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ILLINOIS DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Informal Conference Board
- 2) Code Citation: 86 Ill. Adm. Code 215
- 3) 

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|-------------------------|--------------------------|
| <u>Section Numbers:</u> | <u>Proposed Actions:</u> |
| 215.115                 | Amendment                |
| 215.120                 | Amendment                |
- 4) Statutory Authority: Implementing Section 2505-510, and authorized by Section 2505-795, of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-510 and 2505-795]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking extends the time that must remain on the statute of limitations before Informal Conference Board (ICB) rights will be granted from 60 days to 180 days. That ensures the Audit Bureau has enough time to complete the internal review process and issue an assessment when taxpayers do not avail themselves of the ICB. This rulemaking provides that ICB will not hold cases nor make adjustments to issues that are related to pending litigation. This rulemaking also would expand ICB jurisdiction to include audit adjustments that result in reductions to net operating losses rather than assessments or claim denials. This allows taxpayers to seek informal review of the audit adjustments without having to wait until the losses have been used completely and a deficiency results. However, no protest rights will be afforded in these cases to remain consistent with IRS procedure.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Fliflet, Deputy General Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794

(217) 782-2844  
[REV.GCO@illinois.gov](mailto:REV.GCO@illinois.gov)

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: No effect on small businesses.
  - B) Reporting, bookkeeping or other procedures required for compliance: Regular income tax recordkeeping.
  - C) Types of professional skills necessary for compliance: Accounting; general business acumen.
- 14) Small Business Impact Analysis: No impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: January, 2024

The full text of the Proposed Amendments begins on the next page:

**Section 215.115 Procedure for Requesting Review by the Informal Conference Board (ICB)**

- a) Notice of Proposed Audit ResultsAdjustments. Once the auditor has conducted the audit and made an examination of the taxpayer's books and records provided during the audit process, the Department shall issue a written notice to the taxpayer in cases in which a liability or deficiency is asserted, ~~or~~ a refund claimclaimed is denied in whole or in part, or, in the case of income tax, a net loss is reduced as a result of the audit. Such

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letter shall be referred to as a Notice of Proposed Liability, Notice of Proposed Deficiency, ~~or~~ Notice of Proposed Claim Denial, Notice of Proposed Deficiency and Claim Denial, or Notice of Net Loss and Credit Reductions. The notice shall state the amount of the proposed liability, deficiency, ~~or~~ claim denial or loss reduction and inform the taxpayer of ~~the his or her~~ right to an informal review by the Informal Conference Board (ICB). The taxpayer shall have 60 days after the date the Notice of Proposed Liability, Notice of Proposed Deficiency, ~~or~~ Notice of Proposed Claim Denial, Notice of Proposed Deficiency and Claim Denial, or Notice of Net Loss and Credit Reductions is issued to file a request with the ~~ICB Informal Conference Board~~ for review of the proposed audit ~~results adjustment~~. The 60-day period for filing a request commences with the date the notice is hand delivered or emailed to the taxpayer, or with the ~~mailing date of~~ the notice is mailed or, if the Taxpayer has an active MyTax Illinois account, provided to the taxpayer electronically through MyTax Illinois. The mailing date is the date that appears on the face of the notice or the postmark date, if later than the date shown on the notice. A request for review shall be deemed to be timely filed if it is either received by the ICB or is postmarked within the 60-day period. Although ICB review is being extended to include audits that result only in loss reductions, no protest rights will be afforded until such time as the taxpayer has a tax deficiency.

- b) Situations When the Taxpayer Will Not Be Issued a Notice of Proposed Audit ~~Results Adjustment~~. The Department will not issue a Notice of Proposed Liability, Notice of Proposed Deficiency, ~~or~~ Notice of Proposed Claim Denial or Notice of Proposed Deficiency and Claim Denial when a taxpayer has agreed to an audit by signing an auditor's report or waiver of restrictions the EDA-105 or IL-870, or by making a payment of tax deemed assessed under ~~ITA~~ Section 903(a)(4) of the Illinois Income Tax Act or, on or after January 1, 2024, under Section 4 of the Retailers' Occupation Tax Act. By signing the auditor's report or waiver of restrictions EDA-105 or IL-870, or making such a payment, the taxpayer has waived ~~the his or her~~ right to seek review by the ~~ICB Informal Conference Board~~. The Department ~~will~~ also will not issue a Notice of Proposed Liability, Notice of Proposed Deficiency, ~~or~~ Notice of Proposed Claim Denial or Notice of Proposed Deficiency and Claim Denial if at the time the audit is completed fewer than 180 days remain during which the Department is required to make an assessment as provided in Section 905 of the Illinois Income Tax

