

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 ARTICLE 1. SHORT TITLE; PURPOSE

5 Section 1-1. Short title. This Act may be cited as the
6 FY2007 Budget Implementation (Revenue) Act.

7 Section 1-3. Purpose. The purpose of this Act is to make
8 changes in State programs that are necessary to implement the
9 Governor's FY2007 budget recommendations concerning revenue.

10 ARTICLE 5. AMENDATORY PROVISIONS

11 Section 5-5. The Illinois Income Tax Act is amended by
12 changing Sections 905 and 911 as follows:

13 (35 ILCS 5/905) (from Ch. 120, par. 9-905)

14 Sec. 905. Limitations on Notices of Deficiency.

15 (a) In general. Except as otherwise provided in this Act:

16 (1) A notice of deficiency shall be issued not later
17 than 3 years after the date the return was filed, and

18 (2) No deficiency shall be assessed or collected with
19 respect to the year for which the return was filed unless
20 such notice is issued within such period.

21 (b) Substantial omission of items.

22 (1) Omission of more than 25% of income. If the
23 taxpayer omits from base income an amount properly
24 includible therein which is in excess of 25% of the amount
25 of base income stated in the return, a notice of deficiency
26 may be issued not later than 6 years after the return was
27 filed. For purposes of this paragraph, there shall not be
28 taken into account any amount which is omitted in the

1 return if such amount is disclosed in the return, or in a
2 statement attached to the return, in a manner adequate to
3 apprise the Department of the nature and the amount of such
4 item.

5 (2) Reportable transactions. If a taxpayer fails to
6 include on any return or statement for any taxable year any
7 information with respect to a reportable transaction, as
8 required under Section 501(b) of this Act, a notice of
9 deficiency may be issued not later than 6 years after the
10 return is filed with respect to the taxable year in which
11 the taxpayer participated in the reportable transaction
12 and said deficiency is limited to the non-disclosed item.

13 (c) No return or fraudulent return. If no return is filed
14 or a false and fraudulent return is filed with intent to evade
15 the tax imposed by this Act, a notice of deficiency may be
16 issued at any time.

17 (d) Failure to report federal change. If a taxpayer fails
18 to notify the Department in any case where notification is
19 required by Section 304(c) or 506(b), or fails to report a
20 change or correction which is treated in the same manner as if
21 it were a deficiency for federal income tax purposes, a notice
22 of deficiency may be issued (i) at any time or (ii) on or after
23 August 13, 1999, at any time for the taxable year for which the
24 notification is required or for any taxable year to which the
25 taxpayer may carry an Article 2 credit, or a Section 207 loss,
26 earned, incurred, or used in the year for which the
27 notification is required; provided, however, that the amount of
28 any proposed assessment set forth in the notice shall be
29 limited to the amount of any deficiency resulting under this
30 Act from the recomputation of the taxpayer's net income,
31 Article 2 credits, or Section 207 loss earned, incurred, or
32 used in the taxable year for which the notification is required
33 after giving effect to the item or items required to be
34 reported.

35 (e) Report of federal change.

36 (1) Before August 13, 1999, in any case where

1 notification of an alteration is given as required by
2 Section 506(b), a notice of deficiency may be issued at any
3 time within 2 years after the date such notification is
4 given, provided, however, that the amount of any proposed
5 assessment set forth in such notice shall be limited to the
6 amount of any deficiency resulting under this Act from
7 recomputation of the taxpayer's net income, net loss, or
8 Article 2 credits for the taxable year after giving effect
9 to the item or items reflected in the reported alteration.

10 (2) On and after August 13, 1999, in any case where
11 notification of an alteration is given as required by
12 Section 506(b), a notice of deficiency may be issued at any
13 time within 2 years after the date such notification is
14 given for the taxable year for which the notification is
15 given or for any taxable year to which the taxpayer may
16 carry an Article 2 credit, or a Section 207 loss, earned,
17 incurred, or used in the year for which the notification is
18 given, provided, however, that the amount of any proposed
19 assessment set forth in such notice shall be limited to the
20 amount of any deficiency resulting under this Act from
21 recomputation of the taxpayer's net income, Article 2
22 credits, or Section 207 loss earned, incurred, or used in
23 the taxable year for which the notification is given after
24 giving effect to the item or items reflected in the
25 reported alteration.

