

ILLINOIS INDEPENDENT TAX TRIBUNAL

NOTICE OF ADOPTED RULES

TITLE 86: REVENUE

CHAPTER V: ILLINOIS INDEPENDENT TAX TRIBUNAL

PART 5000

ORGANIZATION, INFORMATION, RULEMAKING AND HEARINGS

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AUTHORITY: Implementing and authorized by the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010].

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SOURCE: Adopted by emergency rulemaking at 38 Ill. Reg. 2956, effective January 9, 2014, for a maximum of 150 days; adopted at 38 Ill. Reg. 10673, effective May 1, 2014.

SUBPART A: ORGANIZATION

Section 5000.10 Definitions

Whenever used in this Part, the following terms shall have the meanings set forth in this Section unless otherwise expressly provided.

"Act" means the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010].

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Freedom of Information Officer" or "FOI Officer" means an individual responsible for receiving and responding to requests for public records.

"Department" means the Illinois Department of Revenue.

"Tribunal" means the Illinois Independent Tax Tribunal, Chief Administrative Law Judge, or presiding administrative law judge as the context may dictate whenever it occurs in this Part.

"Statutory Notice" means any notice listed in 35 ILCS 1010/1-45.

Section 5000.20 Composition of the Tribunal

- a) The Tribunal consists of a Chief Administrative Law Judge and up to three additional Administrative Law Judges, each appointed by the Governor with the advice and consent of the Senate. The Chief Administrative Law Judge shall serve a 5-year term. The administrative law judges, other than the Chief Administrative Law Judge, shall initially be appointed to staggered terms of no greater than 4 years. After the initial terms of office, all administrative law judges, other than the Chief Administrative Law Judge, shall be appointed for terms of 4 years. Each administrative law judge is eligible for reappointment. (See 35 ILCS 1010/1-25(a).)

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- b) *The Chief Administrative Law Judge shall have sole charge of the administration of the Tax Tribunal and shall apportion among the judges all causes, matters, and proceedings coming before the Tax Tribunal. Each administrative law judge shall exercise the power of the Tax Tribunal. [35 ILCS 1010/1-25(f)]*

SUBPART B: INFORMATION

Section 5000.110 Requests for Records

- a) A request for access to records for inspection and copying shall be submitted in writing to the Freedom of Information Officer at the office of the Tribunal. Requests for public records may be submitted by mail, e-mail, hand delivery or facsimile, directed to the FOI Officer, as follows:

FOI OFFICER
Illinois Independent Tax Tribunal
160 N. LaSalle Ave.
Chicago IL 60601

- b) The request must describe the public record sought, being as specific as possible. If the description is not sufficiently clear to allow easy identification of the records sought, the requester may be asked to supply additional necessary information.

Section 5000.120 Materials Immediately Available

As required by the Freedom of Information Act, certain information about the Tribunal, including, without limitation, a description of the Tribunal's responsibilities, organizational structure, categories of public records, and process for obtaining public records, shall publicly and immediately be available on the Tribunal's website.

SUBPART C: RULEMAKING

Section 5000.210 Rulemaking Procedures

Procedures of the Tribunal must be conducted in compliance with applicable provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

SUBPART D: PROCEDURAL RULES

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Section 5000.300 General

- a) Scope. This Subpart shall govern all proceedings before the Tribunal.
- b) Intent. These standards of practice and procedure shall govern all proceedings brought before the Illinois Independent Tax Tribunal pursuant to the Illinois Tax Tribunal Act of 2012 [35 ILCS 1010]. They are intended to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with the Illinois Department of Revenue.
- c) Hours. The principal offices of the Tribunal shall be open each day for the transaction of business and filing of documents between the hours of 9:00 a.m. and 5:00 p.m., Saturdays, Sundays and legal holidays excepted.
- d) The Illinois Supreme Court Rules and the Illinois Code of Civil Procedure [735 ILCS 5] shall apply to proceedings before the Tribunal, except to the extent they conflict or are otherwise inconsistent with the requirements specifically provided in this Part.