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~~Act or Section 5 of the Retailers' Occupation Tax Act and when the taxpayer will not agree~~ 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~~

- c) Requirements of a Request for Review. A written request to the ICB will commence the informal review process. The ICB will examine the basis for the proposed audit adjustments that are being disputed and review the reasons why the taxpayer disagrees with the proposed adjustments, along with all supporting documentation and any additional information that the taxpayer may wish to submit in support of his or her position. The request to the ICB for review of the proposed audit adjustments shall be on a form prescribed by the Department. The form shall include at least the following information:
- 1) ~~The~~ name of the taxpayer or taxpayers;
  - 2) tax identification~~the taxpayer's identifying~~ numbers (Social Security number of individuals or the Illinois Business Tax number issued by the Department for registration purposes, or federal employer identification number for entities, such as corporations, estates and trusts, or partnerships);
  - 3) ~~the~~ current address of the taxpayer and the taxpayer's representative to which correspondence concerning the request should be directed;
  - 4) ~~the~~ amount of the proposed liability, deficiency, ~~or~~ claim denial or loss reduction that is the subject of the request;
  - 5) ~~the~~ audit period at issue to which the request is directed; and
  - 6) letter identification~~the identifying~~ numbers that appear on the Notice of Proposed Liability, Notice of Proposed Deficiency, ~~or~~ Notice of Proposed Claim Denial, Notice of Proposed Deficiency and Claim Denial, or Notice of Net Loss and Credit Reductions. ~~The request must be dated and signed by the taxpayer or by an authorized representative of the taxpayer.~~ If the taxpayer fails, unless for good cause shown, to provide all information required by the

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Department's form and instructions, the ICB~~Board~~ may refuse to take jurisdiction of the request or dismiss the request.

- d) In-Person Conference Request. An in-person conference with the ICB panel members or their representatives must be requested at the time that the request for review is filed with the ICB. See Section 215.130 for additional detail relating to in-person conferences.
- e) Grounds for Request. A request to the ICB must raise objections to the proposed audit adjustments. The request may be supplemented up until 30 days before the in-person conference, if one is requested, or within 30 days after the filing of the request if an in-person conference is not requested. The request shall state the taxpayer's specific reasons for the disagreement with the proposed adjustments and show why the Department's proposed tax adjustment is incorrect. The request should reference any information relied upon by the taxpayer.
- f) The filing of a Request for Review by a taxpayer or authorized representative under this Part shall act as a waiver of the applicable statute of limitation that would otherwise prevent the Department from ~~issuing the issuance of~~ a Notice of Tax Liability, Notice of Deficiency, or Notice of Claim Denial following the completion of an audit. In such instance, any applicable limitations period shall be tolled from the date the Request for Review is accepted by the ICB up to and including 180 days following the date of the Action Decision~~final decision~~ or closing memorandum issued by the ICB. ~~Furthermore~~Furthermore, should the ICB matter impact future audit periods, the taxpayer will execute all necessary waivers for later audit periods when requested to do so by the Audit Bureau while the matter is pending at the ICB. If the ICB matter impacts later audit periods and the taxpayer fails to execute all necessary waivers for later audit periods when requested to do so by the Audit Bureau, the Audit Bureau will notify the ICB of the non-compliance and the ICB may dismiss the taxpayer's case. For purposes of this Part, an impact on future audit periods includes, but is not limited to, the following situations: the same issues are involved in both audit periods; the subsequent audit period is a mandatory audit due to the amount of liability proposed in the ICB matter; or the amounts shown on a return subject to review by the ICB may be carried to a subsequent year's return.

