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JB Pritzker
Governor

David Harris
Director

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

TO: The Honorable JB Pritzker
Governor

The Honorable John J. Cullerton
Senate President

The Honorable Michael J. Madigan
Speaker of the House

The Honorable William E. Brady
Senate Republican Leader

The Honorable Jim Durkin
House Republican Leader

FROM: David Harris
Director *DH*

DATE: December 31, 2019

SUBJECT: Illinois Department of Revenue FY2019 Annual Report.

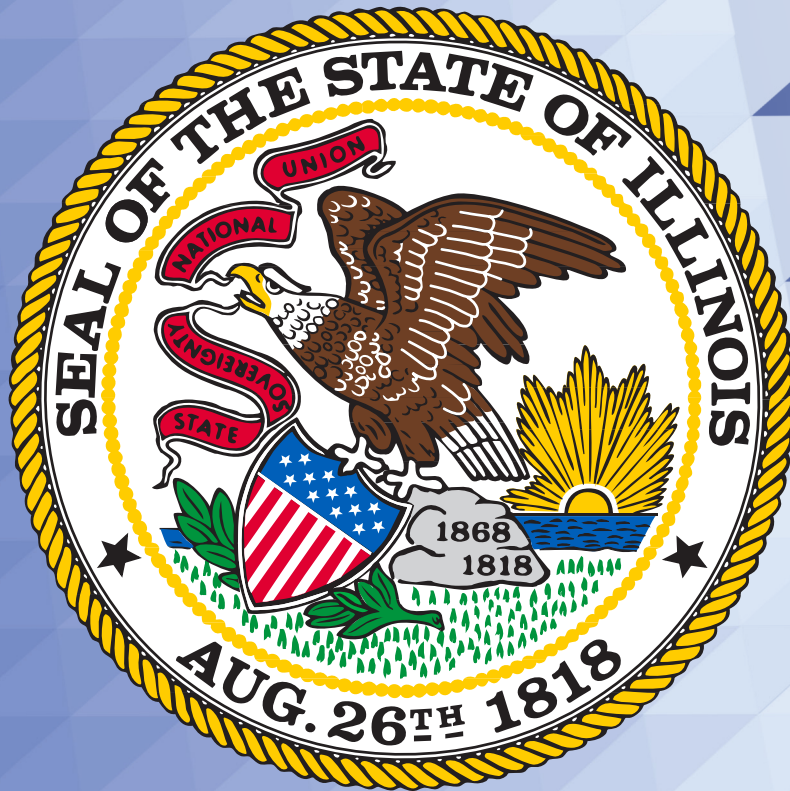
The Illinois Department of Revenue is submitting its Annual Report as required by 30 ILCS 105/3(A), including information required per 20 ILCS 2505/2505-745, for Fiscal Year 2019.

Cc: Office of the Governor
Dan Hynes
Alexis Sturm
Ann Spillane
Lisa Duarte
Cameron Mock
General Assembly
Secretary of the Senate
Clerk of the House
Department of Revenue
Richard Sgro
Cory Staley
Marty Johnson

ILLINOIS DEPARTMENT OF REVENUE

Annual Report

Fiscal Year 2019





Annual Report FY2019

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Collections Remitted to the State Comptroller - All Revenue Sources

	Total
Collections by tax/type ¹	
Sales and Use.....	\$16,005,693,544.86
Motor Fuel.....	1,359,421,027.62
Cigarette	767,895,067.47
Senior Citizen Deferral.....	6,134,033.73
Liquor	297,221,421.34
Public Utility	1,465,118,798.62
Hotel.....	446,305,646.33
Liquor Control Commission.....	19,854,763.00
Real Estate	92,286,849.13
Gaming	5,783,530.29
Private Vehicle Use.....	53,125,456.13
General Office / Misc.	9,954,412.61
Business Income.....	5,451,119,011.97
Individual Income	21,891,537,585.53
Racing.....	5,837,559.03
Automobile Renting.....	86,063,281.13
Live Adult Entertainment.....	428,363.39
Intergovernmental	71,822,648.86
	\$48,035,603,001.04

Collections deposited into State Treasury and in-transit to State Comptroller at year end:

Current year	357,394,157.57
Prior year	<u>324,308,599.45</u>
Net change.....	\$33,085,558.12

Comptroller fund receipts ²

Sales and Use.....	15,999,938,015.07
Motor Fuel.....	1,351,722,862.14
Cigarette	769,475,166.47
Senior Citizen Deferral.....	6,223,264.42
Liquor	297,249,152.67
Public Utility	1,460,335,157.66
Hotel.....	443,782,849.69
Liquor Control Commission.....	19,840,871.00
Real Estate	93,666,828.56
Gaming	5,787,808.57
Private Vehicle Use.....	53,135,660.62
General Office / Misc.	9,965,665.30
Business Income.....	5,443,057,518.52
Individual Income	21,884,668,323.90
Racing.....	5,842,910.94
Automobile Renting.....	85,574,375.14
Live Adult Entertainment.....	428,363.39
Intergovernmental	71,822,648.86
	\$48,002,517,442.92

Collections reconciled to receipts ³

\$0

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Additional Information

¹ Collections by tax/type

Taxpayers remit their payments to the Illinois Department of Revenue (IDOR) using prescribed payment vouchers. The monies collected are deposited into bank accounts held in the custody of the State Treasurer's Office. The amounts showing in the "**Collections by tax/type**" section reflect the payments received from taxpayers.

