is requested the taxpayer return the questionnaire prior to the initial opening conference interview appointment date. Answers to the questionnaire may shorten the opening conference and may possibly trigger additional clarification questions for the auditor to ask during that interview.

These letters can be manually printed by the auditor. If they are not manually printed by the auditor, they will be systematically printed in the overnight batch process and mailed from Springfield to the taxpayer's address.

The taxpayer can view and print audit letters from their MyTax Illinois account the following day after the auditor has issued the letter. The taxpayer can also complete and submit a response to the EDA-159 through MyTax Illinois. Additional informational forms such as the PIO-60-VAR An Introduction to the Virtual Audit Room, and PIO-60 Audit Information are available to the taxpayer through the Department's website.

If after an audit has been initiated and EDA-135 has issued, it is determined that the audit should be cancelled, the Auditor will begin the cancellation process. Once the cancellation request is approved, the EDA-140, Notice of Audit Cancellation will be issued by Planning notifying the taxpayer that the audit examination was cancelled, and no further action is required.

If the auditor did not see a need to expand the audit period while doing their preaudit research, and circumstances change, the audit period can be expanded after the audit is initiated. The Notice of Audit Expansion (EDA-136) letter is systematically created when expanding the audit period after the EDA-135 has been issued. If periods/year(s) are added to expand the original audit period, an EDA-136 letter must be generated and provided to the taxpayer. The subsequent Initiation Date entered is the same day the taxpayer is advised of the additional periods/year(s). Only the additional periods/year(s) should be stated in the EDA-136. This letter must be provided each time the audit period is expanded.

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Ideally, the auditor should contact the taxpayer between 7 to 15 days of receiving the audit assignment unless the taxpayer contacts the auditor regarding the initiation letter. An opening conference appointment should be made through an owner, an officer, or a partner of the business; however, the business may designate another person within the company as the contact person responsible for the audit. Taxpayers might also request that their accountant or attorney be contacted and that the audit be conducted at the accountant's or attorney's office. In this case, the auditor must secure a properly executed Power of Attorney (Form IL-2848) before commencing the audit.

If a Power of Attorney (Form IL-2848) is not on file, the taxpayer may send a completed form to the auditor by emailing the completed form directly to REV.POA@illinois.gov, faxing it to (217) 782-4217, submitting it via MyTax Illinois, or mailing it to IDOR. While processing time for e-mails and faxes are usually one business day, taxpayers are encouraged to allow for three business days. Processing time for mail is 10 business days. When scheduling appointments, it is preferred that auditors confirm their appointments by telephone or email in-advance.

After making successful contact with the taxpayer, the auditor may, if needed again, send the Sales and Use Tax Pre-audit Questionnaire (EDA-159) for the taxpayer to fill out prior to their meeting.

The auditor must notify the taxpayer as soon as possible if a scheduled appointment cannot be kept. If an appointment should be cancelled, the auditor needs to schedule a new appointment and contact their supervisor.

Usually, the first impression that a taxpayer forms about the auditor is in the initial call to schedule an appointment. Remember, first impressions are very important. The auditor is expected to always be professional and courteous when contacting the taxpayer. The auditor will inform their supervisor if the taxpayer does not commit to an appointment date within a reasonable amount of time (no later than 6 months). The supervisor may intercede and attempt to get a more current date confirmed. The amount of time considered reasonable depends upon the size of the taxpayer. Good judgment should be exercised in this area.

If a taxpayer wants to delay the start of the audit or cancels a scheduled appointment, the auditor should request that the taxpayer send a written letter or email, giving the reasons for the postponement. The auditor should make sure to document their conversation in the audit records as well. This information is good documentation when attempting to explain why cases become aged. It can also be used if the taxpayer raises the issue, at a later date, that the Department delayed the case unnecessarily causing more interest to be due.

During the initial interview, the auditor should discuss MyTax Illinois, the Virtual Audit Room and email response options with the taxpayer. The taxpayer may respond to certain audit letters and digitally sign documents through their MyTax Illinois account. The Virtual Audit Room provides a safe and secure means to share large volumes of taxpayer records electronically. Auditors may use email or the virtual audit room to send copies of system generated information document requests (IDRs), audit workpapers, and other information throughout the audit process.

MyTax responses are preferred; however, the VAR is an online data site providing a secure environment where access is controlled, and sensitive information can be shared electronically while maintaining confidentiality. The site is built in a Microsoft SharePoint environment with a secure folder for each auditor. At the conclusion of the audit, the VAR audit folder, and all information contained within it, will be deleted.

**NOTE:** Since Share Point is a Microsoft program, Internet Explorer or Microsoft Edge must be used to access the VAR. The auditor should advise the taxpayer to use a Microsoft web browser, **not** Google Chrome, Safari, or others. See Chapter 2 for further detail regarding the Virtual Audit Room.

The auditor should be diligent in their documentation when requesting books and records to review and documenting communication with the taxpayer. Nothing is more central to the audit process than the quality of the evidence the auditor has available to verify the taxpayer's various assertions as to the correctness of their filings. Therefore, it is necessary to thoroughly document all requests for documents or any failure of the taxpayer to provide sufficient evidence. Given the importance of documenting the kind of information and when it is provided by the taxpayer, the Department has established a uniform method for requesting information from taxpayers.

The Audit Information Document Request (EDA-70C) case is to be used every time additional documentation is needed from the taxpayer after the Initiation letter has been sent. Additional information document requests include the following: the Notice of Demand for Books and Records (EDA-11-AC), Notice of Demand for Documentary Evidence (EDA-11-BC), and the Subpoenas Duces Tecum (IDOR-5-SUB-L). The Required Records List (EDA-11-INS) is an attachment, or letter insert, that is automatically included with the EDA-70-C and EDA-11-AC. It provides a list of the documents that have been requested within the information document requests.

These forms should be used in this order of progression to keep a record of the audit. Auditors should be mindful when setting timeframes or deadlines and set reasonable expectations. Setting deadlines is a delicate process requiring a balance between the auditor's needs and the taxpayer's workload and staffing constraints. Normally, asking for information well in advance will eliminate any claims by the taxpayer that the auditor is being unreasonable.

### 6.11.1 EDA-70-C Audit Information Document Request

The due date on the EDA-70-C is 30 days from issuance. If there is a significant delay between initial contact and the opening conference or if no opening conference is held (In-House Discovery audits), then the due date may be earlier or set based upon discussion with the taxpayer. However, the date printed on the letter will be 30 days from issuance. The letter will be viewable on the taxpayer's MyTax account the following day after it is issued. The taxpayer can respond to the letter through their MyTax account.

Examples of typical records requested on the initial EDA-70-C would be, but are not limited to:

- Federal and State Income Tax Returns,
- Depreciation Schedule, and
- Sales Tax Returns with work papers used to prepare the returns.

Examples of additional records typically requested on the initial EDA-70-C for a cash audit would be, but are not limited to:

- Daily cash register tapes
- Bank Statements
- POS reports
- 1099-K reports

When asking for information, be sure the request is as specific and detailed as possible. This may avoid misinterpretation of the request that could result in getting wrong information or information in the wrong format. Provide the taxpayer with any information that will assist them in providing the requested

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information. For example, if having the sales order number will allow the taxpayer to secure the invoice quicker and easier, provide the order number with the request. Any assistance provided to the taxpayer will help move the audit process forward and create a positive audit experience. The request should also identify the records in the name that the Taxpayer uses to identify the documents. This will reduce confusion and delays.

Two EDA-70-C's must be issued before issuing the EDA-11-AC Notice of Demand for Books and Records.

### **6.11.2 EDA-11-AC Notice of Demand for Books and Records**

Current audit policy provides that the auditor makes two requests to the taxpayer for specific records before issuing an EDA-11-AC. The EDA-11-AC specifies a deadline date for the books and records to be made available. The **deadline is 30 days** from the date the request is issued to the taxpayer. The EDA-11-AC has both the auditor and supervisor's names prepopulated on the form and will be viewable on the taxpayer's MyTax account the following day after it has been issued. The taxpayer can respond to the letter through their MyTax account.

### **6.11.3 EDA-11-BC Notice of Demand for Documentary Evidence**

The EDA-11-BC Notice of Demand for Documentary Evidence is used to request invoices/documentation which supports a nontaxable transaction. Current audit policy requires these records have already been requested twice via an EDA-70-C Information Document Request. The letter will be viewable on the taxpayer's MyTax account on the following day. The taxpayer can respond to the letter through their MyTax account.

If the taxpayer fails to secure the necessary proof within the prescribed time frame (60 days), the law precludes the taxpayer from entering such proof at a later date. If the taxpayer fails to produce the necessary support within the time granted, the law states that the matter shall be closed and the transaction in question will be conclusively presumed to be taxable. [35 ILCS 120/7]

### **6.11.4 EDA-11-BC-EXT Notice of Demand for Documentary Evidence Extended**

In the event the taxpayer needs additional time, the auditor may give the taxpayer an extension with the supervisor's approval. The EDA-11-BC [EXT] Notice of Demand for Documentary Evidence [Extended] is used when a taxpayer is granted an extension to the deadline originally set forth in the EDA-11-BC Notice of Demand for Documentary Evidence. Current audit policy provides that a taxpayer may be granted an extension to the 60-day deadline established by the EDA-11-BC Demand Letter. The extension letter must be completed prior to the expiration of the original EDA-11-BC. Additional extensions will be at management's discretion. The taxpayer will be able to respond to the letter via MyTax. If the taxpayer fails to produce the necessary support within the time granted, the law states that the matter shall be closed and the transaction(s) in question will be conclusively presumed to be taxable. In such cases, it is more likely that the taxpayer will be barred from producing the documents in later proceedings.