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- g) Proposals for Disposition. A taxpayer may submit a formal request to settle the tax dispute with the Department as a part of the initial request to the ICB or at any point during ICB review prior to the issuance of an Action Decision. Procedures for proposals are outlined in Section 215.125.
- h) Offers in Compromise. The ICB will not accept or negotiate offers in compromise. If a taxpayer is only seeking relief from the further obligation to pay an undisputed tax liability based on an inability to pay, the taxpayer should contact the Department's Board of Appeals after a final assessment of the tax.

(Source: Amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 215.120 Review of Requests by the Informal Conference Board**

- a) The informal conference process is a meaningful~~the first~~ step in attempting to resolve a tax dispute with the Department. It provides an opportunity for the ICB and the taxpayer to review and discuss the issues relating to the proposed audit adjustments brought into question. The informal conference process is not subject to the requirements of the Illinois Administrative Procedure Act [5 ILCS 100] and any final action taken by the ICB is not subject to administrative review.
- b) In order to make its determination with respect to a written request, the ICB may request additional relevant information regarding the grounds raised in the taxpayer's request for ICB review. Requests for information by the ICB are limited to information or documents related to issues raised during the audit that are reflected in the reasons for, and/or the computations supporting, any proposed audit adjustments. A request for additional information may also be made by the ICB either in writing or orally during the course of an in-person conference. The taxpayer, or the taxpayer's representative, has a duty to respond to any requests for additional information within 30 days from the date of the request, unless otherwise agreed. Failure to respond in a timely and complete manner may result in the request for an in-person conference and/or relief being denied. A written statement by the taxpayer that information requested does not or did not exist, or cannot be assembled or collated in a reasonable amount of time, will be considered a complete response. However, failure to provide the information requested because it cannot

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be assembled or collated in a reasonable amount of time may be the basis of an ICB decision to deny an in-person conference and/or the relief requested by the taxpayer.

- 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 a taxpayer submits information to the conferee, the information may be given to the auditor to review and make any revisions to the proposed audit adjustments before an ICB conference is held or before a recommendation is made by the conferee. In the situation where information is returned to the auditor for review, the ICB will retain jurisdiction over the matter. Documentation or information submitted to the ICB does not become part of any formal record and cannot be forwarded to any other agency or judicial body for purposes of that body making a determination on the merits of any case. Both the taxpayer and the Department must present all evidence directly to those judicial bodies in accordance with the rules of those bodies if they wish the evidence to be considered.
- d) Requests for review submitted to the ICB and all accompanying information provided are part of the pre-assessment administrative process of the Department. All such information is covered by the confidentiality provisions of the various tax laws.
- e) Recommendations, notes, memoranda and other records of the ICB with respect to issues raised in pending ICB matters are not subject to disclosure and do not become part of the audit file.
- f) The ICB is charged with the responsibility of making a determination of whether the amount of the proposed audit adjustment is accurate. After a complete review of the request, accompanying information and any evidence and arguments submitted on behalf of the taxpayer at an in-person conference, if requested, the ICB shall issue an Action Decision. Whenever possible, the Action Decision shall be issued within 120 days after receipt of the taxpayer's request. An Action Decision shall be issued only upon the approval of no fewer than 2 of the 3 members of the ICB panel assigned to the matter. Under no circumstances will any ICB matter be held in abeyance pending the resolution of the same or similar issues in litigation pending with this taxpayer, nor will any adjustments related to

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those issues be made in the ICB. This does not preclude the ICB from attempting to resolve other issues that are not involved in litigation.

- g) The ICB may expedite the processing of requests for review that involve proposed liabilities, deficiencies or claim denials in an amount of \$5,000 or less. In determining whether a request should be expedited, the ICB administrator will consider such factors as whether the amount at issue exceeds \$5,000, or whether the issue is one of first impression or controversial. The ICB administrator will notify the taxpayer in writing if it is determined that the matter should be expedited. The expedited process would mean that only the conferee assigned to the matter will attend the in-person conference, if one is requested. In addition, an Action Decision issued in an expedited matter shall be issued upon the approval of one member of the ICB panel.
- h) The Action Decision is final and binding on the Department except where there is a misrepresentation of material fact or a clerical or mathematical error made by the taxpayer, the ICB or a member of the ICB staff. In such situations, the Board may amend or vacate the Action Decision. Action Decisions must be implemented by those areas of the Department to which they are directed. The taxpayer and its representative will be provided with a written notice of the Action Decision.

(Source: Amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)