26 (f) Extension by agreement. Where, before the expiration of
27 the time prescribed in this Section for the issuance of a
28 notice of deficiency, both the Department and the taxpayer
29 shall have consented in writing to its issuance after such
30 time, such notice may be issued at any time prior to the
31 expiration of the period agreed upon. In the case of a taxpayer
32 who is a partnership, Subchapter S corporation, or trust and
33 who enters into an agreement with the Department pursuant to
34 this subsection on or after January 1, 2003, a notice of
35 deficiency may be issued to the partners, shareholders, or
36 beneficiaries of the taxpayer at any time prior to the

1 expiration of the period agreed upon. Any proposed assessment
2 set forth in the notice, however, shall be limited to the
3 amount of any deficiency resulting under this Act from
4 recomputation of items of income, deduction, credits, or other
5 amounts of the taxpayer that are taken into account by the
6 partner, shareholder, or beneficiary in computing its
7 liability under this Act. The period so agreed upon may be
8 extended by subsequent agreements in writing made before the
9 expiration of the period previously agreed upon.

10 (g) Erroneous refunds. In any case in which there has been
11 an erroneous refund of tax payable under this Act, a notice of
12 deficiency may be issued at any time within 2 years from the
13 making of such refund, or within 5 years from the making of
14 such refund if it appears that any part of the refund was
15 induced by fraud or the misrepresentation of a material fact,
16 provided, however, that the amount of any proposed assessment
17 set forth in such notice shall be limited to the amount of such
18 erroneous refund.

19 Beginning July 1, 1993, in any case in which there has been
20 a refund of tax payable under this Act attributable to a net
21 loss carryback as provided for in Section 207, and that refund
22 is subsequently determined to be an erroneous refund due to a
23 reduction in the amount of the net loss which was originally
24 carried back, a notice of deficiency for the erroneous refund
25 amount may be issued at any time during the same time period in
26 which a notice of deficiency can be issued on the loss year
27 creating the carryback amount and subsequent erroneous refund.
28 The amount of any proposed assessment set forth in the notice
29 shall be limited to the amount of such erroneous refund.

30 (h) Time return deemed filed. For purposes of this Section
31 a tax return filed before the last day prescribed by law
32 (including any extension thereof) shall be deemed to have been
33 filed on such last day.

34 (i) Request for prompt determination of liability. For
35 purposes of subsection (a)(1), in the case of a tax return
36 required under this Act in respect of a decedent, or by his

1 estate during the period of administration, or by a
2 corporation, the period referred to in such Subsection shall be
3 18 months after a written request for prompt determination of
4 liability is filed with the Department (at such time and in
5 such form and manner as the Department shall by regulations
6 prescribe) by the executor, administrator, or other fiduciary
7 representing the estate of such decedent, or by such
8 corporation, but not more than 3 years after the date the
9 return was filed. This subsection shall not apply in the case
10 of a corporation unless:

11 (1) (A) such written request notifies the Department
12 that the corporation contemplates dissolution at or before
13 the expiration of such 18-month period, (B) the dissolution
14 is begun in good faith before the expiration of such
15 18-month period, and (C) the dissolution is completed;

16 (2) (A) such written request notifies the Department
17 that a dissolution has in good faith been begun, and (B)
18 the dissolution is completed; or

19 (3) a dissolution has been completed at the time such
20 written request is made.

21 (j) Withholding tax. In the case of returns required under
22 Article 7 of this Act (with respect to any amounts withheld as
23 tax or any amounts required to have been withheld as tax) a
24 notice of deficiency shall be issued not later than 3 years
25 after the 15th day of the 4th month following the close of the
26 calendar year in which such withholding was required.

27 (k) Penalties for failure to make information reports. A
28 notice of deficiency for the penalties provided by Subsection
29 1405.1(c) of this Act may not be issued more than 3 years after
30 the due date of the reports with respect to which the penalties
31 are asserted.

32 (l) Penalty for failure to file withholding returns. A
33 notice of deficiency for penalties provided by Section 1004 of
34 this Act for taxpayer's failure to file withholding returns may
35 not be issued more than three years after the 15th day of the
36 4th month following the close of the calendar year in which the

1 withholding giving rise to taxpayer's obligation to file those
2 returns occurred.

3 (m) Transferee liability. A notice of deficiency may be
4 issued to a transferee relative to a liability asserted under
5 Section 1405 during time periods defined as follows:

6 1) Initial Transferee. In the case of the liability of
7 an initial transferee, up to 2 years after the expiration
8 of the period of limitation for assessment against the
9 transferor, except that if a court proceeding for review of
10 the assessment against the transferor has begun, then up to
11 2 years after the return of the certified copy of the
12 judgment in the court proceeding.