### **6.11.5 IDOR-5-SUB-L Subpoenas Duces Tecum**

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The final document used to request taxpayer records is the IDOR-5-SUB-L Subpoena Duces Tecum. 35 ILCS 120/10 gives any officer or employee, designated in writing by the Director, the authority to issue subpoenas requiring attendance by a witness or to issue Subpoena Duces Tecum requiring the production of books, papers, records, or other memoranda bearing on such matters that auditors have the authority to investigate. The Department has taken the position this authority extends to computer data and other magnetic media.

Subpoenas will only be issued when the taxpayer has not provided the information requested on the previously issued EDA-70-Cs and EDA-11-AC. Therefore, every effort should be made to secure testimony and/or information without a subpoena.

With the implementation of the Records Penalty, the policy of when to issue the subpoena has been adjusted for certain tax types.

In the event the audited tax type is subject to the Records Penalty and the taxpayer has not responded timely to the issued EDA-11-A; the auditor should not issue the formal subpoena. In an effort to encourage cooperation, inform the taxpayer that a penalty of \$1,000 for the first failure to keep records or produce records for examination and a penalty of \$3,000 for each subsequent failure to keep records or produce records for examination as required by Section 7 of the Retailers' Occupation Tax Act will be applied and provide the taxpayer with a copy of the regulation as a courtesy (i.e., 86 Ill. Adm. Code 130.801(i)). [35 ILCS 120/7]

As with everything, there are always exceptions to the rule. If the taxpayer is being cooperative and simply needs more time, a subpoena may be acceptable rather than applying the penalty. You should always consult with your supervisor regarding this matter. With the implementation of the Records Penalty, we should attempt to leave the issuance of any formal subpoena to Litigation.

Example 1: A Retailers' Occupation Tax audit is being performed, no records have been provided and the taxpayer has not responded timely to the EDA-11-A. Since the audited tax type (i.e., Retailers' Occupation Tax) is subject to the Records Penalty, the auditor should request to impose the penalty and advise the taxpayer of the assessment. In theory, if the taxpayer has records which they are purposefully withholding and become aware they are being assessed a penalty for this action, they will provide their records to the auditor. In this situation, there is no need to issue the subpoena because the taxpayer's tax type under audit (i.e., Retailers' Occupation Tax) is subject to the Records Penalty.

For a taxpayer whose audit would not be subject to the Records Penalty (i.e., Telecom, IFTA), a formal subpoena should still be issued after the issuance of the EDA-11-A.

Example 2: A Telecommunications audit is being performed, no records have been provided, and the taxpayer does not respond timely to the EDA-11-A. Since the tax type under audit is *not* subject to the Records Penalty, the auditor should move on to issuing a subpoena and continuing the audit as normal.

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One of the most substantive audit procedures done during Field work is defining populations to be examined and selecting samples for review. Given the complexity of sampling, each audit is evaluated independently and sampling techniques applied as appropriate.

IDOR has three generally accepted methods for sampling.

1. Random sampling is completed using the Random Sample Generator Case.
2. Statistical sample requires working as a team with a Revenue Computer Audit Specialist (RCAS).
3. Block sampling was previously used by IDOR, however, with advancements in technology, there are fewer instances where this method is recommended. All block samples must be approved in advance by supervisors.

The basis for selecting which sampling method to use will be based on the taxpayer's business activities and records. The population of transactions to be reviewed in the audit must be clearly defined before any method is selected. The population determines the sampling method to select. Auditors must clearly document in the audit narrative how the sampling method was determined, including the reasoning and methodology behind the choice. The sampling method chosen must be defensible as the best method available under the circumstances.

The position of the Audit Bureau follows that of the Internal Revenue Service - statistical sampling is the preferred method in large case auditing. Cases where the taxpayer has a large volume of transactions or the case took a large number of hours in the prior cycle, are prime targets for Computer Assisted Auditing (CAA) techniques. A specific group of experienced auditors are trained in using methodology developed by the Internal Revenue Service. The members of the group are referred to as Revenue Computer Audit Specialists (RCAS). The methods and theory used by the IRS – and most other states – have been successfully defended in court over the years.

Regulations 86 Ill. Adm. Code 130.801, 130.805, and 130.825 discuss electronic media as part of the books and records requirements and the Department's authority to request electronic data even when hard copy formats are available. Electronic audits conducted by RCAS are commonly known as Computer Assisted Auditing (CAA).

Illinois Department of Revenue Publication 107, "Electronic Records and Computer Assisted Auditing", explains and discusses the department's policies on using electronic data in computer assisted auditing. Whenever the taxpayer has a computer system, the auditor should always explore the possibility of using electronic data. When the format of electronic data is in Excel, the auditor is able to read and analyze the data. However, if the data file has more than 3,000 records, computer assisted auditing will provide better coverage.

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When analyzing the taxpayer's returns, the system will create a transcript using the taxpayer's filed returns for the auditor to compare to the Department's records. From the Returns as Filed transcript, the Schedule 3 Sales Reconciliation and the Schedule 5 Sales/Use Tax Collections Reconciliation may be started. Additional documents required to perform a thorough analysis of the Returns as Filed include but are not limited to:

- Backup documentation for Use Tax self-assessment.
- Records which will be used to verify total sales, sales tax collected, and sales tax paid to the Department.
- Federal returns
- The taxpayer's Statement of Customer which shows any outstanding assessments or credits.

The benefits of analyzing returns as filed are as follows:

- Verifies taxpayer reporting accuracy
- Identifies periods with missing returns
- Identifies cyclical sales periods
- Identifies mathematical errors
- Identifies improperly taken discounts
- Identifies extent of Use Tax self-assessment
- Identifies use of credits as a form of payment
- Identifies what types of deductions are being taken
- Identifies if deductions are claimed by elimination
- Identifies high concentration of a particular deduction
- Identifies if there might be a Service Occupation Tax liability
- Identifies if there might be a Service Use Tax liability
- Identifies trends in filing

Commonly, taxpayers claim exemptions for non-taxable sales by deducting them on their sales tax returns. It is likely that the taxpayer has also segregated and specifically identified the individual transactions claimed as exempt. This may simplify the identification and verification of these non-taxable sales deductions.

Deductions may be sampled or examined in detail. Some very common errors made by taxpayers claiming deductions on their returns are:

- the elimination of non-taxable sales from gross sales on Line 1 and also deducting them on the return; and
- the deduction of non-taxable sales twice on the same or multiple returns. This can happen when the sale could qualify as a deduction under several different categories.

The auditor may elect to examine all deductions, or several deductions claimed simultaneously and prepare only one set of schedules and workpapers. For example, the accuracy of all non-taxable transactions (resale, interstate commerce, exempt organizations, etc.) may be verified by selecting a given sample of total transactions. The individual methods used to verify deductions is somewhat flexible. It is important that some discretion be permitted in choosing an audit approach that best fits each individual situation. However, the auditor should discuss the verification methods used with the

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taxpayer and document it in the audit file.

Whatever approach is taken to verify the accuracy of deductions must be fair. If sampling is used, the sample method should be unbiased. Most importantly, the methods used should be explained and documented in the audit file. Lastly, the audit approach must be discussed with the taxpayer to avoid any misunderstanding which could result in an unagreed case.

When conducting the examination of deductions claimed by the taxpayer, documentation is required to support any adjustments made in the audit workpapers. (86 Ill. Adm. Code 130.810) Transactions which are disallowed should be clearly identified in the audit working papers.

As part of every audit assignment, the auditor must determine if the taxpayer owes Use Tax. Use Tax on purchases may be paid by taxpayers to their suppliers or by self-assessment on their sales tax returns. Use Tax liability will be established per the audit when the taxpayer fails to do either. The examination for Use Tax on purchases is required only when the taxpayer has operations in Illinois. Only items purchased and/or used in the State are subject to the tax. Review 86 Ill. Adm. Code Part 150.

There are three significant areas in the Use Tax on purchases examinations:

- 1) Fixed Assets
- 2) Consumable Supplies
- 3) Inventory Withdrawals for Personal Use or Consumption

Fixed asset purchases are items that are capitalized and normally depreciated for Federal Income Tax purposes. Generally, fixed assets are reviewed in detail, however, in very large audits where a considerable amount of fixed asset purchases are made, sampling may be used to examine them for Use Tax liability. The method of sampling should be discussed with the auditor's supervisor.

Control over fixed asset purchases can usually be gained through the following records:

- 1) General Ledger Accounts
- 2) Federal Income Tax Depreciation Backup Schedules
- 3) Form 4562, Federal Income Tax Depreciation and Amortization Return
- 4) Cash Disbursement Journal

The auditor is not limited to any of the above control records. The taxpayer may have some other kind of control records which better facilitates the audit. Certain statutory exemptions have limited the taxability of assets, i.e., purchases (machinery and equipment) made by manufacturers, those involved in graphic arts (printers), and coal and aggregate mining. The auditor should become familiar with the current regulations regarding these areas to avoid assessing Use Tax on purchases that are exempt.