Section 5000.305 Representation

- a) Representation of Petitioner in Proceedings before the Tribunal.
 - 1) Personal Appearance. Appearances in proceedings conducted before the Tribunal may be by the petitioner pro se. A partnership may act through one of its general partners without filing any power of attorney.
 - 2) Representation by Others. All parties not acting on their own behalf shall be represented by an attorney authorized to practice before the courts of the state of Illinois.
 - 3) Pro Hac Vice Admission. Persons authorized to practice law in another jurisdiction may, upon certifying in writing that they have followed the Illinois Supreme Court procedures for admission to practice pro hac vice in Illinois, and upon proper application to Tribunal, be authorized to practice before the Tribunal in a particular proceeding.

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- b) Substitution or Withdrawal of Representative. A party's representative may be changed and a new representative substituted by written notice to the Tribunal and to all other parties when the proceedings will not be unreasonably delayed. The Tribunal may in such circumstances permit substitution of representatives at hearing. Representatives who wish to withdraw must immediately file a written notice of withdrawal.

Section 5000.310 Pleadings

- a) Petition. All proceedings in the Tribunal must be commenced by the filing of a petition.
- 1) Form of Petition. The petition shall contain or identify:
- A) the name, address, and telephone number of the petitioner;
 - B) the name, address, telephone number and email address of the petitioner's representatives, if any;
 - C) the taxpayer's identification number;
 - D) a copy of the Statutory Notice at issue;
 - E) the years or periods involved;
 - F) separately numbered paragraphs stating, in clear and concise terms a summary of the errors of fact or law that the petitioner alleges have been made by the Department (e.g., in issuing the Statutory Notice), together with a statement of the facts or law upon which the petitioner relies to establish the errors;
 - G) the relief sought by the petitioner;
 - H) the signature of the petitioner or the petitioner's representative, if any; and
 - I) a check or money order in the amount of \$500 made payable to Illinois Independent Tax Tribunal or application for waiver of the fee.

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- 2) Filing and Service of Petition.
 - A) The petition and two copies thereof shall be filed with the Tribunal within the time limitations prescribed by the applicable statutory Sections. Petitions may be filed in person at the offices of the Tribunal in Springfield or in Chicago, by certified or registered mail, by messenger, or by private parcel delivery service. The Tribunal may permit electronic filing of petitions and other pleadings. The petitioner shall also serve a copy of the petition upon the Department simultaneously.
 - B) When the clerk of the Tribunal determines that the petition is in proper form, the clerk shall send to the petitioner a dated acknowledgment of receipt of the petition and immediately forward a copy of the acknowledgment to the Department for preparation of the answer. The time within which the Department must answer the petition shall start to run from the date of its receipt of the Tribunal's notification that the taxpayer has filed a petition in the proper form.
- 3) Protests Improperly Filed with the Office of Administrative Hearings. In the event a taxpayer files a protest within the allowable timeframe for that protest with the Office of Administrative Hearings that is dismissed due to lack of jurisdiction because it should have been filed with the Tribunal, a petition will be considered to be timely filed if the taxpayer files a petition with the Tribunal within 60 days after notice of the dismissal.
- 4) Corrected Petitions.
 - A) When the petition filed by a petitioner is not in the form required by this Section, the clerk shall promptly return it to the petitioner together with a statement indicating each requirement with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition with the Tribunal. When the clerk determines that the corrected petition is in proper form, the clerk shall then acknowledge receipt of the corrected petition and forward the acknowledgment and the corrected petition to the Department pursuant to subsection (a)(2).

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For purposes of the time limitations for filing and service of a petition, a corrected petition is deemed to have been filed and served at the time the original petition was filed and served. However, the time within which the Department must answer the corrected petition shall start to run from the date of its receipt of the Tribunal's notification that the taxpayer has filed a corrected petition in the proper form.