² Comptroller fund receipts

The monies collected are then receipted into State funds maintained by the State Comptroller's Office. The fund receipts are reflected in the section titled "Comptroller fund receipts". The allocation of specific monies to specific funds is governed by various tax acts. Additional information regarding fund receipts can be found in the State Ledger on the Comptroller's website.

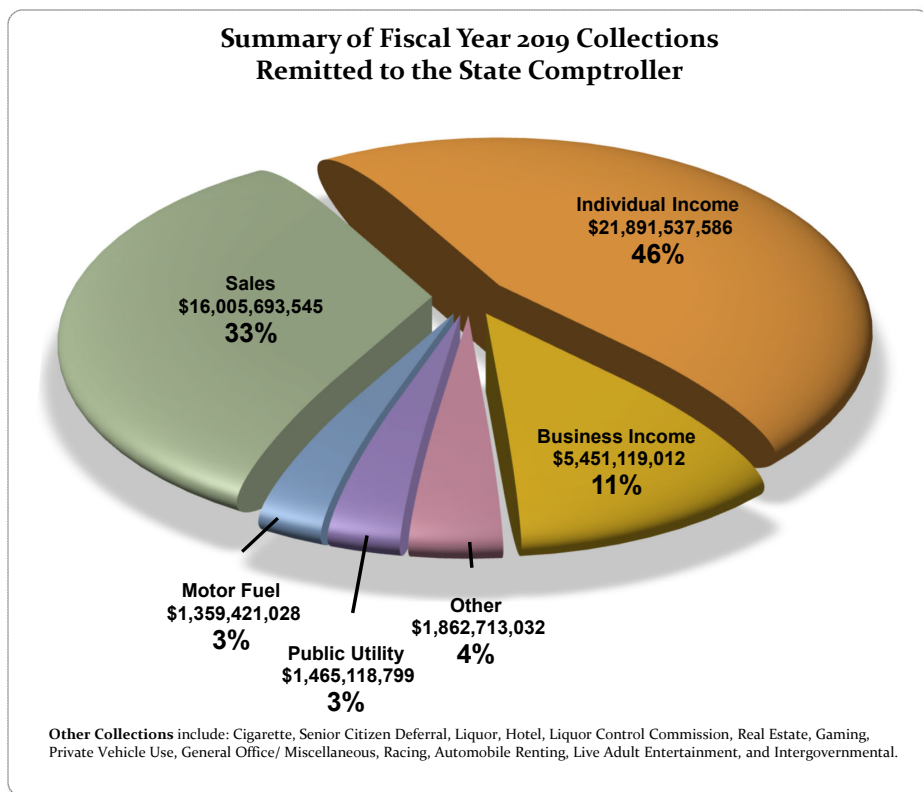
³ Collections reconciled to receipts

The line "**Collections reconciled to receipts**" demonstrates any discrepancies between money collected by IDOR from taxpayers and the money ultimately receipted into State funds. Variances between collections and receipts are due to timing differences related to changes in the amount of deposits in-transit to the State Comptroller at the end of the period. This information is provided in the section titled "**Collections deposited into State Treasury and in-transit to State Comptroller at year end.**"

(Total "**Collections by tax/type**, \$48,035,603,001.04" less "**Collections deposited into the State Treasury and in-transit to the State Comptroller**, \$33,085,558.12" is equal to "**Comptroller fund receipts**, \$48,002,517,442.92".)

Information regarding the taxes imposed, rates, form/filing requirements, payment requirements, and statutory authority can be found in the Research/Tax Information section of IDOR's website at tax.illinois.gov. A more detailed version of this schedule with monthly amounts, collections by voucher type, and receipts by fund and revenue source can be found in the Research/Raw Tax Statistics section of the IDOR's website.

Also, updated tax statistics are available at the Research section of IDOR's website. Please see the report "Monthly Collections Remitted to the State Comptroller." This report provides additional details about monthly amounts, collections by voucher type, and receipts by fund and revenue source.





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Illinois Department of Revenue Legislative Summary*

Income Tax

Senate Bill 1, Public Act 101-0001

Minimum Wage/Withholding Tax Credit - Amends the Illinois Income Tax Act and the Minimum Wage Law. Provides for an increase in the minimum wage and for a credit against withholding payments in relation to the increase. Increases the minimum wage to \$9.25 per hour beginning January 1, 2020. Provides for annual increases in the minimum wage culminating in a minimum wage of \$15 per hour beginning on January 1, 2025. Provides employers with 50 or fewer full-time equivalent employees a credit against withholding tax for reporting periods beginning on or after January 1, 2020. Provides for a reduction in the credit each year beginning January 1, 2021. Provides employers may claim the credit for reporting periods beginning on or after January 1, 2020 and end on or before December 31, 2026 and that employers with no more than 5 employees may claim the credit for reporting periods ending on or before December 31, 2027. Authorizes the Department of Labor to perform random audits of employer to ascertain compliance with the Minimum Wage Law. Authorizes a penalty of \$100 per employee for failure to maintain required records.