13 2) Transferee of Transferee. In the case of the
14 liability of a transferee, up to 2 years after the
15 expiration of the period of limitation for assessment
16 against the preceding transferee, but not more than 3 years
17 after the expiration of the period of limitation for
18 assessment against the initial transferor; except that if,
19 before the expiration of the period of limitation for the
20 assessment of the liability of the transferee, a court
21 proceeding for the collection of the tax or liability in
22 respect thereof has been begun against the initial
23 transferor or the last preceding transferee, as the case
24 may be, then the period of limitation for assessment of the
25 liability of the transferee shall expire 2 years after the
26 return of the certified copy of the judgment in the court
27 proceeding.

28 (n) Notice of decrease in net loss. On and after August 23,
29 2002 ~~the effective date of this amendatory Act of the 92nd~~
30 ~~General Assembly~~, no notice of deficiency shall be issued as
31 the result of a decrease determined by the Department in the
32 net loss incurred by a taxpayer in any taxable year ending
33 prior to December 31, 2002 under Section 207 of this Act unless
34 the Department has notified the taxpayer of the proposed
35 decrease within 3 years after the return reporting the loss was
36 filed or within one year after an amended return reporting an

1 increase in the loss was filed, provided that in the case of an
2 amended return, a decrease proposed by the Department more than
3 3 years after the original return was filed may not exceed the
4 increase claimed by the taxpayer on the original return.

5 (Source: P.A. 92-846, eff. 8-23-02; 93-840, eff. 7-30-04.)

6 (35 ILCS 5/911) (from Ch. 120, par. 9-911)

7 Sec. 911. Limitations on Claims for Refund.

8 (a) In general. Except as otherwise provided in this Act:

9 (1) A claim for refund shall be filed not later than 3
10 years after the date the return was filed (in the case of
11 returns required under Article 7 of this Act respecting any
12 amounts withheld as tax, not later than 3 years after the
13 15th day of the 4th month following the close of the
14 calendar year in which such withholding was made), or one
15 year after the date the tax was paid, whichever is the
16 later; and

17 (2) No credit or refund shall be allowed or made with
18 respect to the year for which the claim was filed unless
19 such claim is filed within such period.

20 (b) Federal changes.

21 (1) In general. In any case where notification of an
22 alteration is required by Section 506(b), a claim for
23 refund may be filed within 2 years after the date on which
24 such notification was due (regardless of whether such
25 notice was given), but the amount recoverable pursuant to a
26 claim filed under this Section shall be limited to the
27 amount of any overpayment resulting under this Act from
28 recomputation of the taxpayer's net income, net loss, or
29 Article 2 credits for the taxable year after giving effect
30 to the item or items reflected in the alteration required
31 to be reported.

32 (2) Tentative carryback adjustments paid before
33 January 1, 1974. If, as the result of the payment before
34 January 1, 1974 of a federal tentative carryback
35 adjustment, a notification of an alteration is required

1 under Section 506(b), a claim for refund may be filed at
2 any time before January 1, 1976, but the amount recoverable
3 pursuant to a claim filed under this Section shall be
4 limited to the amount of any overpayment resulting under
5 this Act from recomputation of the taxpayer's base income
6 for the taxable year after giving effect to the federal
7 alteration resulting from the tentative carryback
8 adjustment irrespective of any limitation imposed in
9 paragraph (1) of this subsection.

10 (c) Extension by agreement. Where, before the expiration of
11 the time prescribed in this section for the filing of a claim
12 for refund, both the Department and the claimant shall have
13 consented in writing to its filing after such time, such claim
14 may be filed at any time prior to the expiration of the period
15 agreed upon. The period so agreed upon may be extended by
16 subsequent agreements in writing made before the expiration of
17 the period previously agreed upon. In the case of a taxpayer
18 who is a partnership, Subchapter S corporation, or trust and
19 who enters into an agreement with the Department pursuant to
20 this subsection on or after January 1, 2003, a claim for refund
21 may be issued to the partners, shareholders, or beneficiaries
22 of the taxpayer at any time prior to the expiration of the
23 period agreed upon. Any refund allowed pursuant to the claim,
24 however, shall be limited to the amount of any overpayment of
25 tax due under this Act that results from recomputation of items
26 of income, deduction, credits, or other amounts of the taxpayer
27 that are taken into account by the partner, shareholder, or
28 beneficiary in computing its liability under this Act.

29 (d) Limit on amount of credit or refund.