Consumable Supplies is another area that auditors examine. These are purchases used by the taxpayer during their operations. They generally constitute expenses since the item is consumed or has an extremely short useful life. The taxpayer is the end user of these items since they are not resold, and the taxpayer derives the economic benefit from them. The auditor is not limited to only examining these records. The taxpayer may have some other kind of controlling record or mechanism which better facilitates the examination. The taxpayer's "Chart of Accounts" should be utilized for defining

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taxable areas and uses. However, an auditor should not let the taxpayer's classification (account number) of a purchase exclusively govern Use Tax implications.

Normally, a purchase of inventory is classified as such because it will be resold (as is) or incorporated into a product which is sold as a part of the taxpayer's daily sales activity; this is true of a manufacturer, dealer-distributor, etc. Obviously, no Use Tax is due on these purchases. However, there are cases where a taxpayer may classify a purchase as "inventory", but the product is actually used or consumed and not resold. Auditors must be aware of how an item is used in the taxpayer's business.

Any items originally purchased for resale and placed in inventory which were removed and used, or consumed by the taxpayer, and not sold should also be part of the Use Tax examination. Examples of this type of transaction include an automobile dealer taking parts from inventory to use in repairing the company service truck, or a retail store taking light bulbs off the shelf to replace those that burn out in the store.

These transactions are normally recorded by one of the following methods:

- 1) General Journal Entries
- 2) Inventory Requisitions
- 3) Company Sales Accounts or Company Accounts Receivable

Use Tax would be due on these transactions at the time the items were converted to use or consumed. This is true even if the items were originally purchased during periods barred by statute in the audit. The base used to compute the tax due would be the original cost of the item purchased, even though the internal entries may show the normal selling price of the items transferred.

When looking at invoices from out-of-state (not another country) vendors, there may be instances where tax has been charged and it is not clear whether it was Illinois tax or tax charged by the vendor's home state. If the taxpayer took possession of the purchase at the vendor location outside Illinois, then the transaction will generally be regarded as occurring outside Illinois. In this instance, the tax may be regarded as properly paid to the out of state vendor and the taxpayer would be allowed a credit against the Illinois use tax due when they brought it into Illinois. If the out-of-state (not another country) tax rate is less than the Illinois rate (6.25%) then the taxpayer is required to pay the difference. However, if the out-of-state (not another country) tax rate is higher than the Illinois rate of (6.25%) then no additional tax is due to Illinois nor may the taxpayer request a refund from Illinois for the additional tax paid to the other state. Additionally, if the item was shipped directly to the taxpayer, then Illinois Use Tax may be included on the invoice.

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### 6.14.1 Overview

There are many documents within the audit file which allow for the auditor to record important details related to the audit. Some of these important details include taxpayer's names, business names, locations, etc. There are areas in the audit file where taxpayers' names and account numbers should be included and other areas where the use of a taxpayer's name should be avoided. A taxpayer's Account ID should be used rather than their SSN. SSNs should never be included in the audit file.

The following are reminders which should be followed.

- **EDC-5 (History Worksheet)** – This should be a document that lists what occurs during the audit process including
  - the work that is completed on a daily basis,
  - the hours charged on the audit for each day,
  - the individual that is the audit contact for the taxpayer,
  - summaries of any meetings held and the participants in the meeting,
  - summaries of discussions or emails between the auditor and the taxpayer(s) or their representative(s), and
  - discussions between the auditor and other members of the Audit Area or the Agency (such as Supervisor, Technical Support Personnel, Legal Personnel, etc.).

**Note:** Any email correspondence should not be included in its entirety in the EDC-5; only summaries should be added to the EDC-5 and the actual email sent or received should be included in the correspondence folder of the audit file.

There is no issue with disclosing confidential information by listing the name(s) of the individual(s) who is the Audit Contact or any individual(s) that participated in meetings or discussions. Account numbers do not need to be included and SSNs should never be included.

- **Audit Narrative** – The name(s) of the Audit Contact should be included in the Audit Narrative as this would not disclose any confidential information and would be very important information for the follow-up audit.
- **Compliance Checks** – The owner/officer compliance check findings along with business income tax, withholding tax, etc. compliance check findings should be noted in the Compliance Checks section of the Audit Narrative with a general statement. Account numbers do not need to be included; FEINs and SSNs should never be included.

If any individual/entity is found non-compliant, state that the individual/entity was notified and, if applicable, an audit referral was submitted (the name of the non-compliant individual/entity should not be included in the Narrative).

Example: Compliance checks were performed; all related parties are in good standing.

Compliance checks were performed; the impacted party was informed and/or audit referrals were submitted for non-filed accounts/periods.

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### 6.14.2 Schedule 3 (Sales Reconciliation) Working Paper

The purpose of a Schedule 3 Sales Reconciliation is to document control over sales. It is also the preferred method for an auditor to verify that they have access to all the taxpayer's sales information. The Schedule 3 working paper allows the auditor to reconcile the sales reported on sales tax returns with the sales reported from other sources. The data sources reconciled depend on the type of audit. Ideally, it will ensure that all the taxpayer's sales activity is accounted for, and how it was reported on the sales tax return. There are three categories of adjustments:

1. Affecting the tax liability
2. Having no effect on tax liability
3. Adjustments that require further analysis

Examples of Schedule 3 Adjustments:

1. Sales Taxes Collected
2. Non-Taxable Sales Eliminated from the Return
3. Post-filing Records Changes
4. Differences in Sales Reporting Methods – Cash vs. Accrual

The auditor should reconcile sales by comparing three sources:

- Total Receipts as reported on Line 1 of the ST-1
- Gross Receipts or Sales as reported on the Federal Income Tax Return (FIT) (Line 1 or 1a)
- Total sales as reported on the company's income statement or other records

All adjustments made in preparing the sales reconciliation must be properly identified and explained. Descriptions of adjustments should be specific so that those reviewing the audit understand why an adjustment was made. Most adjustments will represent a large number of similar transactions, for example, "nontaxable sales for resale claimed by elimination." In these instances, indicate the adjustment in total rather than document each individual transaction for the entire audit period. Where adjustments of this type are made to increase the tax liability, backup work papers, such as test check schedules, should be used as the basis for documentation.

If un-reconcilable differences remain after making a reasonable effort to reconcile sales, control of sales may need to be established by other means; you may need to contact the taxpayer to discuss your findings. Any such decision, and the reasons must be documented in the audit file. The presence of over-reported sales, in the absence of any supporting information, on the sales reconciliation does not constitute a valid claim. Any claim must be properly documented and adhere to the requirements of all claims to be valid. See Chapter 8 for further discussion of claims.

#### **Common Sales Adjustments – Schedule 3**

Below are some common adjustments made during the reconciliation process:

- **Sales Taxes Collected** - The taxes collected on a sale of tangible personal property is included in the ST-1 Line 1 amount, but not generally in the FIT and Records sales totals, so this amount must be added to both the FIT and Records totals.

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- **Geographical Differences** - Since the FIT and usually the Records sales totals include all sales throughout the country, sales from outside the state that are not made to purchasers in Illinois may need to be subtracted from the FIT and Records columns.
- **Eliminated Sales** - If a taxpayer eliminates some or all of their non-taxable sales, these will need to be subtracted from the FIT and Records columns if they are truly non-taxable or added to the ST-1 column if they are taxable.
- **Post-Filing Record Changes** - It's not uncommon for smaller taxpayers to only have their records reviewed by an accountant a few times per year. In some cases, the outside accountant will make adjustments to the recorded sales totals. Since ST-1s are generally prepared monthly, the sales totals at the time the returns are filed can be different from the sales totals used to prepare the year end income statement and tax returns. The adjustments you need to make may be to the ST-1, FIT, and/or Records column and may be positive or negative depending on the specific circumstances.
- **Accounting Basis Differences** - The preferred method of reporting sales taxes on the ST-1 is the Gross Receipts Method (cash basis) which has the sale reported in the month in which payments are received. In many cases, however, taxpayers are required to report their sales on the FIT and in their Records using the Gross Sales Method (accrual basis). Although less common, it is also possible for a taxpayer to report sales on the ST-1 using the Gross Sales Method and sales on the FIT and or Records on the Gross Receipts Method.
- **Sales Reconciliation Materiality** - In many cases, it's not practical to perfectly reconcile reported sales totals. The goal when performing the sales reconciliation is not to bring the totals into perfect balance but to ensure all sales were accounted for by the taxpayer when preparing the ST-1. If the auditor can reconcile to the point where the differences are immaterial, there is no reason to continue with the reconciliation.

### 6.14.3 Schedule 5 (Tax Reconciliation) Working Paper

The Schedule 5 reconciles the taxes collected by the taxpayer with the taxes they remitted to the Department. This working paper won't be required on every audit therefore, the auditor will manually add it to the audit when they need it. This schedule reconciles by month or filing period the tax collected reported on the return with what is recorded in the taxpayer's Illinois Tax Accrual Account.