Senate Bill 687, Public Act 101-0008

The following provisions only become effective if Senate Joint Resolution Constitutional Amendment No. 1 of the 101st General Assembly is approved by voters of the State prior to January 1, 2021.

- **Fair Tax rates** - Amends the Illinois Income Tax Act. Sets forth a schedule of income-based tax rates for individuals, trusts, and estates for taxable years beginning on or after January 1, 2021. Provides that, for taxable years beginning on or after January 1, 2021, the tax on corporations shall be imposed at the rate of 7.99% of the taxpayer's net income for the taxable year.
- **Child tax credit** - Amends the Illinois Income Tax Act. Creates a \$100 child tax credit for each child who is under 17 and for whom the taxpayer is allowed an additional exemption under Section 204 of the IITA. Reduces the credit by \$5 for each \$2,000 of net income that exceeds \$60,000 in the case of a joint return and that exceeds \$40,000 in the case of any other return.
- **Property tax credit** - Amends the Illinois Income Tax Act. Provides that the income tax credit for property taxes shall be equal to 6% (currently, 5%) of real property taxes paid by the taxpayer during the taxable year on the principal residence of the taxpayer.

Senate Bill 689, Public Act 101-0009

- **De-couple from the Tax Cuts and Jobs Act** - Amends the Illinois Income Tax Act. For taxable years beginning after December 31, 2018, creates an addition modification equal to the deduction allowed under Section 250(a)(1)(A) of the IRC. For taxable years beginning after December 31, 2018 and before January 1, 2026, creates a deduction in the amount of excess business loss disallowed as a deduction by Section 461(l)(1)(B) of the IRC.
- **Blue-Collar Jobs Act** - Amends the Illinois Enterprise Zone Act and the Illinois Income Tax Act. For taxable years beginning on or after January 1, 2021, creates a High Impact Business construction jobs credit and an Enterprise Zone construction jobs credit. Provides the total aggregate of credits awarded shall not exceed \$20,000,000 in any State fiscal year.

* The legislation included in this report was passed by the General Assembly during FY2019. Public Acts 101-0037 through 101-0588 were signed in FY2020.

Illinois Department of Revenue Legislative Summary*

Senate Bill 690, Public Act 101-0031

- Amends the Illinois Income Tax Act. For taxable years beginning on or after January 1, 2019, creates a data center construction employment tax credit. Provides the amount of the credit shall be 20% of the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center if certain other conditions are met.
- Amends the Illinois Income Tax Act. For taxable years 2019 through 2027, imposes an income tax surcharge on income arising from the sale or exchange of capital assets, depreciable business property, real property used in the trade or business, and Section 197 intangibles of licensed horse racing and gambling organizations.
- Amends the Illinois Income Tax Act. For taxable years ending on or after December 31, 2019, sources Illinois gambling winnings to Illinois.
- Amends the Illinois Income Tax Act. For payments made after December 31, 2019, requires withholding on Illinois gambling winnings of non-residents.

Senate Bill 1257, Public Act 101-0545

De-couple from the Tax Cuts and Jobs Act - Amends the Illinois Income Tax Act. For taxable years beginning on or after January 1, 2019, the base income of an organization that is exempt from the federal income tax by reason of the Internal Revenue Code shall be determined without regard to Section 512(a)(7) of the IRC.

Senate Bill 1515, Public Act 101-0585

Re-defines compensation paid in Illinois - Amends the Illinois Income Tax Act. Provides that, for purposes of being liable for income tax, compensation is paid in this State if some of the individual's service is performed within this State, the individual's service performed within this State is nonincidental to the individual's service performed without this State, and the individual's service is performed within this State for more than 30 working days during the tax year. Contains provisions concerning the calculation of compensation paid in this State if the employer maintains a time and attendance system. Effective for taxable years ending on or after December 31, 2020.

Senate Bill 1591, Public Act 101-0207

- **Research and Development Credit** - Amends the Illinois Income Tax Act. Extends the sunset date of the Research and Development credit under IITA Section 201(k) to tax years ending prior to January 1, 2027.
- **Apprenticeship Education Expense Credit** - Creates a Department of Commerce and Economic Opportunity administered income tax credit for qualifying education expenses on behalf of a qualifying apprentice. The apprentice education expense credit applies against the regular income tax in an amount equal to 100% of qualifying education expenses incurred by an employer with respect to a qualifying apprentice. The credit is capped at \$3,500 per qualifying apprentice per taxable year. However, an additional \$1,500 flat credit amount is allowed if the apprentice resides in certain defined underserved areas. Provides taxpayers in aggregate may claim no more than \$5,000,000 in credit in any calendar year. Effective for taxable years beginning on or after January 1, 2020.

Senate Bill 1595, Public Act 101-0178

Extends the Film Production Services Tax Credit - Amends the Film Production Services Tax Credit Act of 2008. Provides that a taxpayer may not take a credit awarded under that Act for tax years beginning on or after January 1, 2027.

Senate Bill 1726, Public Act 101-0588

Amends the Alzheimer's Disease Assistance Act. Changes the name of the Alzheimer's Disease Research Fund checkoff to the Alzheimer's Disease Research, Care, and Support Fund checkoff.