- B) When the petitioner fails to file a corrected petition within the time prescribed in subsection (a)(4)(A), the clerk shall notify the Chief Administrative Law Judge, who may take such action as is deemed appropriate.
 - 5) Discretionary Late Hearings. If a Statutory Notice becomes final without a timely petition being filed as provided in subsection (a)(2), the taxpayer may request that the Department grant a discretionary late hearing as provided in Section 908(b)(2) of the Illinois Income Tax Act [35 ILCS 5/908(b)(2)] or Section 4 of the Retailers' Occupation Tax Act [35 ILCS 120/4]. Such application shall be made to the Chief Administrative Law Judge of the Department's Office of Administrative Hearings, and it shall specify each Statutory Notice at issue and the reasons why a timely petition was not filed, and any other information required by 86 Ill. Adm. Code 200.175. If such request is granted by the Department, the taxpayer shall file a petition with the Tribunal within 60 days and shall attach a copy of the letter granting a discretionary late hearing.
 - 6) Waiver of \$500 Filing Fee. In the event of financial hardship, a taxpayer may file an application for waiver of the \$500 filing fee. A form for the application will be prescribed by the Tribunal. The application shall be submitted with the petition.
- b) Answer.
- 1) Filing and Service of Answer. The Department shall file an answer and two copies with the Tribunal and serve a copy thereof on the petitioner, if appearing pro se, or the petitioner's representatives, within 30 days after receipt of the Tribunal's notification that the taxpayer has filed a petition in the proper form.

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- 2) Form of Answer. The answer as filed shall contain numbered paragraphs corresponding to the petition and shall contain:
 - A) a specific admission or denial of each material allegation of fact contained in the petition;
 - B) affirmative defenses, if any; and
 - C) the relief sought by the Department.
 - 3) Allegations Deemed Admitted. Material allegations of fact set forth in the petition that are not expressly admitted or denied in the answer shall be deemed to be admitted, unless the Department states in its Answer that it has no knowledge of the allegations sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge.
 - 4) Failure of Department to Answer. When the Department fails to answer within the prescribed time, the petitioner may make a motion, on notice to the Department, for a determination of default. The administrative law judge designated by the Chief Administrative Law Judge to review the motion shall either grant the motion and issue a default determination, or grant such other relief as is warranted.
- c) Amended Pleadings. Either party may amend a pleading without leave at any time before the period for responding to it expires. After such time, a pleading may be amended only with the written consent of the adverse party or with the permission of the Tribunal. The Tribunal shall freely grant consent to amend upon such terms as may be just. Except as otherwise ordered by the Tribunal, there shall be an answer to an amended pleading if an answer is required to the pleading being amended. Filing of the answer or, if the answer has already been filed, the amended answer shall be made no later than 30 days after the filing of the amended petition. The taxpayer may not amend a petition after expiration of the time for filing a petition, if the amendment would have the effect of conferring jurisdiction on the Tribunal over a matter that would otherwise not come within its jurisdiction. An amendment of a pleading shall relate back to the time of filing of the original pleading only as prescribed by Section 2-616 of the Code of Civil Procedure.

Section 5000.315 Motion Practice

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- a) **Form and Contents.** A motion shall be in writing and must specify the supporting papers (e.g., affidavits, admissions, etc.) upon which the motion is based, in separate numbered paragraphs, the relief requested and the grounds for the relief. Any brief shall be filed with the motion and a copy served on the adverse party.
- b) **Notice of Motion.** A Notice of Motion shall accompany each motion. The Notice of Motion shall specify whether or not the motion is agreed to by the adverse party. The Notice of Motion shall also specify whether the moving party desires an oral argument on the motion.
- c) **Response to Motions.** If a motion is not an agreed motion, the adverse party shall notify the clerk for the Tribunal within five business days after receipt of a Notice of Motion whether the adverse party desires to file a response to the motion and a proposed briefing schedule. The time for filing a response shall not exceed 28 days without the permission of the Tribunal. The time for filing a reply, if a reply is requested, shall not exceed 14 days without the permission of the Tribunal. The adverse party shall also indicate whether it desires an oral argument. Upon approval by the Tribunal, the clerk will schedule an oral argument and send notice of the date and time to the parties.
- d) **Hearings on Motions.** All motions will be decided on the moving papers and answers submitted without oral argument, unless a specific request for oral argument is made by a party and granted by the Tribunal.
- e) **Finality of Orders.** An order by an administrative law judge on any motion that does not finally determine all matters and issues contained in the petition, for purposes of review by the Appellate Court, shall not be deemed final and conclusive until the administrative law judge shall have rendered a determination on the remaining matters and issues.
- f) **Motion to Transfer.** The Tribunal may on its own motion and on notice to the parties, or either party may by filing a motion, transfer the case to the Office of Administrative Hearings if the petition has been timely but erroneously filed with the clerk of the Tribunal. If such a motion is granted, the clerk of the Tribunal shall certify and transmit all papers filed with the Tribunal to the Office of Administrative Hearings of the Department of Revenue.