30 (1) Limit where claim filed within 3-year period. If
31 the claim was filed by the claimant during the 3-year
32 period prescribed in subsection (a), the amount of the
33 credit or refund shall not exceed the portion of the tax
34 paid within the period, immediately preceding the filing of
35 the claim, equal to 3 years plus the period of any
36 extension of time for filing the return.

1 (2) Limit where claim not filed within 3-year period.

2 If the claim was not filed within such 3-year period, the
3 amount of the credit or refund shall not exceed the portion
4 of the tax paid during the one year immediately preceding
5 the filing of the claim.

6 (e) Time return deemed filed. For purposes of this section
7 a tax return filed before the last day prescribed by law for
8 the filing of such return (including any extensions thereof)
9 shall be deemed to have been filed on such last day.

10 (f) No claim for refund based on the taxpayer's taking a
11 credit for estimated tax payments as provided by Section
12 601(b)(2) or for any amount paid by a taxpayer pursuant to
13 Section 602(a) or for any amount of credit for tax withheld
14 pursuant to Section 701 may be filed more than 3 years after
15 the due date, as provided by Section 505, of the return which
16 was required to be filed relative to the taxable year for which
17 the payments were made or for which the tax was withheld. The
18 changes in this subsection (f) made by this amendatory Act of
19 1987 shall apply to all taxable years ending on or after
20 December 31, 1969.

21 (g) Special Period of Limitation with Respect to Net Loss
22 Carrybacks. If the claim for refund relates to an overpayment
23 attributable to a net loss carryback as provided by Section
24 207, in lieu of the 3 year period of limitation prescribed in
25 subsection (a), the period shall be that period which ends 3
26 years after the time prescribed by law for filing the return
27 (including extensions thereof) for the taxable year of the net
28 loss which results in such carryback (or, on and after August
29 13, 1999, with respect to a change in the carryover of an
30 Article 2 credit to a taxable year resulting from the carryback
31 of a Section 207 loss incurred in a taxable year beginning on
32 or after January 1, 2000, the period shall be that period that
33 ends 3 years after the time prescribed by law for filing the
34 return (including extensions of that time) for that subsequent
35 taxable year), or the period prescribed in subsection (c) in
36 respect of such taxable year, whichever expires later. In the

1 case of such a claim, the amount of the refund may exceed the
2 portion of the tax paid within the period provided in
3 subsection (d) to the extent of the amount of the overpayment
4 attributable to such carryback. On and after August 13, 1999,
5 if the claim for refund relates to an overpayment attributable
6 to the carryover of an Article 2 credit, or of a Section 207
7 loss, earned, incurred (in a taxable year beginning on or after
8 January 1, 2000), or used in a year for which a notification of
9 a change affecting federal taxable income must be filed under
10 subsection (b) of Section 506, the claim may be filed within
11 the period prescribed in paragraph (1) of subsection (b) in
12 respect of the year for which the notification is required. In
13 the case of such a claim, the amount of the refund may exceed
14 the portion of the tax paid within the period provided in
15 subsection (d) to the extent of the amount of the overpayment
16 attributable to the recomputation of the taxpayer's Article 2
17 credits, or Section 207 loss, earned, incurred, or used in the
18 taxable year for which the notification is given.

19 (h) Claim for refund based on net loss. On and after August
20 23, 2002 ~~the effective date of this amendatory Act of the 92nd~~
21 ~~General Assembly~~, no claim for refund shall be allowed to the
22 extent the refund is the result of an amount of net loss
23 incurred in any taxable year ending prior to December 31, 2002
24 under Section 207 of this Act that was not reported to the
25 Department within 3 years of the due date (including
26 extensions) of the return for the loss year on either the
27 original return filed by the taxpayer or on amended return or
28 to the extent that the refund is the result of an amount of net
29 loss incurred in any taxable year under Section 207 for which
30 no return was filed within 3 years of the due date (including
31 extensions) of the return for the loss year.

32 (Source: P.A. 91-541, eff. 8-13-99; 92-846, eff. 8-23-02.)

33 Section 5-10. The Public Utilities Act is amended by
34 changing Section 8-403.1 as follows:

1 (220 ILCS 5/8-403.1) (from Ch. 111 2/3, par. 8-403.1)

2 Sec. 8-403.1. Electricity purchased from qualified solid
3 waste energy facility; tax credit; distributions for economic
4 development.

5 (a) It is hereby declared to be the policy of this State to
6 encourage the development of alternate energy production
7 facilities in order to conserve our energy resources and to
8 provide for their most efficient use.