Illinois Department of Revenue Legislative Summary*

Senate Bill 1800, Public Act 101-0355

Estimated payment threshold - Amends the Illinois Income Tax Act. Increases the threshold for when individuals are required to make estimated income tax payments from \$500 to \$1,000. Effective for taxable years ending on or after December 31, 2019.

Senate Bill 1814, Public Act 101-0010

Lowers 1099K reporting threshold - Amends the Illinois Income Tax Act. For reporting periods beginning on or after January 1, 2020, a person is required to file a federal Form 1099-K with the Department of Revenue if the amount of reportable transactions exceeds \$1,000 and the aggregate number of those transactions exceeds three. Provides that failure to provide that information shall result in a penalty for failure to file an information return.

Sales and Related Taxes

Senate Bill 1469, Public Act 100-1181

Hospital Exemption Extension - Amends the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. Provides that the exemption for tangible personal property sold to or used by certain hospitals sunsets on July 1, 2022. Effective March 8, 2019.

Senate Bill 689, Public Act 101-0009

- **Marketplace Facilitators** - Requires marketplace facilitators meeting specified criteria to collect Use Tax on all transactions occurring on its marketplace. Effective January 1, 2020.
- **Manufacturing Machinery and Equipment Exemption** - Extends the Manufacturing Machinery and Equipment exemption to production-related tangible personal property. Effective July 1, 2019.

Senate Bill 690, Public Act 101-0031

- **Cigarette tax increase** - Amends the Cigarette Tax Act. Increases the cigarette tax from 99 mills per cigarette to 149 mills per cigarette. Imposes a cigarette floor stock tax. Effective July 1, 2019.
- **Tax on e-Cigarettes** - Amends the Tobacco Products Tax Act of 1995. Imposes a tax on e-Cigarettes at a rate of 15% of the wholesale price of e-Cigarettes sold and otherwise disposed of to retailers or consumers. Effective July 1, 2019.
- **Data centers exemption** - Creates an exemption for qualified tangible personal property used in the construction or operation of data centers that have been granted a certification of exemption from the Department of Commerce and Economic Opportunity.
- **Parking Excise Tax** - Creates the Parking Excise Tax Act. Imposes a tax at the rate of 6% of the purchase price for a parking space paid hourly, daily, or weekly. Imposes a tax at the rate of 9% of the purchase price of a parking space paid monthly or annually. Effective January 1, 2020.
- **Trade-in credit limit** - Limits the tax credit to the first \$10,000 of the selling price for traded-in motor vehicles of the First Division. Effective January 1, 2020.
- **Creates the Leveling the Playing Field for Illinois Retail Act.** Effective July 1, 2020.

Senate Bill 1814, Public Act 101-0010

Compliance with FAA regulation - In response to a FAA regulation, makes numerous changes to bring Illinois into compliance with revenue-use restrictions on tax collected on sales and use of aviation fuel.

* The legislation included in this report was passed by the General Assembly during FY2019. Public Acts 101-0037 through 101-0588 were signed in FY2020.

Illinois Department of Revenue Legislative Summary*

Senate Bill 1939, Public Act 101-0032

- **Motor fuel tax increase** - Amends the Motor Fuel Tax Law. Increases the motor fuel tax to \$0.38 per gallon and increases the diesel surcharge to \$0.075 per gallon. Provides for an annual increase to be computed by the Department based on the CPI. Effective July 1, 2019.
- **Motor fuel tax deposits** - Provides the amount estimated to represent 16% of net revenue realized from the sales tax collected on motor fuel and gasohol are to be paid into the Road Fund. Provides the percentage paid to the Road Fund increases by 16% in subsequent fiscal years until it reaches 80% in FY 2026. Effective July 1, 2021.
- **Local motor fuel tax** - Amends the Illinois Municipal Code. Authorizes municipalities in counties with a population exceeding 3,000,000 to impose a tax on motor fuel to be administered by the Department at a rate not to exceed \$0.03 per gallon.
- **County motor fuel tax** - Amends the County Motor Fuel Tax Law. Authorizes Lake and Will counties to impose a county motor fuel tax. Provides the minimum tax that can be imposed is \$0.04 per gallon. Provides the maximum tax that can be imposed is \$0.08 per gallon for all counties authorized to impose a county motor fuel tax. Provides for an annual increase to be computed by the Department.

Property Tax

Senate Bill 2744, Public Act 100-1187

Water Commission Exemption - Amends the Property Tax Code. Provides that property belonging to any water commission organized or existing under joint acquisition and operation of a water supply and waterworks system, a common source of supply of water, or both, is exempt from taxation under the Code. Effective January 1, 2020.

House Bill 250, Public Act 101-0379

Amends the Property Tax Code and the Mobile Home Local Services Tax Enforcement Act. Provides that a county with fewer than 3,000,000 inhabitants may, by joint agreement, combine its tax sale with the tax sale of one or more other contiguous counties. Provides that a joint tax sale shall be held at a location in one of the participating counties. Provides that, if property contains a hazardous substance, hazardous waste, or an underground storage tank, the court may order the holder of the certificate of purchase to assign the certificate to the county collector upon request of the county collector. Provides that the county collector may further assign the certificate to the county, acting as trustee for taxing districts, or to a taxing district having an interest in the taxes sold. In a Section that allows a tax purchase to be set aside as a sale in error if a county, city, village, or incorporated town has an interest in the property under the police and welfare power by advancements made from public funds, provides that such a sale in error may not be granted if the lien has been released, satisfied, discharged, or waived. Effective January 1, 2020.

