ILLINOIS CHAMBER OF COMMERCE

The Governor's "Loophole" Closing Proposals

In mid-February, the Governor gave his annual budget address. The Governor announced that he did not plan to seek an increase in the income tax rates on individuals or businesses. However, he announced his intention to close so-called "corporate loopholes."

Congress has passed the President's $1.9 trillion Covid assistance package. Included in the federal legislation is $7.5 billion for the State of Illinois and $5.5 billion for Illinois units of local government. Given the level of federal assistance, there is simply no need to eliminate these valuable incentives provided to Illinois businesses.

Restrict the manufacturing machinery and equipment exemption from the sales tax by removing "production-related tangible personal property" from the exemption. To reach an agreement on the FY 2020 budget, in 2019 the Governor agreed to modify the manufacturing machinery and equipment exemption to include "production-related tangible person property" that was formerly exempted under the Manufacturers' Purchase Credit. With this proposal, he goes back on that agreement.

Eliminate the Blue Collar Jobs Act that was scheduled to be effective on January 1, 2021. To reach an agreement on the FY 2020 budget, in 2019 the Governor agreed to a new Blue Collar Jobs Act program that is designed to spur investment and creation of good paying blue collar jobs. With this proposal, he goes back on that agreement.

Reverse the repeal of the Corporate Franchise Tax. To reach an agreement on the FY 2020 budget, in 2019 the Governor agreed to a gradual phase out of the Corporate Franchise Tax. With this proposal, he goes back on that agreement.

"Limit the corporate net operating loss to $100,000 per year for the next three years." Under Section 207 of the Illinois Income Tax Act, corporations may carry Illinois net losses incurred in a tax year forward to offset income in later years. Illinois decoupled from federal law on corporate net operating losses going back to the 1980s. This proposal would limit the amount of losses that can be used in a tax year to $100,000. The Department advises that this proposal will allow the restricted losses to be carried forward for use in later years. In essence, the Governor is seeking an interest free loan from Illinois business for the next 3 years.

Decouple from federal accelerated depreciation. Under the 2017 federal Tax Cuts and Jobs Act, purchasers of capital assets were authorized to deduct the cost of such a purchase as an expense in the year the purchase was acquired and placed in service, rather than depreciating the cost of the asset over the life of the asset. Illinois conforms to this federal change. The idea behind the federal change was to spur investment by businesses. The Governor proposes to decouple from the federal treatment and "apply the standard depreciation schedules in IRC Section 168." Once again, in the long run this doesn't provide any additional money to Illinois. This is also nothing more than an interest free loan to the State of Illinois from Illinois businesses.

“Roll Back Federal Tax Cuts and Jobs Act 100% Foreign-Source Dividend Deduction.” The Department of Revenue advises that this proposal is intended to add back the 100% deduction for dividends from 10%-owned foreign corporations and the 50% deduction for GILTI. They explain that they plan to do this while still permitting corporate taxpayers to take advantage of the standard deductions authorized under IRC Section 243 for domestic dividends and IITA Section 203(b)(2)(O) for foreign dividends. They state that the impact of this proposal will fall primarily on large, multi-national corporations with foreign subsidiaries or substantial ownership interests in foreign corporations. However, this would impose an Illinois tax on income that is foreign source income that has been taxed by the foreign jurisdiction.

Limit the retailers discount for the costs of sales tax collection to $1,000 per month. Illinois law recognizes that there are costs to retailers for collecting and remitting state and local sales taxes to the state of Illinois. Illinois law allows retailers to retain 1.75% of the taxes collected as reimbursement for the costs of collection. The Governor proposes to cap this discount at $1,000 per month, contending that costs of collection do not increase based on the sales volume of the retailer. This is simply untrue.

Eliminate the sales tax exemption on the sales of biodiesel. Currently, biodiesel blends containing more than 10 percent biodiesel but no more than 99 percent biodiesel, 100-percent biodiesel, and majority blended ethanol currently receive a full sales tax exemption.