9 (b) For the purpose of this Section and Section 9-215.1,
10 "qualified solid waste energy facility" means a facility
11 determined by the Illinois Commerce Commission to qualify as
12 such under the Local Solid Waste Disposal Act, to use methane
13 gas generated from landfills as its primary fuel, and to
14 possess characteristics that would enable it to qualify as a
15 cogeneration or small power production facility under federal
16 law.

17 (c) In furtherance of the policy declared in this Section,
18 the Illinois Commerce Commission shall require electric
19 utilities to enter into long-term contracts to purchase
20 electricity from qualified solid waste energy facilities
21 located in the electric utility's service area, for a period
22 beginning on the date that the facility begins generating
23 electricity and having a duration of not less than 10 years in
24 the case of facilities fueled by landfill-generated methane, or
25 20 years in the case of facilities fueled by methane generated
26 from a landfill owned by a forest preserve district. The
27 purchase rate contained in such contracts shall be equal to the
28 average amount per kilowatt-hour paid from time to time by the
29 unit or units of local government in which the electricity
30 generating facilities are located, excluding amounts paid for
31 street lighting and pumping service.

32 (d) Whenever a public utility is required to purchase
33 electricity pursuant to subsection (c) above, it shall be
34 entitled to credits in respect of its obligations to remit to
35 the State taxes it has collected under the Electricity Excise
36 Tax Law equal to the amounts, if any, by which payments for

1 such electricity exceed (i) the then current rate at which the
2 utility must purchase the output of qualified facilities
3 pursuant to the federal Public Utility Regulatory Policies Act
4 of 1978, less (ii) any costs, expenses, losses, damages or
5 other amounts incurred by the utility, or for which it becomes
6 liable, arising out of its failure to obtain such electricity
7 from such other sources. The amount of any such credit shall,
8 in the first instance, be determined by the utility, which
9 shall make a monthly report of such credits to the Illinois
10 Commerce Commission and, on its monthly tax return, to the
11 Illinois Department of Revenue. Under no circumstances shall a
12 utility be required to purchase electricity from a qualified
13 solid waste energy facility at the rate prescribed in
14 subsection (c) of this Section if such purchase would result in
15 estimated tax credits that exceed, on a monthly basis, the
16 utility's estimated obligation to remit to the State taxes it
17 has collected under the Electricity Excise Tax Law. The owner
18 or operator shall negotiate facility operating conditions with
19 the purchasing utility in accordance with that utility's posted
20 standard terms and conditions for small power producers. If the
21 Department of Revenue disputes the amount of any such credit,
22 such dispute shall be decided by the Illinois Commerce
23 Commission. Whenever a qualified solid waste energy facility
24 has paid or otherwise satisfied in full the capital costs or
25 indebtedness incurred in developing and implementing the
26 qualified solid waste energy facility, whenever the qualified
27 solid waste energy facility ceases to operate and produce
28 electricity from methane gas generated from landfills, or at
29 the end of the contract entered into pursuant to subsection (c)
30 of this Section, whichever occurs first, the qualified solid
31 waste energy facility shall reimburse the Public Utility Fund
32 and the General Revenue Fund in the State treasury for the
33 actual reduction in payments to those Funds caused by this
34 subsection (d) in a manner to be determined by the Illinois
35 Commerce Commission and based on the manner in which revenues
36 for those Funds were reduced. The payments shall be made to the

1 Illinois Commerce Commission, which shall determine the
2 appropriate disbursements to the Public Utility Fund and the
3 General Revenue Fund based on this subsection (d).

4 (e) The Illinois Commerce Commission shall not require an
5 electric utility to purchase electricity from any qualified
6 solid waste energy facility which is owned or operated by an
7 entity that is primarily engaged in the business of producing
8 or selling electricity, gas, or useful thermal energy from a
9 source other than one or more qualified solid waste energy
10 facilities.

11 (e-5) A qualified solid waste energy facility may receive
12 the purchase rate provided in subsection (c) of this Section
13 only for kilowatt-hours generated by the use of methane gas
14 generated from landfills. The purchase rate provided in
15 subsection (c) of this Section does not apply to electricity
16 generated by the use of a fuel that is not methane gas
17 generated from landfills. If the Illinois Commerce Commission
18 determines that a qualified solid waste energy facility has
19 violated the requirement regarding the use of methane gas
20 generated from a landfill as set forth in this subsection
21 (e-5), then the Commission shall issue an order requiring that
22 the qualified solid waste energy facility repay the State for
23 all dollar amounts of electricity sales that are determined by
24 the Commission to be the result of the violation. As part of
25 that order, the Commission shall have the authority to revoke
26 the facility's approval to act as a qualified solid waste
27 energy facility granted by the Commission under this Section.
28 If the amount owed by the qualified solid waste energy facility
29 is not received by the Commission within 90 days after the date
30 of the Commission's order that requires repayment, then the
31 Commission shall issue an order that revokes the facility's
32 approval to act as a qualified solid waste energy facility
33 granted by the Commission under this Section. The Commission's
34 action that vacates prior qualified solid waste energy facility
35 approval does not excuse the repayment to the State treasury
36 required by subsection (d) of this Section for utility tax