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- g) Motion to Dismiss. A motion to dismiss must be filed before the answer is due or the grounds for dismissal may be raised as an affirmative defense in the answer. In no event shall a failure by a party to make such a motion be deemed a waiver of any defense. Only one such motion shall be made.
- h) Dismissal by the Administrative Law Judge on His/Her Own Motion.
- 1) The administrative law judge may, on his or her own motion and on notice to the parties, issue a determination or decision dismissing a petition on the ground that:
 - A) the Tribunal lacks jurisdiction over the subject matter of the petition;
 - B) the Tribunal lacks jurisdiction over the taxpayer; or
 - C) the petition has not been timely filed or served.
 - 2) If the basis for the administrative law judge's dismissal is that the Office of Administrative Hearings of the Department of Revenue has jurisdiction over the subject matter of the petition, the petition shall be transferred to the Office of Administrative Hearings.
- i) Motion to Recuse Administrative Law Judge.
- 1) A Tribunal administrative law judge assigned to the case may, on his or her own motion, or either party may, by motion before the Chief Administrative Law Judge, move to recuse the administrative law judge assigned to its case on the basis that the administrative law judge has a personal bias with respect to the case or that the administrative law judge is otherwise disqualified to hear and decide the case.
 - 2) The party's motion to recuse the administrative law judge must be accompanied by an affidavit setting forth the facts upon which the assertion of bias or other disqualification is based.
 - 3) The motion to recuse must be made at least 30 days prior to the scheduled hearing date and shall comply with all procedural provisions relating to form as described in subsection (a).

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- 4) The adverse party may respond to the motion to recuse by serving its response on the Chief Administrative Law Judge and the moving party not later than 10 days from the date the motion to recuse was served on such adverse party.
- 5) In response to the motion to recuse, the Chief Administrative Law Judge shall assign a different administrative law judge to the case or deny the motion by written order. The order shall be issued not later than 10 days prior to the scheduled hearing date. A party may not file an exception to an order until the administrative law judge renders a determination on the remaining matters and issues.

Section 5000.320 Status Hearings

- a) Initial Status Conference. An initial status conference shall be set within 60 days after the date of filing of the petition.
- b) Notice. The parties shall be given at least 15 days' notice of the first status hearing date, and at least seven days' notice of any other hearing date unless the parties agree to an earlier date. A request by any party for a preference in scheduling will be honored to the extent possible.
- c) Telephonic Hearings. Status conferences and hearings on motions may be conducted telephonically at the request of the parties. Any order setting a status conference or hearing date shall specify whether the parties and/or their representatives are to appear in person, by telephone or as otherwise agreed.

Section 5000.325 Discovery

- a) General. As stated in Section 1-60 of the Act, the Illinois Supreme Court Rules and the Illinois Code of Civil Procedure [735 ILCS 5] shall apply to all discovery, requests for admission, and pre-trial procedure.
- b) Interrogatories. Answers to interrogatories shall be filed with the clerk of the Tribunal.
- c) Requests for Admissions. Requests for admission of fact shall be filed with the clerk of the Tribunal. Within 28 days after service of the requests, the answering

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party shall serve upon the party requesting the admission and file with the clerk of the Tribunal either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or a written objection to each request.

- d) Other Discovery. Except as provided in subsections (b) and (c), discovery requests and answers shall not be filed with the Tribunal.

Section 5000.330 Service

- a) Date of Filing and Service. If any document required to be filed and served under this Part within a prescribed period or on or before a prescribed date is, after that period or date, delivered by United States mail or other third party commercial carrier, the date of the United States postmark stamped on the envelope or the date the document is delivered by the third party commercial carrier, messenger or private parcel delivery service will be deemed to be the date of filing or service.
- b) Saturday, Sunday or Legal Holiday. When the last day prescribed under this Part for filing or service falls on a Saturday, Sunday or legal holiday in the State of Illinois, the filing or service shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday or legal holiday.
- c) Service by Email. The parties may consent to service by email. The date of service will then be the date the email is sent.