Reduce the Illinois tuition tax credit program to a 40% credit for donations from 75%. The Governor campaigned on eliminating the tuition tax credit. This proposal, by reducing the tax credit to 40% of the amount of a donation from the current 75%, will likely have the same effect as an outright repeal by eliminating the attractiveness of making a donation.

Decoupling from the individual net operating loss provisions under the CARES Act was not mentioned in the Governor's budget address. However, I am advised that there will be continued efforts by the Governor to pass decoupling legislation. I suspect the decoupling proposal wasn't highlighted in his budget address because the decoupling would be retroactive at this point and would not be a FY 2022 budget issue, but rather would affect the FY 2021 budget.

The Illinois Chamber Tax Institute Legislative Package

Income tax

HB 2583 - Murphy, and **SB 490** - Stoller - **Small Business Asset Purchase Accounts** - Creates an income tax deduction for an amount of up to $50,000 per tax year contributed to a small business asset purchase account and all interest earned on such accounts during the tax year. A "small business asset purchase account" is an account established by a taxpayer, the proceeds of which are used to purchase property used primarily in Illinois for which a federal income tax deduction is claimed under Section 179 of the Internal Revenue Code.

SB 1864 - Barickman - **Amends the EDGE credit address Covid-related issues**. Upon the issuance of a disaster proclamation by the Governor covering the location of Taxpayer that is party to an Agreement, the Department of Commerce and Economic Opportunity may modify or restructure the Agreement in a manner that includes the temporary modification of the job creation or retention requirements of the Agreement to provide that the Taxpayer will not be considered to be out of compliance with the

Agreement so long as the Taxpayer maintains at least 85% of the job creation and retention requirements of the Agreement or a lesser percentage that the Department determines is warranted by the Taxpayer's particular circumstances.

SB 2531 - Stoller - **Federal SALT cap work around for owners of pass-through entities**. Amends the Illinois Income Tax Act to tax income of partners of partnerships and S Corporation shareholders at the entity level to work around the federal $10,000 SALT deduction cap.

HB 3034 - Wheeler - **Bonus Investment Credit for Small Businesses** - Amends the Illinois Income Tax Act to authorize a 1% investment credit of the amount of expenses claimed as a federal income tax deduction under Section 179 of the Internal Code

SB 492 - Stoller - **Reinstates the personal property replacement income tax investment credit.** This bill provides that the personal property tax replacement income tax credit for investments in qualified property is reinstated effective this year. This credit was in effect for approximately 25 years but was allowed to "sunset" (lapse) a couple of years ago.

HB 3935 - McCombie and SB 491 - Stoller and SB 511 - DeWitte - The proposal will **strengthen the research and development credit** by modifying the base period calculation for purposes of calculating the required increase in qualifying expenditures. This bill changes the base period calculation to 50% of the average of the 3 year base period.

SB 2257 - Fowler - **Establishes a regionalized minimum wage income tax credit.** the maximum income tax withholding tax credit for full-time equivalent employees is determined by the Metropolitan and Nonmetropolitan area of the State that is the base of operations of the employee.

Penalty Relief

SB 2260 - Wilcox - **Amendment of the Uniform Penalty and Interest Act** - The bill provides that if a Department audit discloses that a taxpayer has paid at least 95% of the tax required to be shown due on the return for the tax period at issue, or the taxpayer before commencement of an audit discovers an underpayment of tax and voluntarily files an amended return and pays additional taxes in an amount that is no more than 5% of the amount of tax required to be shown due for the tax period, the underpayment penalty that would otherwise be due is automatically rescinded.

Sales tax and Excise taxes

HB 1938 - McCombie and SB 2256 - Wilcox - **Modifies the temporary storage exemption from the sales tax so the exemption is not lost if property is returned to Illinois for purposes of repair, refurbishment or storage.** The temporary storage exemption from the sales tax provides that property purchased from an out-of-state retailer that is stored here temporarily before being shipped out of Illinois for use is not subject to Illinois sales tax never to be returned. The "never to be returned" language in the sales tax is to guarantee that the items are not utilized in Illinois. However, this language has been construed by the Department of Revenue to include property that is returned to Illinois for repair, refurbishment or storage. In other words, property the is never utilized in Illinois, but the Department taxes it because it has been returned temporarily. This legislation clarified that the Department may not tax property that is returned solely, and temporarily, for repair, refurbishment or storage.