Taxpayers must have records that show sales tax was collected. The regulations require that the tax be separately stated to the purchaser apart from the selling price of tangible personal property sold. Taxpayers can prove compliance with these requirements by showing the tax charged as a separate item on invoices, sales tickets, or cash register tapes given to customers at the time of sale.

There are limited situations where it is not possible or practical to show tax charged as a separate item. In these situations, taxpayers may post a sign publicly stating that the price of the items sold includes appropriate sales taxes. For example, businesses such as taverns, food trucks or fair food vendors may post a sign that tax is collected, but most conventional retailers such as furniture stores or

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hardware stores or restaurants, to name a few, indicate the tax collection on their sales receipts. This sign procedure may not be relied on to prove collection of tax on transactions where taxpayers normally issue invoices or sales tickets to their customers. Taxpayers who use signs to prove collection of tax must date and retain all signs as a part of their books and records. 86 Ill. Adm. Code 130.801

The amount entered as “tax collected” on the ST-1 return Schedule A should be the actual amount of tax collected per the taxpayer's books and records. Taxpayers who do not separately state “tax” was charged to their customers will not be entitled to claim a deduction for tax collected on their ST-1 returns. For example, a taxpayer invoices a customer for \$395 and does not list the tax on the invoice nor separate it out in their records; however, on the ST-1, Schedule A, the taxpayer identifies \$36 tax (10% tax rate) was collected. When a taxpayer takes a tax collected deduction as in this example, the auditor should disallow the tax collected deduction and take the amount the taxpayer stated was collected and add it back to taxable receipts (sales). If the tax collected deduction amount includes local taxes which the Department does not collect, these local taxes should be deducted on Line 16 of the ST-1 (i.e., Municipal Food and Beverage Tax administered by the city of Edwardsville).

If taxpayers collect tax amounts from their customers in excess of what is properly due by law, they should either refund the excess tax to their customers or pay it to the Department. A review of the amount of tax collected on invoices may reveal excess tax collections. When this is uncovered in an audit, the amount over collected is assessed. Over collection of tax is treated as a penalty by the Department so interest is not assessed. (86 Ill. Adm. Code 130.901) Usually, Excess Tax is discovered during the sales review when the tax base is known. True overcollection of tax is that which is in excess of what is due.

Retailers who knowingly over collect tax from their customers are guilty of a Class 4 felony. (86 Ill. Admin. Code 130.910) Taxpayers must be made aware of their responsibilities in this area when problems come to the Department's attention by issuing the EDA-120 Notice of Audit Noncompliance.

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Once workpapers are approved by the supervisor, and certain audit stages are selected, the following reports may be available on the taxpayer's MyTax account. If the taxpayer does not have a MyTax account or the auditor wants to provide a copy immediately, the auditor will need to manually print the letters. These letters are used by the auditor to calculate the taxpayer's liability or credit. Please note, although, these letters may be manually created for regular audits, the auditor should not attempt to generate these for Wayfair/CAA audits due to the volume of information generated from these types of audits that no one will likely need or want.

- EDA-170 Global Exceptions Accumulations Allowed (general)\*
- EDA-171 Global Taxable Exceptions Detailed Report (general)\*
- EDA-171-A Accrual Reconciliation Exceptions Summary
- EDA-171-T Taxable Exceptions Summary\*
- EDA-172 Exceptions Projection Summary\*
- EDA-172-K 1099-K Exception Projection Summary\*
- EDA-172-M Markup Exception Projection Summary
- EDA-174 Interest Computation Summary Report
- EDA-175 Penalty Computation Summary Report
- EDA-176 Multi-site Summary Report\*

\*letter will not auto generate during staging changes of an audit.

**6.16.1 Overview**

Auditors may present taxpayers with tentative audits results as the audit progresses. These results are not considered final. The entire audit must be reviewed by the Revenue Audit Supervisor before presenting the preliminary results and offering informal protest rights. Even if the auditor has provided tentative results, they cannot provide the Audit Report for signature until the Supervisor has completely reviewed the audit.

All audits under the *RAS Review* stage must be *thoroughly* reviewed by the Supervisor. When reviewing audits, the supervisor should confirm all required and necessary documents have been included and are complete in the audit file, all related cases are closed, work items are completed, and working papers have been submitted for approval. Essentially, once the stage has been changed to *RAS Review*, the audit is complete.

One of the most challenging aspects of being an auditor is closing the audit with the taxpayer and providing them with the liability due. A quality audit may have been performed but adjustments must still be explained to the taxpayer. The auditor should explain their findings in a way the taxpayer will understand. The auditor should be confident with their results and know that they did the audit to the best of their ability with the best available information provided.

The key to being effective at closing the case with the taxpayer is being properly prepared. Auditors should take time before the closing conference to review and re-review the schedules and work papers. The materials should be in the logical order in which they will be discussed. To avoid confusion, only one schedule or work paper should be discussed at a time. An attempt should be made to anticipate possible questions that may arise in each area that will be discussed and research performed to prepare answers to these questions beforehand.

Once the audit has been reviewed by the Supervisor and approved to present to the Taxpayer, the audit should be complete at this time and no changes should be made. However, there may be exceptions to this rule. If a situation arises where changes are needed after the supervisor's approval, the Supervisor should be contacted for guidance. When presenting the audit results, the auditor should have a discussion with the taxpayer explaining the adjustments and to find out if the taxpayer agrees or disagrees with the audit findings.

**6.16.2 Agreed Audits**

If the taxpayer indicates agreement with the auditor's proposed adjustments, the audit process can be expedited so the taxpayer can sign the required processing documents and complete the audit. The auditor must issue the Notice of Proposed (EDA-8-NOPS) with the ICB Waiver and secure the taxpayer's signature on the waiver prior to issuing signable auditor reports. The signable Auditor's Reports must be issued with the Notice of Audit Results.

**6.16.3 Unagreed Audits**

Eligible taxpayers must be offered the ability to petition for Fast Track Resolution (FTR) and all taxpayers must be offered their ICB rights.

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- **Fast Track Resolution (Sales Tax)**

Eligible taxpayers must be issued the Audit FTR Program Notice of Eligible Tax Liability, (EDA-8-FTRNOP) to notify them of their ability to request an FTR conference.

- **Informal Conference Board (ICB)**

If a taxpayer is ineligible for FTR, does not petition FTR within 20 days, or they fail to reach an FTR agreement, they must be given the Proposed Audit Results Notice of Proposed Tax Liability (EDA-8-NOPS) providing the option to petition ICB.

#### 6.16.4 EDA-120 Notice Of Audit Noncompliance

Auditors should issue the *EDA-120 Notice of Audit Non-Compliance* letter once they have identified all significant areas of noncompliance in a sales or miscellaneous tax audit. They should use the non-protest version of the form until an updated form is developed. (The EDA-120 was originally set up to issue after the auditor knew whether the taxpayer would agree to the audit results, which is why there is a protest version and a non-protest version.)

**In addition, auditors no longer need to seek a signature from the taxpayer or sign the EDA-120 themselves.**

The EDA-120 is used to document that an auditor informed the taxpayer of the areas where they were not in compliance with tax laws or regulations. It provides support for a fraud or negligence penalty for later tax periods if the taxpayer fails to come into compliance. It can be used for Sales and Miscellaneous Taxes that incorporate the Uniform Penalty and Interest Act.

#### **When to Issue the EDA-120**

Management expects auditors to issue the EDA-120 to the taxpayer when they identify significant areas of noncompliance. It should not be issued to document the minor noncompliance issues that occur in most audits.

Some examples of significant noncompliance issues include

- 1) Failing to keep or provide a major portion of the records required by 86 Ill. Adm. Code 130.801 and 86 Ill. Adm. Code 130.805
- 2) Failing to obtain and/or provide exemption documentation for most or all their exempt customers
- 3) Being unable to provide documentation to support the numbers recorded on tax returns
- 4) Failing to collect tax from large groups of customers or certain types of sales
- 5) Failing to collect and/or report the correct local taxes
- 6) Reporting high-rate sales as low-rate sales for no credible reason
- 7) Including taxes in the selling price when the taxpayer is ineligible to use the posted sign method
- 8) Charging ROT on materials converted to real property as part of a construction contract
- 9) Issuing a Certificate of Resale to a supplier for items purchased for the taxpayer's own use

**Note:** The EDA-120 should always be issued when the Records Penalty is imposed.

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Some examples of minor noncompliance issues include

- 1) Failing to keep records that had no material impact on the auditor's ability to complete the audit
- 2) Accepting inadequate exemption documentation from some customers
- 3) Failing to keep a small amount of purchase invoices
- 4) Failing to provide records that are not required to be kept by statute or regulation
- 5) Incorrectly collecting low-rate tax on some high-rate items
- 6) Claiming an exemption based on a different interpretation of the statutes
- 7) Failing to display a Certificate of Registration

If an auditor is unsure whether an area of noncompliance is a major or minor noncompliance issue, they should consult with their RAS and/or ADM.