House Bill 833, Public Act 101-0453

Senior Citizens Homestead Exemption - Amends the Property Tax Code. Provides that in a county with 3,000,000 or more inhabitants, for taxable years 2020 through 2024, a taxpayer who has been granted a senior citizens homestead exemption need not reapply (currently, the taxpayer must reapply annually). Provides that, if the property ceases to be qualified for that exemption in any year for which a reapplication is not required, then the owner of record of the property shall notify the chief county assessment officer that the property is no longer qualified. Provides that the chief county assessment officer shall enter into intergovernmental agreements with the county clerk of his or her county and the Department of Public Health, as well as any other appropriate governmental agency, to obtain information that documents the death of a taxpayer who has been granted a senior citizens homestead exemption. Makes conforming changes in provisions concerning erroneous homestead exemptions.

Illinois Department of Revenue Legislative Summary*

House Bill 2243, Public Act 101-0467

Assessor qualifications - Amends the Property Tax Code. Eliminates the dual continuing education requirements for Certified Illinois Assessing Officers (CIAOs), provides that the Department shall certify all candidates to office regardless of the designation being used to qualify, and provides additional acceptable designations for qualification to hold office. Effective immediately.

House Bill 2578, Public Act 101-0186

High speed rail exemption - Amends the Property Tax Code. Provides that an increase in a property's overall valuation that are directly attributable to the investment, improvement, replacement, or expansion of railroad operating property through State or federal government programs necessary for high speed passenger rail transportation shall be excluded from valuation of its real property improvements through December 31, 2029 (currently, those provisions sunset on December 31, 2019). Effective immediately.

House Bill 3143, Public Act 101-0150

Selection of County Assessor - Amends the Property Tax Code. Provides a county with less than 3,000,000 inhabitants may, upon referendum approval, change the manner in which it selects its county assessor or county supervisor of assessments from an elected position to an appointed position or from an appointed position to an elected position. Effective immediately.

Senate Bill 39, Public Act 101-0077

Property Tax Relief Fund - Amends the State Finance Act. Creates the Illinois Property Tax Relief Fund. Provides that moneys in the Illinois Property Tax Relief Fund shall be used to pay rebates to residential property taxpayers in the State. Provides that the Fund may accept moneys from any lawful source. Provides that the State Comptroller shall calculate a property tax rebate amount for the applicable property tax year by dividing the total amount appropriated from the Illinois Property Tax Relief Fund by the total number of homestead exemptions granted for homestead property in the State. Provides that the property tax bills of non-delinquent taxpayers who received a general homestead exemption under the Property Tax Code shall be reduced by the property tax rebate amount. Effective July 12, 2019.

Senate Bill 158, Public Act 101-0398

Exemption of property owned by taxing district - Amends the Property Tax Code. Provides that, for a municipality with a population over 100,000, all property owned by the municipality, or property interests or rights held by the municipality, regardless of whether such property, interests, or rights are, in whole or in part, within or without its corporate limits, that is used for toll road or toll bridge purposes and that is leased or licensed for those purposes to another entity whose property or property interests or rights are not exempt shall remain exempt, and any leasehold interest in such property, interest, or rights shall not be subject to property taxes. Effective immediately.

Senate Bill 1041, Public Act 101-0198

Notification of delinquent taxes - Amends the Property Tax Code. Provides that, in a county with more than 800,000 inhabitants but fewer than 1,000,000 inhabitants, if a lessee is liable for the payment of property taxes extended against property that is owned by a taxing district, the county treasurer shall promptly notify the taxing district that owns the property if the property taxes are delinquent 60 days after the second installment due date. Authorizes the State's Attorney in that county to bring an action against the lessee in circuit court. Effective January 1, 2020.

* The legislation included in this report was passed by the General Assembly during FY2019. Public Acts 101-0037 through 101-0588 were signed in FY2020.

Illinois Department of Revenue Legislative Summary*

Senate Bill 1055, Public Act 101-0199

Assessment of water treatment facilities - Amends the Property Tax Code. Provides that, on and after January 1, 2020, applications for assessment as a qualified water treatment facility shall be made to the Department of Revenue.

Senate Bill 1456, Public Act 101-0551

Exemption for certain leased property - Amends the Property Tax Code. Provides that the exemption for leaseback property and qualified leased property only applies to property used for parking. Further provides that if any portion of the property is used for a purpose other than parking that portion of the property shall be subject to taxation for the period of time in which it is used for that non-exempt purpose. Effective January 1, 2020.

Senate Bill 1932, Public Act 101-0181

Property Tax Relief Task Force - Amends the Property Tax Code. Creates the Property Tax Relief Task Force. Provides that the Task Force shall identify the causes of increasingly burdensome property taxes across Illinois, review best practices in public policy strategies that create short-term and long-term property tax relief for homeowners, and make recommendations to assist in the development of short-term and long-term administrative, electoral, and legislative changes needed to create short-term and long-term property tax relief for homeowners. Provides for the membership of the Task Force. Provides that the Task Force shall submit its initial report to the Governor and the General Assembly within 90 days of the effective date of this amendatory Act and provides that the Task Force shall submit its final report to the Governor and the General Assembly by December 31, 2019.