1 credits accumulated up to the time of the Commission's action.
2 A qualified solid waste energy facility must receive Commission
3 approval before it may use any fuel in addition to methane gas
4 generated from a landfill in order to generate electricity. If
5 a qualified solid waste energy facility petitions the
6 Commission to use any fuel in addition to methane gas generated
7 from a landfill to generate electricity, then the Commission
8 shall have the authority to do the following:

9 (1) establish the methodology for determining the
10 amount of electricity that is generated by the use of
11 methane gas generated from a landfill and the amount that
12 is generated by the use of other fuel;

13 (2) determine all reporting requirements for the
14 qualified solid waste energy facility that are necessary
15 for the Commission to determine the amount of electricity
16 that is generated by the use of methane gas from a landfill
17 and the amount that is generated by the use of other fuel
18 and the resulting payments to the qualified solid waste
19 energy facility; and

20 (3) require that the qualified solid waste energy
21 facility, at the qualified solid waste energy facility's
22 expense, install metering equipment that the Commission
23 determines is necessary to enforce compliance with this
24 subsection (e-5).

25 A public utility that is required to enter into a long-term
26 purchase contract with a qualified solid waste energy facility
27 has no duty to determine whether the electricity being
28 purchased was generated by the use of methane gas generated
29 from a landfill or was generated by the use of some other fuel
30 in violation of the requirements of this subsection (e-5).

31 (f) This Section does not require an electric utility to
32 construct additional facilities unless those facilities are
33 paid for by the owner or operator of the affected qualified
34 solid waste energy facility.

35 (g) The Illinois Commerce Commission shall require that:
36 (1) electric utilities use the electricity purchased from a

1 qualified solid waste energy facility to displace electricity
2 generated from nuclear power or coal mined and purchased
3 outside the boundaries of the State of Illinois before
4 displacing electricity generated from coal mined and purchased
5 within the State of Illinois, to the extent possible, and (2)
6 electric utilities report annually to the Commission on the
7 extent of such displacements.

8 (h) Nothing in this Section is intended to cause an
9 electric utility that is required to purchase power hereunder
10 to incur any economic loss as a result of its purchase. All
11 amounts paid for power which a utility is required to purchase
12 pursuant to subparagraph (c) shall be deemed to be costs
13 prudently incurred for purposes of computing charges under
14 rates authorized by Section 9-220 of this Act. Tax credits
15 provided for herein shall be reflected in charges made pursuant
16 to rates so authorized to the extent such credits are based
17 upon a cost which is also reflected in such charges.

18 (i) Beginning in February 1999 and through January 2009,
19 each qualified solid waste energy facility that sells
20 electricity to an electric utility at the purchase rate
21 described in subsection (c) shall file with the Department of
22 Revenue on or before the 15th of each month a form, prescribed
23 by the Department of Revenue, that states the number of
24 kilowatt hours of electricity for which payment was received at
25 that purchase rate from electric utilities in Illinois during
26 the immediately preceding month. This form shall be accompanied
27 by a payment from the qualified solid waste energy facility in
28 an amount equal to six-tenths of a mill (\$.0006) per kilowatt
29 hour of electricity stated on the form. Beginning on the
30 effective date of this amendatory Act of the 92nd General
31 Assembly, a qualified solid waste energy facility must file the
32 form required under this subsection (i) before the 15th of each
33 month regardless of whether the facility received any payment
34 in the previous month. Payments received by the Department of
35 Revenue shall be deposited into the Municipal Economic
36 Development Fund, a trust fund created outside the State

1 treasury. The State Treasurer may invest the moneys in the Fund
2 in any investment authorized by the Public Funds Investment
3 Act, and investment income shall be deposited into and become
4 part of the Fund. Moneys in the Fund shall be used by the State
5 Treasurer as provided in subsection (j).

6 Beginning on July 1, 2006 through January 31, 2009, each
7 month the State Treasurer shall certify the following to the
8 State Comptroller:

9 (A) the amount received by the Department of Revenue
10 under this subsection (i) during the immediately preceding
11 month; and

12 (B) the amount received by the Department of Revenue
13 under this subsection (i) in the corresponding month in
14 calendar year 2002.

