



ILLINOIS CHAMBER OF COMMERCE

Illinois Chamber of Commerce Tax Institute Legislative Proposals - 2020 spring legislative session

- 1. Amend the Illinois Income Tax Act to create a small business asset purchase account (2019 - SB 1655 Weaver – 2019 - HB 3062, 2020 – SB 3724 – Weaver, 2020 – HB 4021 Murphy)**
 - a. Amends the Illinois Income Tax Act to create an income tax deduction for amounts 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.
 - b. A “small business asset purchase account” is an account established by a taxpayer, the proceeds of which are used to purchase property the proceeds of which are used to purchase property used primarily in Illinois for which an income tax deduction is claimed under Section 179 of the Internal Revenue Code.
 - c. Section 179 of the Internal Revenue Code authorizes certain small business taxpayers to immediately expense (deduct) the cost of certain property in the year of acquisition, rather than deducting the cost of the property over the normal federal depreciation schedule.
 - i. The federal deduction applies to new and used equipment, as well as off-the-shelf software,
 - ii. To claim the federal deduction for a tax year, the equipment must be acquired and placed into service between January 1, and the end of the day on December 31,
 - iii. The maximum amount of the federal deduction is \$1,000,000,
 - iv. The maximum amount that can be spent on equipment before the federal deduction begins to be reduced on a dollar for dollar basis is \$2.5 million,
 - d. Provides and addition modification for amounts withdrawn from a small business asset account that are not used for qualified purchases

- e. Amends the Uniform Penalty and Interest Act to establish a penalty for improper use of moneys in a small business asset purchase account.

2. Modify the temporary storage exemption to provide that the exemption is not lost if otherwise eligible items are returned to Illinois only for storage, repair or refurbishment (2019 - HB 1480 McCombie – and 2019 - SB 1686 Tracy, 2020 – SB 2521 McConchie)

- a. The temporary storage exemption from the Use Tax authorizes the tax-free temporary storage of tangible personal property, that is acquired outside this state and, after being brought into this state and stored here temporarily, is used solely outside this State,
- b. Lessors and sellers of tangible personal property can take advantage of the temporary storage exemption if the property is leased to an out-of-state lessee or sold to an out-of-state purchaser,
- c. However, if the purchased or leased item is ever returned to Illinois for storage, repair or refurbishment, the exemption is lost and tax is charged because the subsequent storage, repair or refurbishment is considered a taxable “use,”
- d. “Use” can occur for tax purposes even though the item is never “utilized” in Illinois,
- e. This amendment provides that property of a purchaser or lessor that is returned to Illinois solely for storage, repair or refurbishment, and is not utilized by a lessor or purchaser in Illinois, is not a taxable use,
 - i. Example: An Illinois company fabricates displays for Microsoft that Microsoft uses at conventions outside of Illinois. Currently, if after the convention the display is returned to Illinois for storage, repair, or refurbishment, the display becomes taxable, even though the display is never utilized in Illinois, but only stored,
 - ii. Example 2: A lessor of construction equipment acquires equipment from an out-of-state seller and leases that equipment to a construction company for use in Indiana. After the lease is over, the construction equipment is returned to Illinois for storage or for repair or refurbishment until it is leased to another construction company for use outside of Illinois. Currently, because the equipment is returned to Illinois for storage, repair or refurbishment the equipment becomes subject to tax,

- f. The current state of the law provides an incentive for companies to locate their operations outside of Illinois, and also creates a “gotcha” situation on audit for companies who oftentimes don’t understand the subtle nuances of the temporary storage exemption,
- g. Modification of the temporary storage exemption to authorize the return of property for storage, repair and refurbishment will promote business activity in Illinois.

3. Reinstate and extend the sunset date of the expanded temporary storage exemption (2019 - HB 3572 – Wheeler, 2020 - 2019 - SB 1676 Tracy, 2020 – HB 5207 – Wheeler, 2020 - SB 3221 –Wilcox)

- a. The expanded exemption was enacted into law effective January 1, 2002 to correct a problem with the temporary storage exemption,
 - i. The problem was that the temporary storage exemption provided an incentive for Illinois businesses to make purchases from out-of-state retailers, rather than Illinois retailers.
 - ii. This is because the temporary exemption was limited to purchases of items outside of Illinois,
 - iii. The same purchases made from an Illinois vendor were taxable.
- b. Because the expanded temporary storage exemption was allowed to expire (sunset) at the end of June 2016, once again Illinois businesses have an incentive to use out-of-state vendors, rather than Illinois vendors.