HB 3033 - Wheeler - **Reinstates the Expanded Temporary Storage Exemption from the sales tax**. Currently, the temporary storage exemption provides an incentive for Illinois purchasers to make purchases from out-of-state retailers because only purchases made from out-of-state retailers may qualify for the temporary storage exemption. This legislation reinstates the portion of the temporary storage exemption that allows purchasers to buy from Illinois retailers and claim the temporary storage exemption. This provision was in effect for about 10 years, but was allowed to "sunset" (lapse) by operation of law. This bill reinstates the authorization to make purchases from Illinois retailers.

SB 2180 - Sims - **Changes the sales taxation of leased property to the lease payments from the up-front cost of the leased item.** This legislation would modify the sales tax leases in Illinois to make Illinois law consistent with the way that every other state other than Maine, and currently Illinois, tax leases. Most states impose sales tax on the lease payment a lessor receives from his or her customer. Illinois and Maine do not impose a tax on the lease payment, but rather tax the cost of the property purchased or lease purposes.

SB 2182 - Sims - **Amends the Data Center exemption** legislation to address implementation issues identified by taxpayers and the Department of Commerce and Economic Opportunity.

Some Notably Bad Legislation

HB 95 - Halpin - Creates the Company-Specific Subsidy Interstate Compact in which each member state agrees to not offer company-specific subsidies for companies currently located in or considering locating in the member state, including, but not limited to, for corporate headquarters, manufacturing facilities, office space, or other real estate developments.

HB 145 - Morgan - Creates the Phase Out Corporate Giveaways Interstate Compact which may be entered into by any state and the District of Columbia, in which each member state agrees not to offer or provide any company-specific tax incentive or company-specific grant to any entity for a corporate headquarters, manufacturing facility, office space, or other real estate development located in any other member state as an inducement for the corporate headquarters, manufacturing facility, office space, or other real estate development to relocate to the offering member state.

HB 860 - Davis - **This is the Cook County Assessor's so-called "data modernization legislation. We remain strongly opposed to this unnecessary and intrusive legislation** which amends the Property Tax Code. Provides that, in counties with 3,000,000 or more inhabitants, taxpayers of income producing property shall submit income and expense data annually to the chief county assessment officer on or before July 1 of each year. Counties of fewer than 3,000,000 inhabitants may opt in to this legislation as well.

HB 3164 - Hernandez - **We oppose this new tax on wire transfers.** Creates the Wire Transfer Tax Act. Provides that a tax of 1% of the amount transferred is imposed on each wire transfer originating from within the State. Provides that the moneys received from the tax shall be deposited into the Illinois DREAM Fund. Amends the Higher Education Student Assistance Act to make conforming changes.

HB 3242 - Mah - **We oppose this legislation that creates the Environmental Responsibility in Tax Credit Awards Act**. The legislation provides that, if the Environmental Protection Agency or the Pollution

Control Board become aware that a taxpayer receiving State tax incentives has engaged in reckless conduct causing environmental damage that seriously endangers the public health or welfare, the Environmental Protection Agency or the Pollution Control Board, as applicable, shall notify the Department of Revenue of its findings. Provides that the Department of Revenue shall then take steps to revoke the taxpayer's State tax incentives.

HB 3424 - Guzzardi - **SB 2127** - Peters - **We oppose this legislation.** The apportionment change the legislation is seeking to reverse corrected a problem with the apportionment of income of federally regulated exchanges that resulted from the change in Illinois apportionment from cost of performance to market based sourcing. The legislation was designed to keep apportionment of the exchanges at roughly the same percentage they were at prior to the change to marketplace sourcing. Amends the Illinois Income Tax Act. The legislation provides that provisions concerning apportionment of income from federally regulated exchanges apply only for taxable years ending on or before December 31, 2021.