When possible, auditors should include all significant noncompliance issues on one EDA-120 generated towards the end of the audit. There may be situations, however, where an auditor may need to issue more than one EDA-120. For example, an auditor may believe they need to issue an early EDA-120 to try to encourage a taxpayer to come into immediate compliance. Auditors may also need to issue an additional EDA-120 if they identify more than five areas of noncompliance since the current version of the form is limited to five entries.

### **Completing the EDA-120**

Before completing the EDA-120, auditors must first discuss the identified issues with the taxpayer or their representative to give them an opportunity to explain why they believe they reasonably complied with the applicable rules. This can be done in person, by phone, or through email and must be documented in the *EDC-5 Audit History Worksheet*.

The EDA-120 must identify the person with whom the auditor discussed the noncompliance issues. It must also list both the noncompliance issues and the regulations or other references which explains the compliance requirements. The goal is to clearly define the issues while also referring the taxpayer to the references which explain the applicable rules.

**Example:** "You did not keep cash register tapes or other data which provides a daily record of your gross amount of sales as required by 86 Ill. Adm. Code 130.805."

**Example:** "You only collected Certificates of Registration from your customers claiming a resale exemption. Most resale customers must provide a valid Certificates of Resale. See 86 Ill. Adm. Code 130.1405, for more information on the requirements to document a sale for resale."

**Example:** "You incorrectly reported your restaurants sales on Line 5a of the ST-1 as sales subject to the low-rate of tax. As explained in 86 Ill. Adm. Code 130.310, food sold by restaurants is generally considered food prepared for immediate consumption and is reportable at the high-rate of tax."

### **Processing the EDA-120**

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After issuing the EDA-120, auditors no longer need to request that the taxpayer sign the notice as confirmation the issues were discussed. If the taxpayer does manually sign the notice, the signed EDA-120 should be included in the audit's **CRM** tab and **Electronic Documents** sub-tab. If the taxpayer signs the EDA-120 through MyTax, the electronically signed version will be found in the audit's **CRM** tab and **Associated Items** sub-tab as an *Audit Response: Signature Response*. A response received through MyTax does not need to be attached to the **Electronic Documents** sub-tab. In either case, auditors are not required to sign the EDA-120, but the receipt of the signed notice must be documented in their EDC-5 Audit History Worksheet.

**Note:** The EDA-120 will be updated to eliminate the signature lines for both the taxpayer and the auditor. When this update is complete, the EDA-120 will be issued and documented in the EDC-5 like other letters which do not require a response.

### **EDC-5 Audit History Worksheet Entries**

In conjunction with issuing the EDA-120, the EDC-5 plays a vital role in supporting the reason the negligence and/or fraud penalty was applied in follow-up audits.

Any communication between the auditor and the taxpayer about noncompliance issues should be well-documented in the EDC-5. Email correspondence must be included in the **Electronic Documents** sub-tab or in a corresponding case. Even in a situation where a taxpayer does not give a response, it is important to document that an attempt to communicate was made and that no reply was given. The discrepancies found may have a legitimate reason for existing, and that is why communication is so important.

### **The Impact of the EDA-120 on Later Audits**

If the EDA-120 was issued during a prior audit, the auditor must discuss it in their *Fraud/Negligence Case*, if applicable, and *Narrative Working Paper*. They should mention the key details such as the date the EDA-120 was issued in the previous audit and the actions the taxpayer took, if any, to come into compliance after receiving the letter.

If the taxpayer did not make the required improvements after receiving the letter, the auditor should consider that when conducting a Badges of Fraud analysis to identify whether the negligence or fraud penalties apply.

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The taxpayer should be directed to the Audit Fast Track Resolution Fact Sheet on the Department's website.

The Illinois Department of Revenue's (IDOR) Fast Track Resolution (FTR) program provides a forum for the prompt resolution of disputed audit issues while the case is still under the authority of the Audit Bureau. The FTR program consists of a one-day conference between the taxpayer or authorized designee, an FTR facilitator, and members of the Audit Bureau who are independent of the unresolved audit.

The EDA-8-FTRNOPS Notice of Eligible Liability or Claim Denial is presented to the taxpayer at the conclusion of field work to document the findings if they are eligible to participate in the Fast Track Resolution Program. The issuance of this letter begins the taxpayer's 20-day review period to request a conference. The Fast Track Resolution (FTR) Program allows the taxpayer the opportunity to resolve disputed audit issues with the assistance of an FTR Facilitator.

The FTR program application (IDOR-8-FTR1) also contains a waiver of the statute of limitations and a Confidentiality Agreement that must be signed at the time the application is filed. The waiver is active from the date that the application is filed through 120 days after the issuance of a closing memorandum signifying the conclusion of the FTR process.

The FTR program will not entertain offers in compromise only. Each applicant must also raise an issue with the audit that identifies a legal challenge to the audit. If the only item listed is an offer in compromise or they want to discuss the audit without raising an issue, the application may be rejected.

If no resolution is reached at the FTR Conference, the taxpayer withdraws, or the FTR application is denied, the taxpayer will still retain their ICB rights, and the auditor will provide the taxpayer with the appropriate ICB notice after the FTR Closing Memorandum (IDOR-8-FTR6) is issued.

### 6.18.1 Overview

The Informal Conference Board (ICB) was established for the purpose of reviewing unagreed proposed audit adjustments before the issuance of any statutory notice that would require a formal protest to resolve the issues. ICB's primary goal is to ensure that the Illinois Department of Revenue's (IDOR's) proposed audit adjustments are correct and to resolve disputes. ICB will not accept an offer in compromise based on ability to pay. Information regarding the ICB is available on the Department's website in the PIO-58. 86 Ill. Adm. Code 215.

To apply for ICB, the taxpayer must fill out Form ICB-1 Request for Informal Conference Board Review found on the Department's website. Within the ICB application is a waiver of statute of limitations. This waiver runs from the date the request for ICB review is received and accepted by ICB through 180 days after the ICB issues the Action Decision. (86 Ill Adm. Code 215.120(f)). Whenever possible, the Action Decision should be issued within 120 days after receipt of the taxpayer's request for review.

ICB decisions are binding on the Audit Bureau regardless of taxpayer agreement unless the final ICB resolution is a settlement that requires taxpayer agreement. Taxpayers do not have the right to appeal the Action Decision; however, the taxpayer may disagree with the Decision and pursue other formal protest options; such as Administrative Hearing, Tax Tribunal or Circuit Court. The Notice of Tax Liability or Claim denial must be issued for the audit to reach the level of a formal protest.

Per 86 Ill. Adm. Code 215.120(c):

“Documentation or information submitted to the ICB in writing or as part of an Informal conference, other than offers of disposition, may become part of the Department's audit file or may be reviewed by the Audit Bureau.”

If there are less than 60 days left on statute, the auditor is not generally required to issue the Notice of Proposed Liability and provide ICB rights. However, if the taxpayer indicates they want to go to ICB and there is a short statute, the taxpayer should be provided a four-month waiver to allow them the opportunity to apply to ICB, but still allow the Department time to issue the protestable notice in the event the taxpayer ultimately does not go to ICB.

Some important facts regarding ICB are

- The only issues that will be addressed in the ICB Conference are the issues brought forward by the taxpayer.
- If during an ICB review an auditor or ICB Conferee finds additional tax liability for an issue not raised by the taxpayer, that additional liability cannot be adjusted in the ICB conference or subsequent to the ICB Conference (unless it is a computational error).
- It is also true if the situation is reversed and the auditor over-assessed the taxpayer, if that issue is not brought forward by the taxpayer, then no adjustment will be made in the ICB Conference or subsequent to the Conference.
- ICB's primary goal is to ensure that the Illinois Department of Revenue's (IDOR's) proposed audit adjustments are correct in order to resolve disputes at the earliest possible time. However, it is not ICB's responsibility to re-audit the original audit concerning any issues not brought forward by the taxpayer (unless it is a computational error).

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The Notice of Proposed Audit Results (EDA-8-NOPS) is presented to the taxpayer at the conclusion of field work to document the findings. It is presented after the taxpayer's Fast Track Resolution conference has been concluded if the taxpayer is eligible and their application is accepted. This letter begins the taxpayer's 60-day review period during which they may petition the Informal Conference Board. The EDA-8-NOPS lists the calculated changes to tax, penalties, and interest due found in the audit. It is primarily used to inform the taxpayer that the audit resulted in an increase in calculated liability, but it is also the default letter to use if there is no other letter which covers the particular audit situation.

The taxpayer has 60 days to make a decision regarding whether or not to apply for ICB. If the taxpayer agrees to the proposed audit findings within the 60 days, the taxpayer must sign and return the ICB Waiver. Once the waiver is received from the taxpayer, the auditor will prepare the appropriate final audit report.

The signable Auditor's Report (EDA-8-ARO) cannot be issued simultaneously with ICB Notices. Instead, they **must** be issued 60 days after the ICB Notice was issued (unless the taxpayer waives their right to seek an ICB review). Interest continues to accrue until the audit tax liability is paid. If the taxpayer pays the tax liability within 30 days of receiving the Auditor's Report and signs the Auditor's Report, the late payment penalty rate will be 15%. If the taxpayer pays after 30 days of being provided the Auditor's Report, the late payment penalty imposed is 20%. If the Auditor's Report is not signed, the late payment penalty will also increase to 20% even if the taxpayer pays the tax liability within 30 days.