4. Amend the Illinois False Claims Act to correct abuses allowed under current law (2019 - HB 2139 Keith Wheeler, 2020 HB 5212 – Wheeler, 2019 - SB 1714 Weaver, 2019 SB 1564 - McConchie)

- a. This legislation amends the Illinois False Claims Act (the “IFCA”) to correct abuses allowed under current law. Under current law, private parties may bring lawsuits against any other party alleging a failure to properly charge and collect taxes. The IFCA exempts the Illinois Income Tax Act from such suits, but all other taxes remain subject to the IFCA.

- b. This legislation creates a new procedure for reporting “false claims” relating to tax matters to the Illinois Department of Revenue (the “IDOR”) and eliminates the ability of private parties to file lawsuits directly against other parties in the circuit courts. Adoption of this legislation will eliminate the current rash of abusive private enforcement actions, while preserving the true intent of the law.
- c. The proposed amendments to the IFCA allow whistleblowers to report any “false claim” or tax evasion scheme directly to the IDOR. IDOR will then review the claim and determine whether it simply requires an audit and assessment, or whether the matter is serious enough to warrant a *qui tam* (false claims) action in court with its enhanced penalty system. If a *qui tam* action is warranted, IDOR will recommend to the Illinois Attorney General that it bring the appropriate action under the IFCA. Although the whistleblower would no longer be allowed to bring a private action for such tax cases, he or she would still be rewarded for tax dollars recouped as a result of the information provided to IDOR-- receiving a reward of between 15% to 30% of collections resulting from the information provided.
- d. In recent years, Illinois has seen an ever-increasing number of private *qui tam* or *whistleblower* actions filed under the IFCA. Unlike most other states, Illinois does not exempt sales and excise taxes from the scope of the IFCA.¹
- e. The rash of IFCA lawsuits bypasses the IDOR’s tax administration processes and allows private persons to bring civil enforcement lawsuits against Illinois businesses. These lawsuits require businesses to defend their sales and excise tax compliance directly in the courts. Private plaintiffs bringing these lawsuits stand to reap substantial awards under the IFCA (percentage of tax recovered, treble damages, and attorney fees awards). There is an inherent incentive for such plaintiffs to pursue weak or even meritless claims in unsettled areas of the

¹ The failure to exempt sales and excise taxes from the IFCA appears to have been due to a mistake made when the original False Claims Act was drafted. The IFCA is modeled on the federal False Claims Act. The federal False Claims Act exempts taxes imposed under the Internal Revenue Code. When the Illinois False Claims Act was drafted, the Illinois legislation included, and still includes, an exemption for taxes imposed under the Illinois Income Tax Act. The drafters of the Illinois False Claims Act likely included the exemption from the Illinois Income Tax Act to parallel the federal reference to the Internal Revenue Code in an attempt to exempt taxes from the Act, without realizing that including only a reference to the Illinois Income Tax Act would not exempt all taxes administered and collected by the State of Illinois.

law in order to coerce settlements through the threat of expensive litigation. Indeed, the overwhelming majority of these cases end up being settled because the high cost of litigation causes Illinois businesses to settle baseless claims, rather than fighting the suits as a matter of principle.

- f. The legislation leaves tax enforcement processes in the hands of the Department of Revenue and the Illinois Attorney General—not in the hands of private persons or law firms. The legislation prevents private parties from filing suit against companies in situations where the Department of Revenue may have already conducted, or is in the process of conducting, an audit or investigation of the taxpayer.
- g. The legislation also eliminates the current situation that allows private parties litigating tax matters under the IFCA to obtain access to confidential taxpayer information in direct conflict with Illinois' tax confidentiality laws. The current IFCA does not protect the confidentiality of taxpayer information of companies named in lawsuits. Currently, threats to make public confidential tax records can unfairly coerce taxpayers to settle out of court.