HB 3427 - Guzzardi -**SB 2125** - Peters **We oppose reducing the exclusion under the Illinois Estate Tax. We believe the tax should be eliminated or at least the exclusion amount should be raised to match the federal exclusion amount.** The legislation amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Provides that the exclusion amount is $2,000,000 for persons dying on or after January 1, 2022 (currently, $4,000,000).

HB 3475 - Ramirez - **SB 2121** – Peters - **We oppose this legislation that redefines the definition of income to use mark-to-market valuation.** This proposed change is antithetical to U.S. system of taxation and is an artificial and inaccurate manner of determining income. It would result in the same wild and unrealistic fluctuations that is currently seen in the mark-to-market requirements for financial reporting by public companies. The legislation creates the Extremely High Wealth Mark-to-Market Tax Act. Contains provisions concerning gains or losses of assets for individual taxpayers with net assets worth $50,000,000 or more.

HB 3476 - Ramirez - **SB 2124** - Peters **We oppose this unconstitutional legislation.** The legislation amends the Illinois Income Tax Act and provides, for tax years ending on or after December 31, 2021, a surcharge is imposed on an Illinois resident's low-taxed investment income. Defines "low-taxed investment income". Provides how the surcharge is calculated. Exempts from the surcharge: (i) resident married individuals filing joint returns, if Illinois taxable income is not more than $250,000; (ii) a resident head of household, if Illinois taxable income is not more than $200,000; and (iii) resident unmarried individuals, resident married individuals filing separate returns, and resident estates and trusts, if Illinois taxable income is not more than $150,000.

HB 3477 - Ramirez - **SB 2126** – Peters - **We oppose this conceptually and technically flawed legislation.** The legislation amends the Illinois Income Tax Act and provides that all the corporations, wherever incorporated or domiciled, that are members of a unitary business shall file a combined return as a combined group. Makes changes to the definition of "unitary business". Contains provisions concerning a water's edge election. Provides that, with respect to unitary business groups, "United States" means the 50 states of the United States, the District of Columbia, and United States' territories and possessions.

HB 3478 - Ramirez - **We oppose this legislation designed to tax income that the State of Illinois has no right to tax.** Amends the Illinois Income Tax Act. Contains provisions concerning a deduction for income included in the taxpayer's federal adjusted gross income and deemed received under Section 951A (GILTI) or Section 952 (Subpart F) of the Internal Revenue Code.

HB 3529 - Zalewski - **SB 2062** – Castro - **This is the latest attempt by the Cook County Assessor to place new and more burdensome reporting requirements on owners of income producing property.** These bills amend the Property Tax Code and provide that owners of income producing properties shall file physical descriptions of their properties with the chief county assessor, on a form and format determined by the chief county assessor. Effective immediately.

SB 1794 - Murphy - **We oppose this legislation which appears to grant additional authority to 3rd party bounty hunters to conduct audits dealing with locally-imposed and locally-collected utility taxes.** The legislation amends the Local Government Taxpayers' Bill of Rights Act and provides that the statute of limitations set by a unit of local government for the determination and assessment of taxes covered by the Act may not exceed 10 years (currently, 4 years) after the end of the calendar year for which the return for the period was filed or the end of the calendar year in which the return for the period was due, whichever occurs later. Makes conforming changes concerning the tolling of this 10-year period. Amends the Illinois Municipal Code. In a Section concerning municipal audits of public utilities, provides that municipalities may request information from public utilities no more than annually (currently, no more than once every 2 years). Provides that, if the public utility fails to respond in a timely manner to the request for information with complete information, the public utility shall be liable to the municipality for a penalty of $1,000 for each day it fails to produce the requested information. Provides that, if a public utility is liable for any error in past tax payments in excess of $5,000 that were unknown prior to an audit from the municipality, then the public utility shall reimburse the municipality for the cost of the audit. Sets forth conditions under which the public utility may be liable for attorney's fees incurred by the municipality.

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