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Governor signs Refund Recapture Bill into Law

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On Friday Governor Pritzker signed into law **Public Act 102-0519** (Senate Bill 508) creating Section 18-233 of the Property Tax Code, which implements an automatic levy increase to be applied by county tax extension officials each year in the amount of the aggregate property tax refunds paid by a taxing district in the prior year for certain types of refunds. This refund recapture authority will apply to three categories of property tax refunds – the issuance of a certificate of error, a court order issued in a valuation tax objection complaint, and a decision of the Property Tax Appeal Board.

As we alerted you in early June, SB 508 directs the county clerk to automatically apply an additional amount to the levy each year during the tax extension process equal to the taxing district's refunds paid out during the prior 12-month period. By November 15th of each year the county treasurer must certify the aggregate amount of refunds paid in these three categories. The clerk will then automatically extend the amount without any action required by the taxing district.

As we discussed in June, the refund recapture concept creates both opportunity and potential pitfalls for taxing districts. The additional extension will allow taxing districts to re-collect or recapture amounts paid out as refunds from prior year levies. At the same time, the additional extension will impose a new tax on local taxpayers as the recapture extends amounts already paid in over the tax base a second time. Also, it is likely that the process will occasion a tax shift to the residential tax base as the largest refunds are typically paid to commercial and industrial taxpayers. Finally, taxing districts will need to monitor how the recapture levy affects the defense of property assessment challenges. To the extent taxing districts and local boards of review pullback from defending assessments, the pitfalls identified here would multiply.

We have learned that there is significant concern among several taxpayer advocacy groups about the impact of the new Section 18-233. In particular, there is concern that Section 18-233 will have the effect of causing larger taxpayers to pay their own refunds through the recapture process. A letter threatening litigation on constitutional due process grounds was sent to the bill sponsors and the Governor's office. Time will tell whether the new provision is actually challenged or if additional legislation will modify Section 18-233. For now, however, new Section 18-233 provides taxing districts with a mechanism to recapture refunds paid out to taxpayers for eligible refunds with the process occurring automatically as part of the tax extension process.

The refund recapture concept has been talked about and introduced as legislation multiple times over the past 20 years. Now that the concept is the law in Illinois, taxing districts will need to factor this additional authority into their annual budget and levy process.