Section 5000.335 Subpoenas

- a) Upon the request of any party, the administrative law judge assigned to the case may issue subpoenas to require the attendance of witnesses at a deposition or hearing or to require the production of documentary evidence; provided, however, that when it appears to the administrative law judge requested to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the administrative law judge may, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the administrative law judge requested to issue the subpoena shall, after consideration of all the circumstances, determine that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or

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unduly burdensome, the administrative law judge may refuse to issue the subpoena, or issue it only upon the conditions the administrative law judge deems appropriate. In the event that an administrative law judge has not been assigned to the case or the administrative law judge is unavailable, the request to issue subpoenas may be made to the Chief Administrative Law Judge. Subpoenas will be delivered to the person requesting them and service of the subpoena will be the requestor's responsibility.

- b) Request to Withdraw or Modify a Subpoena. Upon issuance of a subpoena pursuant to subsection (a), any person to whom a subpoena is directed may, prior to the time specified in the subpoena for compliance, but in no event more than 14 days after the date of service of that subpoena, request that the subpoena be withdrawn or modified by filing that request with the administrative law judge assigned to the case or, if no assignment has been made, to the Chief Administrative Law Judge. The request shall be upon notice to the other party and shall otherwise conform to the procedural requirements of Section 5000.315 for motions.

Section 5000.340 Stipulations

- a) General. The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all undisputed facts not privileged that are relevant to the pending controversy. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence that fairly should not be in dispute. When the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by the adverse party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Part without regard to where the burden of proof may lie with respect to the controversies involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.
- b) Form. Stipulations shall be written and signed by the parties to the stipulation or by their representatives, if any, and shall be filed with the Tribunal. Documents or other papers that are the subject of stipulation in any respect and that the parties intend to place before the Tribunal shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be

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stated in separate paragraphs and shall be appropriately numbered. Exhibits attached to a stipulation shall be lettered serially.

- c) **Binding Effect.** A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Tribunal or agreed upon by the parties. The Tribunal shall not permit a party to a stipulation to qualify, change or contradict a stipulation, in whole or in part, except when justice requires. A stipulation and the admissions in the stipulation shall be binding and have effect only in the pending proceeding and not for any other purpose, and they shall not be used against any party to the stipulation in any other proceeding before the Tribunal, the Department or the courts.
- d) **Submission without Hearing.** The parties may consent in writing to waive oral argument on contested motions and have the controversy determined on submission without need for appearance at a hearing.

Section 5000.345 Hearings

- a) **Out-of-state Petitioners.** If the taxpayer does not have his or her place of business in this State, a hearing shall be held at the office designated by the Tribunal. If the chosen location is undesirable, upon a showing of just cause, the taxpayer may petition the Tribunal to move the hearing to another office.
- b) **Post-hearing Briefs.** At the discretion of the administrative law judge, the parties may submit post-hearing briefs, including proposed findings of fact and conclusions of law.

Section 5000.350 Bonds

- a) **General.** The Tax Tribunal may require the taxpayer to post a bond equal to 25% of the liability at issue:
 - 1) upon motion of the Department and a showing that:
 - A) the taxpayer's action is frivolous or legally insufficient; or

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- B) the taxpayer is acting primarily for the purpose of delaying the collection of tax or prejudicing the ability ultimately to collect the tax; or
- 2) if, at any time during the proceedings, it is determined by the Tax Tribunal that the taxpayer is not pursuing the resolution of the case with due diligence. If the Tax Tribunal finds in a particular case that the taxpayer cannot procure and furnish a satisfactory surety or sureties for the kind of bond required in subsection (a), the Tax Tribunal may relieve the taxpayer of the obligation of filing the bond, if, upon the timely application for a lien in lieu of a bond, with proof of the taxpayer's inability to procure the surety submitted in the application, the Tax Tribunal is satisfied that any lien imposed would operate to secure the assessment in the manner and to the degree as would a bond.
- b) Surety Bonds. If the Tax Tribunal determines that a taxpayer should post a bond, any surety bond must be obtained from a third party and filed with the Tax Tribunal.
 - c) Liens. If a taxpayer is unable to procure and furnish a satisfactory surety or sureties, the Tax Tribunal may impose a lien or liens in lieu of bond against any real or personal property of the taxpayer in the amount of the required bond. A taxpayer who is required, but unable to procure a bond, must file a sworn statement of assets and liabilities, a title search of any real property to be encumbered, and a UCC search of any personal property to be encumbered with the Tax Tribunal.