



ILLINOIS CHAMBER OF COMMERCE

Illinois Chamber of Commerce Tax Institute Legislative Proposals - 2019 spring legislative session

1. Streamline the Enterprise Zone selection process (SB 1613 Sims)

- a. Amends Section 4.1 to make the scoring of enterprise zone applications more objective,
- b. Amends Section 4.1 to add points for any existing or former zone that demonstrates success in addressing the criteria in Section 4 of the Act that formed the basis of the most recent approved application for enterprise zone designation,
- c. Amends Section 5.2.1 to provide that the Board shall approve any application that receives at least 200 points. Adds standards for Board review of a new application of any applicant zone that was previously decertified for cause,
- d. Amends Section 5.3 to eliminate the cap on the number of Enterprise Zones,
- e. Ends the current "Hunger Games" competition between existing zones and new zones,
- f. New zones must continue to comply with the statutory requirements for zone designation e.g. demonstrate that the proposed zone is a "depressed area" as that term is defined in the Act,
- g. The amendments would have an immediate effective date and apply to all Enterprise Zone applications on file with the Department or before the Board on the effective date of this Act.
- h. Current 12 states impose a tax cap and \$.50 is the most common tax cap.

2. Amend the Illinois Income Tax Act to create a small business asset purchase account (SB 1655 Weaver – HB 3062 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. Any business that spends more than \$2,500,000 on equipment receives no deduction,
- 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.

3. 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 (HB 1480 McCombie and SB 1686 Tracy)

- 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.

4. Reinstate and extend the sunset date of the expanded temporary storage exemption (HB 3572 Wheeler and SB 1676 Tracy)

- 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.

5. Amend the Illinois False Claims Act to correct abuses allowed under current law (HB 2139 Keith Wheeler SB 1714 Weaver)

- 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 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

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.

named in lawsuits. Currently, threats to make public confidential tax records can unfairly coerce taxpayers to settle out of court.

6. Level the playing field for Illinois cigar retailers by capping the tax on cigars at \$0.50/cigar and expanding the tax to online sellers (SB 1362 Tom Cullerton)

- 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. The Tobacco Products tax is currently not imposed on sales by non-Illinois Internet sellers,
- e. As a result, there is a significant price differential between premium cigars purchased from Illinois retailers and premium cigars purchased from Internet sellers,
- f. Illinois retailers are at a significant competitive disadvantage compared to Internet retailers,
- g. We recommend leveling the playing field for Illinois cigar retailers by imposing the Tobacco Products tax on Internet sellers and capping the tax at \$.50 per cigar,
- h. Current 12 states impose a tax cap and \$.50 is the most common tax cap.

7. Create a bonus investment credit for small businesses (HB 3571 Keith Wheeler - SB 1328 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. Any business that spends more than \$2,500,000 on equipment receives no deduction,
- 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.

8. Amend the Uniform Penalty and Interest Act to automatically rescind underpayment penalties (This legislation passed the Senate unanimously each of the past three years, but stalled in the House each year) (SB 1349 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.

9. Enhance the R&D credit by modifying the base period calculation (SB 1350 Weaver)

- 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.

10. Expand the Manufacturing Machinery and Equipment exemption to include production-related tangible personal property formerly subject to the manufacturers' purchase credit. (HB 3573 Keith Wheeler)

- a. Manufacturing machinery and equipment is exempt from Illinois sales and use taxes. The current exemption is limited to machinery and equipment used directly in manufacturing.
- b. For many years, Illinois law also provided a credit against the state sales and use taxes for production-related tangible property used in a manufacturing operation through the Manufacturers' Purchase Credit ("MPC"). However, the MPC automatically "sunset" by operation of law on August 31, 2014.
- c. Production-related property includes such items as supplies and consumables, hand tools protective apparel and fire and safety equipment used in the manufacturing process and Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging and packing for shipping or transportation.
- d. This bill adds production-related tangible personal property to existing manufacturing machinery and equipment exemption

11. Amend the Revised Uniform Unclaimed Property Act to modify certain anti-business provisions (HB 2573 Zalewski)

- a. Restore the business-to-business exemption from prior law,
- b. Move the general abandonment period back to 5 years from 3 years,
- c. Modify the statute of limitations to make it consistent with the model RUUPA, instead of the unlimited statute of limitations for businesses that file reports in the new law – 5 years if a report is filed and 10 years if no report is filed,
- d. Eliminate the authority of the Treasurer to hire third party contingent fee auditors,
- e. Modify the ability of the Treasurer to base liability of holders on "estimates,"
- f. Eliminate retroactive application of the new Act.

12. Create a sales and use tax exemption for tangible personal property used in the construction or operation of a new or existing data center (HB 3412 Zalewski – SB 1591 Sims)

- a. We are worked with the members of the data center coalition to develop legislation on this topic.
- b. This bill amends the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois, the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and the Electricity Excise Tax Law and provides that the Department of Commerce and Economic Opportunity shall issue certificates of exemption to qualified Illinois data centers.
- c. Qualified tangible personal property used in the construction or operation of a certified data center is exempt from the taxes imposed under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act.
- d. The bill also provides that certified data centers are exempt from the tax imposed under the Electricity Excise Tax Law.

13. Amend the Illinois Income Tax Act to extend the sunset date of the personal property tax replacement income tax investment credit (SB 1656 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).

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