**NOTE:** The Department will not issue an EDA-8-NOPS Notice of Proposed Audit Results when the taxpayer refuses to extend the statute of limitations when those statutes will expire prior to the expiration of the 60-day period for seeking Informal Conference Board review.

- The only issues that will be addressed in the ICB Conference are the issues brought forward by the taxpayer.
- If during an ICB review an auditor or ICB Conferee finds additional tax liability for an issue not raised by the taxpayer, that additional liability cannot be adjusted in the ICB conference or subsequent to the ICB Conference (unless it is a computational error).
- It is also true if the situation is reversed and the auditor over-assessed the taxpayer, if that issue is not brought forward by the taxpayer, then no adjustment will be made in the ICB Conference or subsequent to the Conference.
- ICB's primary goal is to ensure that the Illinois Department of Revenue's (IDOR's) proposed audit adjustments are correct in order to resolve disputes at the earliest possible time. However, it is not ICB's responsibility to re-audit the original audit concerning any issues not brought forward by the taxpayer (unless it is a computational error).

### 6.18.2 Pre-ICB Review

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It is **imperative** that the Supervisor **thoroughly** reviews the completed audit before it goes to ICB, and if the audit is not technically or mathematically correct, the audit should be returned to the auditor for revisions or corrections.

Audit Technical Review will only need to conduct a thorough pre-ICB review when an audit is accepted by the ICB. The audits should only be assigned to a Reviewer once ICB has accepted jurisdiction.

### 6.18.3 Corrections Needed/ ICB Clock

If the revisions or corrections result in additional liability being preliminarily assessed against the taxpayer, the original Notice of Proposed Liability or Proposed Notice of Claim Denial will need to be rescinded and a new Notice will need to be issued to the taxpayer (If the taxpayer **has not** already petitioned ICB – the 60-day clock restarts).

If the taxpayer **has** already petitioned and been accepted by the ICB and an error is discovered by Audit Review, the audit should be returned to the auditor for corrections and the auditor should notify the taxpayer of the revised liability/issue discovered and the taxpayer will be allowed to revise their issues that were originally addressed on the ICB-1 (the 60-day clock does not restart and the auditor does not need to re-issue the Notice).

### 6.18.4 Documents/ Correspondence

It is also **imperative** for the auditor to include all documentation received from the taxpayer in the Zip File or corresponding case as this information will need to be available for the Supervisor, Audit Review personnel, and the ICB Conferee (assuming taxpayer petitions ICB and is accepted) to review to support the audit findings and to dispute the arguments brought forward by the taxpayer at the Conference.

Additionally, all e-mail correspondence (e.g., status updates, conversation summaries, etc.) associated with an audit from the time the auditor is assigned the audit to the time the auditor concludes the audit must be included in the Audit File or corresponding case. Emails are subject to discovery if the audit is formally protested.

### 6.19.1 Overview

The Uniform Penalty and Interest Act (UPIA) was originally implemented on January 1, 1994, to standardize the penalty and interest basis and rates across most of Department administered taxes.

It applies to **all** taxes the Department administers **except** the following:

- The Racing Privilege Tax Act
- The Revenue Act of 1939 (Repealed by Public Act 88-455)
- The Real Estate Transfer Tax Act
- The Coin-Operated Amusement Device and Redemption Machine Tax Act
- The Motor Fuel Use Tax Act (IFTA - International Fuel Tax Agreement)

The UPIA applies to any returns that are unprocessable, filed late, paid late, or underpaid. Refer to Publication 103 Penalties and Interest for Illinois Taxpayers.

### 6.19.2 Uniform Penalty And Interest Act (UPIA) – Interest

Interest paid by the Department to taxpayers and interest charged to taxpayers by the Department are both calculated in the same manner. **Public Act 98-0425** changed the way interest is calculated by amending Section 3-2 of the Uniform Penalty and Interest Act [[35 ILCS 735/3-2\(a\)](#)]. Effective January 1, 2014, there is no two-tier interest system for returns due on and after January 1, 2014. Actual statutory language follows:

#### Sec. 3-2. Interest.

Interest paid by the Department to taxpayers and interest charged to taxpayers by the Department shall be paid at the annual rate determined by the Department. For periods prior to January 1, 2004, and after December 31, 2013, that rate shall be the underpayment rate established under Section 6621 of the Internal Revenue Code. For periods after December 31, 2003, and prior to January 1, 2014, that rate shall be:

(1) for the one-year period beginning with the date of underpayment or overpayment, the short-term federal rate established under Section 6621 of the Internal Revenue Code.

(2) for any period beginning the day after the one-year period described in paragraph (1) of this subsection (a), the underpayment rate established under Section 6621 of the Internal Revenue Code.

#### 6.19.2.1 Interest Calculations

Audit Bureau personnel typically calculate interest using the Department-approved software but understanding how to manually calculate interest can be useful when explaining interest to a taxpayer. The auditor would find it helpful to use the Department-approved software on Excise Tax audits to calculate penalty and interest or on claim audits with payment dates different from the due dates. Refer to Publication 103 for Penalty and Interest.

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This calculation must be performed for each tax period and for each change in the interest rate or tax liability due. In this example, when using the Department-approved software, the original due date used is June 20, 2020, and the amount due is \$10,000. The interest thru date would be the date when the payment was made (June 30, 2020). This will provide the taxpayer with the interest due calculation of \$13.66.

### 6.19.2.2 Interest Charged to Taxpayer

Interest begins to accrue the day after the payment due date and continues until the tax is paid regardless to extensions of time for filing returns. It is rounded to the nearest dollar on audit reports. (86 Ill. Adm. Code 700.220). If a taxpayer is going to pay the audit on a particular day which is after the interest through date, they will have to apply rounding rules.

### 6.19.2.3 Interest Paid by The Department

Unless an overpayment is refunded, or a credit is approved *within* 90 days after the return due date, interest is paid to the taxpayer from the later of the due date of the original return, the date a processable return is filed, or the date of overpayment. Interest continues to accrue until the overpayment is refunded, applied to a liability, or converted to a credit memorandum (whichever is latest). (86 Ill. Adm. Code 700.230).

For the purposes of computing interest, a return shall be deemed to be processable unless the Department notifies the taxpayer that the return is not processable within 90 days after the receipt of the return; however, interest shall not accumulate for the period following this date of notice.

### 6.19.2.4 Interest through Date

The “interest through date” is simply the date through which interest is calculated. The specific interest through date used in calculations varies depending on the circumstances. In many cases it is the current date or the last day of the month. It can also be a future date when estimating what will be due or a past date when accounting for a prior taxpayer payment. If the Auditor’s Report is mailed to the taxpayer, the last day of the next full month should be recorded as the interest through and payment due date.

**Daily Interest Calculation** - Auditors need to provide taxpayers with the approximate amount their interest increases each day on unpaid liabilities. This amount must be both listed on the Notice of Audit Results (EDA-8-NAR) and explained to the taxpayer when presenting audit results.

The most basic way to calculate the daily interest increase is to calculate the total interest for the current date and then the total interest for the following day. The difference in interest amounts is the daily increase.

**Example:** On July 12, 2021, an auditor needs to calculate the daily interest for a \$10,000 audit tax liability on an original return liability due date of June 20, 2021. Using Department-approved software, they calculate that the interest due through July 12, 2021, is \$18.08. They then

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calculate that the interest due through July 13, 2021, is \$18.90. The daily interest increase is the difference between these two amounts, \$0.90.

Auditors should explain to taxpayers that this amount is just an estimate. Due to rounding, the calculated amount between any two sets of adjacent days can vary by several cents. The more periods used in the calculation, the greater the potential difference.

This difference is generally irrelevant because the amount of interest recorded on the audit report is rounded to the nearest dollar, but if the taxpayer takes a long time to pay, the difference can be noticeable. In addition, changes in the effective interest rate will also impact the daily interest increase.

#### **6.19.2.5 Interest on Refund & Credits**

Effective November 1, 2022, the Illinois Department of Revenue adopted amendments to the Retailers' Occupation Tax, Service Occupation Tax, Use Tax, and Service Use Tax rules (86 Ill. Adm. Code 130.1520, 140.1420, 150.1420 and 160.151), explaining the unique nature of a verified credit and the ways it can be used.

Per the updated regulations, a verified credit arises when a taxpayer remits more tax than is due, and the Department can verify the overpayment from the face of the return. A verified credit may be used in the following ways:

1. The taxpayer may immediately use the verified credit against their liability on other periods without filing a claim for credit,
2. The taxpayer may request their verified credit be converted to a credit memorandum, or
3. The taxpayer may request their verified credit be converted to a credit memorandum and assigned to another taxpayer under the Retailers' Occupation Tax Act, the Service Occupation Tax Act, the Use Tax Act, or the Service Use Tax Act.

A credit memorandum is issued by the Department when a taxpayer files a claim for credit/refund and the Department has verified the claim is accurate. Regardless of which option the taxpayer decides, the verified credit does not expire. As part of a Department policy change, interest will no longer be paid on verified credits; this includes situations when a verified credit has been converted to a credit memorandum.