Local Government

House Bill 156, Public Act 100-1149

Nuclear Facility Enterprise Zone - Amends the Illinois Enterprise Zone Act. Provides that the presence of an inactive nuclear powered electrical generation facility where spent nuclear fuel is stored on-site is a qualifying factor for a potential enterprise zone. Effective immediately. Effective December 14, 2018.

House Bill 4560, Public Act 100-1167

Special County ROT - Additional Use of Revenues - Amends the Counties Code. Provides that the special county retailers' occupation tax for public safety, public facilities, or transportation may additionally be imposed for mental health or substance abuse (rather than only public safety, public facility, or transportation) purposes in the county. Makes conforming changes. Amends the Transportation Development Partnership Act and the Simplified Sales and Use Tax Administration Act to make conforming changes. Effective January 4, 2019.

Senate Bill 687, Public Act 101-0008

The following provision only becomes effective if Senate Joint Resolution Constitutional Amendment No. 1 of the 101st General Assembly is approved by voters of the State prior to January 1, 2021.

Beginning on February 1, 2021, the monthly transfers from the General Revenue Fund to the Local Government Distributive Fund shall be equal to the sum of (i) 5.32% of the net revenue realized from the tax imposed upon individuals, trusts, and estates during the preceding month and (ii) 6.16% of the net revenue realized from the tax imposed upon corporations during the preceding month.

Illinois Department of Revenue Legislative Summary*

Senate Bill 1814, Public Act 101-0010

- **PPRT Allocations** - Continues payments for public community college base operating grants and local health protection grants to certified local health departments from PPRT.
- **5% reductions continued** - Continues 5% reduction in deposits from GRF to the Downstate Public Transportation Fund. Continues 5% reduction in deposits from GRF to LGDF from income tax receipts. Provides the first \$150 million (previously \$100 million) that should be transferred from GRF to the Public Transportation Fund shall be transferred from the Road Fund and continues 5% reduction in deposits from GRF to the Public Transportation Fund.

Senate Bill 1939, Public Act 101-0032

See Sales and Related Taxes section.

Liquor Control

House Bill 2577, Public Act 101-0037

Amends the Liquor Control Act of 1934. Excludes manufacturers and importing distributors that in the preceding year had less than \$50,000 of tax liability under the Taxation of Liquor Article from a provision requiring manufacturers and importing distributors to file a specified bond with the Department of Revenue. Provides that investigators of the State Commission are peace officers with jurisdiction, including arrest powers, throughout the State.

House Bill 2675, Public Act 101-0482

Amends the Liquor Control Act of 1934. Provides craft distillers with parity with the craft brewers. Separates the “craft distiller” license into a “class 1 draft distiller” and a “class 2 craft distiller.” Creates a “distilling pub” license. Creates a “craft distiller warehouse permit,” which is similar to the brewer’s warehouse permit. Allows class 1 craft distillers and class 2 craft distillers to sell their own spirits and any other manufacturer’s vermouth at their licensed premises. Provides if a class 2 craft distiller also owns distilling pubs, they cannot sell from more than three locations, which must be designated to the Commission.

House Bill 3604, Public Act 101-0156

Amends the Liquor Control Act of 1934. Provides that a vote to prohibit sales at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight or alcoholic liquor containing more than 4% alcohol by weight in the original package and not for consumption on the premises) in a precinct in a city, village, or incorporated town of more than 200,000 inhabitants shall not apply to retail sales of alcoholic liquor by a specific private institution of higher learning or an affiliate thereof.

House Bill 3610, Public Act 101-0517

Amends the Liquor Control Act of 1934. Allows commonly-owned brew pubs to aggregate their overall production limits and reallocate those amounts as they wish, so long as the total production of all brew pubs does not exceed the total aggregated amount. Provides definitions, procedures and requirements for the filling of growlers by retailers. Allows on-premises retailers to fill growlers to be consumed off-premises.

* The legislation included in this report was passed by the General Assembly during FY2019. Public Acts 101-0037 through 101-0588 were signed in FY2020.

Illinois Department of Revenue Legislative Summary*

Senate Bill 1831, Public Act 101-0016

Amends the Liquor Control Act of 1934. Allows for the return of unused, saleable beer from special use permittees and caterers, under certain circumstances. Makes a change to the maximum dollar amount allowed for permanent outside signs. Codifies an existing rule into statute related to consignment sales and service or inspection of draft systems. Provides for leasing of certain dispensing equipment for a set period of time. Updates the definition of beer for taxing purposes to include flavored-malt beverages, which had at times been subjected to the higher tax rates of wine and/or spirits. Codifies Department processes for matching liquor returns.