15 As soon as practicable after receiving the certification from
16 the State Treasurer, the State Comptroller shall transfer from
17 the General Revenue Fund to the Municipal Economic Development
18 Fund in the State treasury an amount equal to the amount by
19 which the amount calculated under item (B) of this paragraph
20 exceeds the amount calculated under item (A) of this paragraph,
21 if any.

22 The obligation of a qualified solid waste energy facility
23 to make payments into the Municipal Economic Development Fund
24 shall terminate upon either: (1) expiration or termination of a
25 facility's contract to sell electricity to an electric utility
26 at the purchase rate described in subsection (c); or (2) entry
27 of an enforceable, final, and non-appealable order by a court
28 of competent jurisdiction that Public Act 89-448 is invalid.
29 Payments by a qualified solid waste energy facility into the
30 Municipal Economic Development Fund do not relieve the
31 qualified solid waste energy facility of its obligation to
32 reimburse the Public Utility Fund and the General Revenue Fund
33 for the actual reduction in payments to those Funds as a result
34 of credits received by electric utilities under subsection (d).

35 A qualified solid waste energy facility that fails to
36 timely file the requisite form and payment as required by this

1 subsection (i) shall be subject to penalties and interest in
2 conformance with the provisions of the Illinois Uniform Penalty
3 and Interest Act.

4 Every qualified solid waste energy facility subject to the
5 provisions of this subsection (i) shall keep and maintain
6 records and books of its sales pursuant to subsection (c),
7 including payments received from those sales and the
8 corresponding tax payments made in accordance with this
9 subsection (i), and for purposes of enforcement of this
10 subsection (i) all such books and records shall be subject to
11 inspection by the Department of Revenue or its duly authorized
12 agents or employees.

13 When a qualified solid waste energy facility fails to file
14 the form or make the payment required under this subsection
15 (i), the Department of Revenue, to the extent that it is
16 practical, may enforce the payment obligation in a manner
17 consistent with Section 5 of the Retailers' Occupation Tax Act,
18 and if necessary may impose and enforce a tax lien in a manner
19 consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5i of
20 the Retailers' Occupation Tax Act. No tax lien may be imposed
21 or enforced, however, unless a qualified solid waste energy
22 facility fails to make the payment required under this
23 subsection (i). Only to the extent necessary and for the
24 purpose of enforcing this subsection (i), the Department of
25 Revenue may secure necessary information from a qualified solid
26 waste energy facility in a manner consistent with Section 10 of
27 the Retailers' Occupation Tax Act.

28 All information received by the Department of Revenue in
29 its administration and enforcement of this subsection (i) shall
30 be confidential in a manner consistent with Section 11 of the
31 Retailers' Occupation Tax Act. The Department of Revenue may
32 adopt rules to implement the provisions of this subsection (i).

33 For purposes of implementing the maximum aggregate
34 distribution provisions in subsections (j) and (k), when a
35 qualified solid waste energy facility makes a late payment to
36 the Department of Revenue for deposit into the Municipal

1 Economic Development Fund, that payment and deposit shall be
2 attributed to the month and corresponding quarter in which the
3 payment should have been made, and the Treasurer shall make
4 retroactive distributions or refunds, as the case may be,
5 whenever such late payments so require.

6 (j) The State Treasurer, without appropriation, must make
7 distributions immediately after January 15, April 15, July 15,
8 and October 15 of each year, up to maximum aggregate
9 distributions of \$500,000 for the distributions made in the 4
10 quarters beginning with the April distribution and ending with
11 the January distribution, from the Municipal Economic
12 Development Fund to each city, village, or incorporated town
13 that has within its boundaries an incinerator that: (1) uses
14 or, on the effective date of Public Act 90-813, used municipal
15 waste as its primary fuel to generate electricity; (2) was
16 determined by the Illinois Commerce Commission to qualify as a
17 qualified solid waste energy facility prior to the effective
18 date of Public Act 89-448; and (3) commenced operation prior to
19 January 1, 1998. Total distributions in the aggregate to all
20 qualified cities, villages, and incorporated towns in the 4
21 quarters beginning with the April distribution and ending with
22 the January distribution shall not exceed \$500,000. The amount
23 of each distribution shall be determined pro rata based on the
24 population of the city, village, or incorporated town compared
25 to the total population of all cities, villages, and
26 incorporated towns eligible to receive a distribution.
27 Distributions received by a city, village, or incorporated town
28 must be held in a separate account and may be used only to
29 promote and enhance industrial, commercial, residential,
30 service, transportation, and recreational activities and
31 facilities within its boundaries, thereby enhancing the
32 employment opportunities, public health and general welfare,
33 and economic development within the community, including
34 administrative expenditures exclusively to further these
35 activities. These funds, however, shall not be used by the
36 city, village, or incorporated town, directly or indirectly, to