#### **6.19.2.6 Interest on Erroneous Refunds**

Interest on erroneous refunds is computed on the entire amount of the refund (including tax, penalty, and interest) from the date of the refund. When an erroneous refund is less than \$500 and is due to a mistake of the Department, no interest is charged. [\[35 ILCS 735/3-2\(e\)\]](#)

Interest will continue to accrue after the presentation of the Notice of Audit Results (EDA-8-NAR) and Auditor's Report (EDA-8-ARO) until the tax liability is paid.

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**6.19.3 Penalties [35 ILCS 735]**

Upon providing the taxpayer with the Audit Report and the EDA-8-NAR Notice of Audit Results, the Auditor should tell the taxpayer that the late payment penalty will be increased if the required amount is not paid within 30 days of the Notice of Audit Results.

Penalties are intended to promote voluntary compliance. They are not intended to be a source of revenue. If no sanctions were imposed for violating payment and filing requirements, there would be little incentive for some taxpayers to meet their obligations. Given the opportunity, most taxpayers will do the right thing. Occasionally, despite their best efforts, some will make a mistake. Penalties are not intended to punish a taxpayer for an occasional and honest mistake. Penalties are levied when a taxpayer has failed to take an action (e.g., file a proper return, make payment of taxes) in a timely or proper manner.

Penalties are assessed on the unpaid tax for each tax period and not the consolidated amount of tax reported as due on the audit report. Audit liabilities may be subject to Late Filing (or Non-Filing) Penalties (86 Ill. Adm. Code 700.300), Late Payment Penalties (86 Ill. Adm. Code 700.305), Records Penalty (86 Ill. Adm. Code 130.801), Negligence Penalties (86 Ill. Adm. Code 700.320) and/ or Fraud Penalties (86 Ill. Adm. Code 700.330). Transactional returns which are not filed should be assessed a \$100 penalty for failure to file by the required due date a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act. See Chapter 12 for more details regarding vehicle transactions or 86 Ill. Adm. Code 700.300 regarding the penalty.

Since penalties are assessed by return period, it is possible to have penalties due on an audit return with a net tax credit when the audit contains a mix of liability and credit periods.

**6.19.3.1 Fraud and Negligence Penalty Evaluations**

It is never acceptable to assess the fraud or negligence penalty simply based on the underreporting percentage. Auditors must instead analyze all the available facts to determine whether the taxpayer acted negligently or fraudulently when filing their return. This analysis should be done for both fraud and negligence determinations using the Badges of Fraud analysis.

Section 3-6 of the Uniform Penalty and Interest Act (UPIA) imposes a 50% penalty for fraud when a return, amended return, or claim is filed with intent to defraud. Establishing fraud requires a showing of intent to avoid paying taxes. (See *Vitale v. Ill. Dep't of Revenue*, 118 Ill. App. 3d 210, 213 (3d Dist. 1983)). There is no presumption that favors the Department's determination of fraud. (See *Brown Specialty Co. v. Allphin*, 75 Ill. App. 3d 845, 850-51 (3d Dist. 1979)). The Department has the burden to prove fraud, and it must do so clearly and convincingly.

While the UPIA does not provide guidance on what qualifies as an intent to defraud, a final judgment from the Illinois Tax Tribunal in case 15 TT 150, applied the "badges of fraud" used by the Federal courts. These "badges of fraud" include

- 1) understating income; [or gross receipts]<sup>1</sup>
- 2) failing to maintain adequate records;

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- 3) offering implausible or inconsistent explanations;
- 4) concealing income or assets;
- 5) failing to cooperate with tax authorities;
- 6) engaging in illegal activities;
- 7) providing incomplete or misleading information to the taxpayer's tax return preparer;
- 8) offering false or incredible testimony;
- 9) filing false documents, including filing false income tax returns; [or sales tax returns]<sup>1</sup>
- 10) failing to file tax returns<sup>2</sup>; and
- 11) engaging in extensive dealings in cash.

**Notes:**

- <sup>1</sup> The Federal courts primarily review income tax cases. The information in brackets above was added to the Federal "badges of fraud" list to identify the sales tax equivalent item.
- <sup>2</sup> The UPIA fraud penalty only applies to filed returns.

When determining whether to apply the fraud penalty, auditors should look for the badges of fraud. There is no set number that must exist to apply the fraud penalty. Instead, auditors must look at the number and importance of each badge and its overall relevance to the fraud determination. For example, demonstrating that a taxpayer failed to maintain records and engaged in cash dealings would likely be insufficient, on their own, to support a fraud determination. Submitting an altered bill of sale which lists a lower price than actually paid, however, would likely be sufficient to establish fraud.

If a taxpayer was previously issued an EDA-120 noncompliance letter, auditors must incorporate into their evaluation whether the taxpayer took reasonable actions to correct the specific areas of noncompliance listed on the letter. Failure to take reasonable actions to correct areas of noncompliance after receiving the letter may be an indicator of an intent by the taxpayer to defraud. In contrast, actions taken to correct areas of noncompliance may indicate that the taxpayer did not file returns with an intent to defraud.

**6.19.3.2 Records Penalty**

Auditors may assess the records penalty on an audit with RAS/ADM approval. The earliest period to assess the records penalty is August 2019.

As of August 17, 2018, [Public Act 100-940](#) amended the Retailers' Occupation Tax Act [35 ILCS 120/7], the Use Tax Act [35 ILCS 105/], the Service Occupation Tax Act [35 ILCS 115/], the Service Use Tax Act [35 ILCS 110/], the Cigarette Tax Act [35 ILCS 130/], the Cigarette Use Tax Act [35 ILCS 135] and the Tobacco Products Tax Act of 1995 [35 ILCS 143/]. In addition to these acts that were amended, the penalty was also incorporated by reference into many other statutes. This Public Act caused the Department to amend Sections 130.801 and 130.901 (both effective July 30, 2019) of the Department's regulations.

"Any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 7 of the Act and this Part, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty

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of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by Section 7 of the Act..." [\[35 ILCS 120/7\]](#)

The penalty may be imposed for failure to keep **or** failure to produce books and records for examination. The penalty may only be imposed once per period for either issue – failure to keep or failure to produce books and records for examination. However, the penalties should not be applied if the taxpayer is able to show they acted with ordinary business care and prudence. [\[35 ILCS 120/7\]](#)

"...When determining whether a taxpayer has acted with ordinary business care and prudence, the Department will consider the size of the business, the amount of gross receipts, the volume of sales, the nature of the business, the type and number of items sold by the business, the types of books and records requested, and whether the books and records provided constitute the minimum records required by Section 130.805..." [\(86 Ill. Adm. Code 130.801\(i\)\(7\)\)](#)

**EXAMPLE 1:** The auditor issued two EDA-70s and the EDA-11-A Notice of Demand for Books and Records to the taxpayer requesting sales receipts for the audit period of March 2021 through December 2021. The taxpayer responded to the EDA-11-A with copies of their sales receipts for May 2021 through November 2021. The taxpayer failed to provide records for March 2021, April 2021, and December 2021 due to the records being lost in a flood. The taxpayer was able to provide the auditor with documentation showing that a flood did occur and ruined some of the taxpayer's property where the records were kept. In this case, the taxpayer should not be assessed the penalty because the taxpayer was able to show he or she acted with ordinary business care and prudence.

**EXAMPLE 2:** The auditor issued two EDA-70s for the audit period of January 2019 to December 2021 and the EDA-11-A Notice of Demand for Books and Records for the remaining March 2019 through December 2019 sales receipts. The taxpayer responded to the EDA-11-A with copies of sales receipts for May 2019 through December 2019. The taxpayer failed to provide records for March 2019 and April 2019 due to a computer error with the taxpayer's new register software installed in March 2019. The taxpayer was able to provide the auditor with documentation showing that a new computer software was purchased in March 2019 and that the error was resolved in May 2019. In this case, the taxpayer should not be assessed the penalty because the taxpayer was able to show he or she acted with ordinary business care and prudence.

Per [86 Ill. Adm. Code 130.805\(a\)](#), a taxpayer shall maintain all records either manually or electronically that are necessary to determine the correct tax liability under the Act. All required records must be made available on request by the Department. Where a taxpayer's business consists exclusively of the sale of tangible personal property at retail, the minimum books and records the taxpayer must keep are:

- cash register tapes and other data that provide a daily record of gross sales;
- records of merchandise purchased, such as vendor's invoices or purchase orders; and
- a yearly inventory of the value of stock on hand.

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The closing conference does not have to include only discussion of errors detected and liabilities uncovered. It may be helpful to start out the meeting with a compliment or a thank you. The auditor could compliment the taxpayer regarding knowledgeable employees or portions of the examination that revealed no problems or errors. A thanks to the taxpayer for the courteous treatment afforded during the audit is recommended when applicable. These simple gestures may put the taxpayer more at ease and relax some of the tension associated with an audit and the closing conference.

Most taxpayers are professional during the closing conference. They will generally direct conversations toward the audit findings. However, occasionally a taxpayer may become abusive toward an auditor, the Department, the Governor, etc. Abusive behavior on the part of the taxpayer should never be answered by similar behavior. The auditor must remain calm and maintain an even temperament. Unprofessional behavior during the closing conference can sometimes be predicted from actions exhibited during the audit. In cases where it is suspected that the taxpayer, or a representative of the taxpayer, may become abusive, the supervisor should also attend the closing conference.