General / Miscellaneous

Senate Bill 3445, Public Act 100-1171

- **1099-K Reporting** - Requires entities who are required to file form 1099-K, Payment Card and Third-Party Network Transactions, with the IRS to also file that form with the Department.
- **Notice of Sale** - Removes a requirement that the notice of a “bulk sale” be filed at the Department’s Chicago location and provides notice must occur no later than 10 business days prior to the sale or transfer.
- **Federal Use Tax Exemption** - Creates an exemption from the Retailers’ Occupation Tax in instances where the purchaser is exempt from Use Tax by virtue of federal law.
- **IFTA Waivers** - Provides for temporary waivers of IFTA registration for vehicles traveling through Illinois for the purpose of assisting in disaster relief efforts in Canada, Mexico, and Washington, D.C.
- **Date of First Use** - Provides that the liability for the tax on an item purchased in this State is due on the date of purchase, and liability for the tax on an item purchased in another state and brought into this State is due on the date the item is brought into this State.
- **Use of Verified Overpayments** - Provides for the use of verified overpayments to satisfy future excise tax and motor fuel tax liabilities.

House Bill 1438, Public Act 101-0027

Cannabis Regulation and Tax Act - Creates the Cannabis Regulation and Tax Act. Imposes the Cannabis Cultivation Privilege Tax at 7% of gross receipts. Imposes the Cannabis Purchaser Excise Tax at i) 10% of the purchase price if the THC level is at or below 35%, ii) 25% of the purchase price if the THC level is above 35%, and iii) 20% of the purchase price for cannabis-infused products. Authorizes imposition of a County Cannabis Retailers’ Occupation Tax at up to 3.75% of gross receipts in unincorporated areas and up to 3.00% of gross receipts in a municipality located in a county. (Note: The provisions of the County Cannabis Retailers’ Occupation Tax as provided here are reflective of changes included in PA 101-0363). Authorizes imposition of a Municipal Cannabis Retailers’ Occupation Tax of up to 3.00% of gross receipts. Makes numerous other changes to implement the Act.

House Bill 2237, Public Act 101-0466

Illinois Higher Education Savings Program - Amends the State Treasurer Act. Establishes the Illinois Higher Education Savings Program within the State Treasurer’s Office. Directs the Department of Revenue to provide information related to births and adoptions for purposes of identifying children eligible for enrollment in the program.

Illinois Department of Revenue Legislative Summary*

Senate Bill 61, Public Act 101-0295

Collection of administrative fines - Amends the Animal Welfare Act. Provides that any penalty assessed by the Department of Agriculture under the Animal Welfare Act of \$500 or more and that is not paid within 120 days of issuance shall be submitted to the Department of Revenue for collection as provided for under the Illinois State Collection Act of 1986. Makes other changes.

Senate Bill 171, Public Act 101-0400

Drycleaner Environmental Response Trust Fund - Amends the Drycleaner Environmental Response Trust Fund Act. Changes the repeal date for specified fee and tax provisions from January 1, 2020 to January 1, 2030. Increases facility license fees.

Senate Bill 689, Public Act 101-0009

Tax Amnesty Program - Amends the Tax Delinquency Amnesty Act. Creates a tax amnesty program for the period beginning October 1, 2019 through November 15, 2019 for tax liabilities incurred during taxable periods after June 30, 2011 and prior to July 1, 2018. Provides that penalties and interest shall be abated for any taxpayer for the period of time for which amnesty has been granted to the taxpayer.

Senate Bill 1899, Public Act 101-0423

State Tax Lien Registration Act - Amends the State Tax Lien Registration Act. Provides Department of Employment Security liens created under the Unemployment Insurance Act shall be recorded under the State Tax Lien Registration Act rather than with the county recorder of deeds.

Senate Bill 2023, Public Act 101-0363

Compassionate Use of Medical Cannabis Pilot Program Act - Amends the Compassionate Use of Medical Cannabis Pilot Program Act. Removes the word "Pilot" from the Act's short title and the Compassionate Use of Medical Cannabis Pilot Program. Makes conforming changes throughout the Act and statutes. Provides that if and only if House Bill 1438 becomes law, then the Counties Code is amended. Provides that County Cannabis Retailers' Occupation Tax may not exceed: (i) 3.75% of the gross receipts of sales made in unincorporated areas of the county; and (ii) 3% of the gross receipts of sales made in a municipality located in the county (removing provisions limiting to 0.75% of the gross receipts of sales made in a municipality located in a non-home rule county and 3% of gross sales receipts made in a municipality located in a home rule county).

* The legislation included in this report was passed by the General Assembly during FY2019. Public Acts 101-0037 through 101-0588 were signed in FY2020.



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Illinois Department of Revenue Court Cases

Income Tax

Ford Motor Company v. Illinois Department of Revenue

2016 L 050430 (Cook County)

Ford sought administrative review of the Notice of Decision finalizing two Notices of Deficiency and a denial of credit associated with income Plaintiff reported as allocable nonbusiness income. The nonbusiness income deduction was based on interest income associated with three investment accounts. The ALJ concluded that Plaintiff had not presented sufficient documentary evidence to demonstrate that it was entitled to the nonbusiness income deductions for the years at issue. Specifically, Ford had not presented books and records identifying the amounts of interest income realized by the investment accounts during the years at issue. On administrative review, the circuit court affirmed the Department's decision. Ford appealed to the First District Appellate Court.

The appellate court issued a Rule 23 unpublished opinion on March 29, 2019, affirming the circuit court and the Department's decision. The court concluded that Ford had failed to rebut the Department's prima facie case with competent evidence supported by its book and records. The Department's motion to publish the decision was granted, and a revised opinion was issued May 13, 2019.