1 purchase, lease, operate, or in any way subsidize the operation
2 of any incinerator, and these funds shall not be paid, directly
3 or indirectly, by the city, village, or incorporated town to
4 the owner, operator, lessee, shareholder, or bondholder of any
5 incinerator. Moreover, these funds shall not be used to pay
6 attorneys fees in any litigation relating to the validity of
7 Public Act 89-448. Nothing in this Section prevents a city,
8 village, or incorporated town from using other corporate funds
9 for any legitimate purpose. For purposes of this subsection,
10 the term "municipal waste" has the meaning ascribed to it in
11 Section 3.290 of the Environmental Protection Act.

12 (k) If maximum aggregate distributions of \$500,000 under
13 subsection (j) have been made after the January distribution
14 from the Municipal Economic Development Fund, then the balance
15 in the Fund shall be refunded to the qualified solid waste
16 energy facilities that made payments that were deposited into
17 the Fund during the previous 12-month period. The refunds shall
18 be prorated based upon the facility's payments in relation to
19 total payments for that 12-month period.

20 (l) Beginning January 1, 2000, and each January 1
21 thereafter, each city, village, or incorporated town that
22 received distributions from the Municipal Economic Development
23 Fund, continued to hold any of those distributions, or made
24 expenditures from those distributions during the immediately
25 preceding year shall submit to a financial and compliance and
26 program audit of those distributions performed by the Auditor
27 General at no cost to the city, village, or incorporated town
28 that received the distributions. The audit should be completed
29 by June 30 or as soon thereafter as possible. The audit shall
30 be submitted to the State Treasurer and those officers
31 enumerated in Section 3-14 of the Illinois State Auditing Act.
32 If the Auditor General finds that distributions have been
33 expended in violation of this Section, the Auditor General
34 shall refer the matter to the Attorney General. The Attorney
35 General may recover, in a civil action, 3 times the amount of
36 any distributions illegally expended. For purposes of this

1 subsection, the terms "financial audit," "compliance audit",
2 and "program audit" have the meanings ascribed to them in
3 Sections 1-13 and 1-15 of the Illinois State Auditing Act.

4 (m) On and after the effective date of this amendatory Act
5 of the 94th General Assembly, beginning on the first date on
6 which renewable energy certificates or other saleable
7 representations are sold by a qualified solid waste energy
8 facility, with or without the electricity generated by the
9 facility, and utilized by an electric utility or another
10 electric supplier to comply with a renewable energy portfolio
11 standard mandated by Illinois law or mandated by order of the
12 Illinois Commerce Commission, that qualified solid waste
13 energy facility may not sell electricity pursuant to this
14 Section and shall be exempt from the requirements of
15 subsections (a) through (l) of this Section, except that it
16 shall remain obligated for any reimbursements required under
17 subsection (d) of this Section. All of the provisions of this
18 Section shall remain in full force and effect with respect to
19 any qualified solid waste energy facility that sold electric
20 energy pursuant to this Section at any time before July 1, 2006
21 and that does not sell renewable energy certificates or other
22 saleable representations to meet the requirements of a
23 renewable energy portfolio standard mandated by Illinois law or
24 mandated by order of the Illinois Commerce Commission.

25 (n) Notwithstanding any other provision of law to the
26 contrary, beginning on July 1, 2006, the Illinois Commerce
27 Commission shall not issue any order determining that a
28 facility is a qualified solid waste energy facility unless the
29 qualified solid waste energy facility was determined by the
30 Illinois Commerce Commission to be a qualified solid waste
31 energy facility before July 1, 2006. As a guide to the intent,
32 interpretation, and application of this amendatory Act of the
33 94th General Assembly, it is hereby declared to be the policy
34 of this State to honor each qualified solid waste energy
35 facility contract in existence on the effective date of this
36 amendatory Act of the 94th General Assembly if the qualified

1 solid waste energy facility continues to meet the requirements
2 of this Section for the duration of its respective contract
3 term.

4 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01;
5 92-574, eff. 6-26-02.)

6 ARTICLE 99. EFFECTIVE DATE

7 Section 99-99. Effective date. This Act takes effect upon
8 becoming law.