**6.21.1 Overview**

There may be times when an agreement from the taxpayer regarding audit findings are not possible. Generally, one of three reasons cause a taxpayer to disagree with audit results. Disagreements can be caused by disputes over audit procedures used, disputes over facts, or disputes regarding the applicability or interpretation of law.

The purpose of the audit is to gather facts to determine a taxpayer's correct tax liability. However, many times what a taxpayer claims to be fact (i.e., Sale for Resale) cannot be substantiated. Likewise, a taxpayer may feel any audit procedure that involves reviewing less than 100% of all transactions is inappropriate even when a test method can be statistically shown to represent a reasonable result. Disagreements over audit procedures or facts should be resolved while the audit is in progress.

If a taxpayer doesn't agree, they have multiple options to challenge the results. During the audit, they may find resolution by discussing with the auditor, applying for a Fast Track Resolution conference, or petitioning the Informal Conference Board. The following are venues typically used to resolve disagreements with audit Notice of Tax Liability.

**6.21.2 Administrative Hearings/ Illinois Independent Tax Tribunal**

If the FTR or the ICB denied the request for an informal hearing or did not resolve the issues to the taxpayer's satisfaction, and the Department issued a Notice of Tax Liability (NTL) or Notice of Claim Denial, the taxpayer has the right to protest and request an administrative hearing. The taxpayer has 60 days from the date of the Notice of Tax Liability to file a protest letter (AH-4 Protest and Request for Administrative Hearing) requesting an administrative hearing. If the assessment is not protested within this period, it becomes final and is legally collectable.

An administrative hearing is a formal legal proceeding conducted in a manner defined by the rules adopted by the Illinois Department of Revenue (IDOR) or the Illinois Independent Tax Tribunal and is presided over by an administrative law judge. To file a protest and ask for an administrative hearing, the taxpayer should follow the instructions on their protestable notice. An administrative hearing is a quasi-judicial proceeding. In other words, all phases of hearing and preliminary activities will be presided over by an administrative law judge and handled like matters in circuit court.

For additional information regarding the rules for the Department administrative hearings see 86 Ill. Adm. Code Part 200.

After the hearing, a recommendation will be submitted to the Director of the Department of Revenue. Upon the Director's acceptance, the taxpayer or the taxpayer's representative will receive notice of the final administrative decision. If the determination is against the taxpayer, they may file a complaint with the circuit court within 35 days of the date the decision was mailed or personally served on the taxpayer.

**6.21.3 Circuit Court**

The circuit court is a judicial body that serves as part of the protest process. If the taxpayer did not agree with the outcome of the administrative hearing or did not go through the administrative hearing

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process, they may elect to pay the full amount of the deficiency, accompanied by a notice of protest (Form RR-374, Notice of Payment Under Protest) or in the format specified by the Illinois Compiled Statutes, State Officers and Employees Money Disposition Act [[30 ILCS 230/2a.1](#)]. The notice must express the taxpayer's intention to file a complaint in circuit court and obtain an injunction within 30 days of the date of the protested payment to preserve his right to a refund.

Court decisions not only decide disputes involving tax issues, but they may also set precedent depending on the issue involved and the level of the court. Court decisions may also invalidate a statute or more likely a regulation.

The Department of Revenue's role with regard to the cases that go to court is to prepare the best possible documentation at all levels and to assist the Attorney General's office in defending the case. It is also the Department of Revenue's role to assure that court decisions that do set precedent are followed and that any necessary changes to Tax Statutes, Rules, Regulations, and Audit Policy are pursued.

The auditor's responsibility is to be able to recognize a situation where a major court case has an impact on the issues involved in an audit situation.

#### **6.21.4 Board Of Appeals (86 Ill. Adm. Code 210)**

The purpose of the Board of Appeals is to ensure that the Department has treated the taxpayer fairly and can provide relief when appropriate. The Board of Appeals has the authority to waive penalties and interest based on reasonable cause and to reduce a tax liability if it is likely the full debt cannot be collected.

In general, the taxpayer may not go to the Board of Appeals until all other forms of protest have been exhausted (i.e., administrative hearings and circuit court) **or** the time allowed for taking such action has expired. The Board of Appeals may also review other departmental controversies that are currently pending in administrative hearings, the courts, or various other circumstances if the taxpayer and the Department have requested that the Board of Appeals take jurisdiction and review the matter. The BOA does not have the authority to re-determine a final liability or to review administrative hearings, Tax Tribunal decisions, or any appeal of that decision to the courts.

Taxpayers seeking relief from penalty and interest assessed as a result of an audit must file Form BOA-1, Board of Appeals Petition. The taxpayer does not have to sign the amended return; however, they should pay the tax due as a result of the audit. A taxpayer may file the BOA-1 as soon as the assessment is final. If the petition is filed prior to the finalization of the assessment, it will be dismissed without prejudice as "premature."

The Board of Appeals can provide relief in certain instances. Generally, the Board can provide penalty or interest relief based only on reasonable cause. Petitions filed under this provision are appropriate when the taxpayer filed or paid late due to circumstances beyond their control (e.g., the death, serious illness, or unexpected absence of the person solely responsible for filing a return; or a natural disaster such as flood or fire). Generally, petitions for reasonable cause abatement will affect only the penalty

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portion of an assessment and should be presented to the Board only if relief has been previously denied through normal Department channels.

Relief may be in order when a Department action or lack of action has contributed to the assessment of penalty or the accrual of interest when the taxpayer can show that they did not receive fair treatment (e.g., an unreasonable delay in a process under the Department's control).

The BOA-1 may also be used to offer an amount in compromise as a settlement in cases of hardship only. In cases where a taxpayer is filing and paying back taxes as a result of voluntary disclosure, the BOA-1 may be used for penalty and interest relief. In both of these cases please refer to the BOA-1 instructions for further information.

The BOA-1 also acts as a waiver. It extends the time within which the Department has to recover or collect the tax, penalty, or interest included in the petition. This means that the statute of limitations for enforcement is not affected while the Board has jurisdiction over the case and for 30 days thereafter. The waiver is part of the form and requires the taxpayer signature.

Finally, once the form has been completed in detail, the taxpayer should sign it again attesting to the accuracy of the information. In the event that the taxpayer will have their representative sign the form, it will only be accepted if it is accompanied by a duly executed and authorized Power of Attorney. The Board will not accept jurisdiction of any petition that has not been properly signed.

Provisions are provided for taxpayers to file petitions before the Board of Appeals in 86 Ill. Adm. Code 210.101.

Illinois Income Tax Act (IITA) Section 1102, and Retailers' Occupation Tax Act [35 ILCS 120/5a] authorize jeopardy assessments. These assessments are also authorized by statute for other taxes administered by the Department. Jeopardy assessments are warranted if:

1. The taxpayer is, or appears to be, planning to immediately leave Illinois or to hide;
2. The taxpayer is, or appears to be, planning to quickly place their property beyond the reach of the state by removing it from Illinois, by concealing it, by dissipating it, or by transferring it to other persons;
3. The taxpayer is preparing to do some other act that would tend to prejudice or to render wholly or partly ineffectual the ability to collect the audit liability.

Jeopardy assessments are warranted per these three circumstances. Auditors are required to determine if it is appropriate to pursue a jeopardy assessment on all audits. Management approval must be obtained before a jeopardy assessment can actually be issued. In all audits, the Narrative Working Paper should discuss facts that were analyzed and state reasons why a jeopardy assessment was either necessary or not.

In determining whether one of the three circumstances above are present, there are many factors which may be considered including the following (as detailed in the [Internal Revenue Manual 5.17.15.2.1](#)):

- whether the taxpayer possesses, or deals in, large amounts of cash;
- whether prior tax returns report little or no income despite taxpayer's possession of large amounts of cash;
- whether assets have been dissipated, such as through forfeiture, expenditures for attorney's fees, or appearance bonds;
- whether there is a lack of assets from which potential tax liability can be collected;
- whether the taxpayer has used aliases which makes it more difficult to locate either the taxpayer or his assets;
- whether the taxpayer has failed to supply appropriate financial information;
- whether the taxpayer has used multiple addresses, making it hard to find the taxpayer;
- whether the taxpayer has a history of illegal activity, convictions, or probable cause to believe that the taxpayer was engaged in illegal business activities;
- whether the taxpayer has a history of concealing assets overseas;
- whether the taxpayer recently sold or transferred property;
- whether the taxpayer transferred property to relatives for inadequate consideration; and
- whether the taxpayer transferred property in the wake of an investigation.

Any or all of these may be good indicators that would warrant the issuance of a jeopardy assessment.

***Jeopardy assessments cannot be made just because the statute of limitations for assessing the tax is about to expire or because a taxpayer does not consent to extend the statutory period. A jeopardy assessment can be issued only if the collection of the tax deficiency is in jeopardy for the reasons described above.***

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Upon Management approval, auditors shall give the taxpayer a Notice of Jeopardy Assessment (Form IDOR-8-J) and request immediate payment. Jeopardy assessment liabilities are deemed assessed and are immediately due. Form IDOR-8-J is the last notice sent to a taxpayer before a lien is filed.