5. Level the playing field for Illinois cigar retailers by capping the tax on cigars at \$0.50/cigar (2020 – HB 4048 – Carroll -2020 – SB 3123 – McConchie, SB 3175 - Wilcox)

- a. Cigars sold by Illinois retailers are subject to the sales tax and the Tobacco Products Tax,
- b. The Tobacco Products tax is imposed at the retail level and is collected on Illinois retail sales,
- c. The Tobacco Products tax is not capped and can be substantial when imposed on premium cigars,
- d. As a result, there is a significant price differential between premium cigars purchased from Illinois retailers and premium cigars purchased from Internet sellers,
- e. Illinois retailers are at a significant competitive disadvantage compared to Internet retailers,
- f. We recommend leveling the playing field for Illinois cigar retailers by capping the tax at \$.50 per cigar,
- g. Currently, 12 states impose a tax cap and \$.50 is the most common tax cap.

6. Create a bonus investment credit for small businesses (2019 - HB 3571, Wheeler - 2020 HB 5208 Wheeler, 2019 - SB 1328 Holmes, 2020 - SB 2566 Holmes)

- a. Amends the Illinois Income Tax Act to authorize an immediate additional 1% investment credit of the amount of expenses claimed as a federal income tax deduction under Section 179 of the Internal Code,
- b. Section 179 of the Internal Revenue Code authorizes certain small business taxpayers to immediately expense (deduct) the cost of certain property in the year of acquisition, rather than deducting the cost of the property over the normal federal depreciation schedule.
 - i. The federal deduction applies to new and used equipment, as well as off-the-shelf software,
 - ii. To claim the federal deduction for a tax year, the equipment must be acquired and placed into service between January 1, and the end of the day on December 31,
 - iii. The maximum amount of the federal deduction is \$1,000,000,
 - iv. The maximum amount that can be spent on equipment before the federal deduction begins to be reduced on a dollar for dollar basis is \$2.5 million.
- c. The credit will be transferrable. The aggregate amount of the credit that may be awarded in any fiscal year is capped at \$45,000,000 in the House version, and \$30,000,000 in the Senate version.

7. Amend the Uniform Penalty and Interest Act to automatically rescind underpayment penalties (This legislation passed the Senate unanimously each of the past four years, but stalled in the House each year) (2019 - SB 1349 Weaver – passed the Senate unanimously, out of rules to House Revenue 2/4/20, moved to subcommittee of House Revenue on 2/6/20, 2020 - SB 2906 – McConchie and Fowler, 2020 SB 3722 - Weaver)

- a. In order to lessen the burden on taxpayers and the administrative burden on the Department, we propose amending the Uniform Penalty and Interest Act
- b. 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.

8. Enhance the R&D credit by modifying the base period calculation (2019 - SB 1350 Weaver and Barickman, 2020 SB 3723 - Weaver, SB 3165 – DeWitte, 2020 – HB 4670 - McCombie)

- a. 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.
- b. Currently, the credit is authorizing for *increasing* research activities in Illinois.
- c. The credit is awarded for the increase in qualified research over a three year base period.
- d. As a result, companies that maintain a steady level of research in Illinois, even if it is a very high level of research in Illinois receive credit only for increases in research activities over the base.
- e. This bill changes the base period calculation to 50% of the average of the 3 year base period.

9. Amend the Illinois Income Tax Act to extend the sunset date of the personal property tax replacement income tax investment credit (2019 - SB 1656 - Weaver, 2020 – SB 3725 - Weaver)

- a. Section 201(e) authorizes the personal property tax replacement income tax investment credit.
- b. This bill provides that the personal property tax replacement income tax credit for investments in qualified property applies for costs incurred on or before December 31, 2023 (currently, December 31, 2018).

10. Amends the Illinois Income Tax Act to provide a regionalized income tax withholding credit against the minimum wage increase (2020 – SB 2567 – Holmes)

- a. Provides that 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.

- b. Metropolitan and Nonmetropolitan areas of the state are determined by the federal Bureau of Labor Statistics as of May 2017.

11. Modify the sales taxation of leases (2020 HB 5135 – Hoffman, 2020 SB 3352 – Sims)

- a. Modifies that sales and use tax treatment of leases.
- b. Currently, a lessor of tangible personal property is required to pay tax on the cost price of an item acquired for lease purposes and no tax is due on the lease stream.
- c. This legislation is designed to modify that tax treatment – tax would no longer be due from a lessor when an item of tangible personal property is acquired for lease purposes. Rather, tax would be due on the lease stream.

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