Sales and Related Taxes

Safety-Kleen Systems, Inc. v. Illinois Department of Revenue

Illinois Independent Tax Tribunal No. 16 TT 167 (September 6, 2018)

Safety-Kleen Systems, Inc. supplies washer parts and cleaning products for degreasing metal parts and tools. Part of the business involves purchasing virgin solvent which is then blended with recycled solvent to then provide to customers. The Department assessed use tax on Safety-Kleen's purchase of virgin solvent for the audit period. In Summary Judgement on Count IV in this matter, Safety-Kleen alleged that its purchases of virgin solvent from outside of Illinois should be exempt from use tax under the applicable temporary storage exemption because the solvent was returning in a different form (as used or contaminated solvent) from its out-of-state customers before being refined as blended solvent to be redistributed to out-of-state customers.

In general, section 3-55(e) of the Use Tax Act, known as the temporary storage exemption, applies to tangible personal property that: 1) is acquired outside of Illinois; 2) is stored temporarily in Illinois, and 3) is then used solely outside of Illinois. Using this standard, after tangible personal property is stored in Illinois and is sent out of state, if the tangible personal property is thereafter returned to Illinois again, it is subject to use tax. In essence, the temporary storage exemption is one of several exemptions created to prevent actual or likely multistate taxation of tangible personal property.

Safety-Kleen claimed that the used solvent is different tangible personal property than the blended solvent because it has a distinct look, smell, chemical composition, PH balance, and flashpoint. The Tribunal noted that no legal authority was cited to support Safety-Kleen's position, and also stated that it was following applicable precedent to treat the temporary storage exemption as an exemption, as opposed to an exclusion from tax. This means that a taxpayer has the burden of proof to prove its right to a tax exemption.

In sum, the Tribunal held that the solvent had not fundamentally changed because the used solvent that returned to Illinois was thereafter recycled to be used for the solvent's intended purpose. Since the solvent came back to Illinois, the temporary storage exemption was lost. Therefore, Summary Judgement was granted for the Department. Notably, this matter is still pending at the Tribunal due to other undecided issues.

Illinois Department of Revenue Court Cases

Redbox Automated Retail LLC. v. Illinois Department of Revenue

Illinois Independent Tax Tribunal No. 17-TT-045 (September 18, 2018)

The Department conducted a sales tax audit on Redbox (a film rental company) for tax periods 1/1/2007 through 6/30/2010 (“the first audit”). The statute of limitations for the first audit period was extended through waivers to June 30, 2013. Redbox paid the first audit liability. A second sales tax audit (“the second audit”) covered tax periods of 7/1/2010 through 6/30/2014. While this second audit was being conducted, the Department agreed to provide Redbox with a refund for previously paid use taxes related to licensing agreements paid during the tax periods in the second audit. Thereafter, in February 2016, Redbox filed a claim for the periods covered in the first audit for the same type of use tax payments related to licensing agreements. The Department denied the majority of this claim and cross-motions for Summary Judgement were filed.

In sum, Redbox generally argued that: 1) the applicable statute of limitations period should have been extended to 3 years beyond when the first audit was conducted (February 2013) and 2) there was a violation of the Illinois Constitution’s Uniformity Clause in creating two classes between taxpayers who discover they owe taxes on their own and those taxpayers that make that discovery through an auditing process.

The Tribunal cited the applicable statute of limitations provisions of the Use Tax Act and verified that “[t]he only authorized way to extend a statute of limitations date is for the taxpayer and Department to extend the date by written agreement.” In sum, Redbox’s statute of limitations argument was contrary to applicable statutes and caselaw. In regard to the Uniformity Clause argument, the Tribunal held that there was no such violation since all taxpayers have a right to file a claim for refund prior to the applicable statute of limitations period and that audit proceedings have no bearing on any statute of limitations period. The Tribunal also noted that, even if it had agreed with Redbox, the Tribunal has no authority under the Tax Tribunal Act to declare a statute or regulation unconstitutional on its face.

The State of Illinois ex rel. v. My Pillow, Inc.

2018 IL 122487 (September 20, 2018)

Originally, the Law Firm Schad, Diamond, and Shedden, P.C. (“Diamond”) filed a qui tam action against My Pillow, Inc. pursuant to the Illinois False Claims Act. Diamond alleged that My Pillow had failed to collect and remit Retailers’ Occupation Tax (“ROT”) and Use Tax (“UT”). The State was properly notified but decided not to proceed in the action itself. The allegations for ROT arose from My Pillow’s product sales at craft shows and for UT from products sold online and by phone. The Circuit Court found against My Pillow for the UT. Under the False Claims Act, Diamond was to collect 30% of the proceeds recovered as compensation for recovering the funds on behalf of the State. In addition to this 30%, Diamond also sought other costs and fees, which specifically included its own attorney fees. My Pillow objected to this by claiming that Diamond was essentially acting as a pro se litigant and that the fees requested were excessive. Although the Circuit Court reduced the amount sought, the Court found that Diamond was entitled to these attorney fees.

On appeal, The Appellate Court affirmed in part, reversed in part, and remanded for further proceedings. Of note, the Appellate Court held that Diamond could only recover any fees occurred by outside counsel and there would be no recovery for any fees related to the firm’s own lawyers. Diamond petitioned the Supreme Court for leave to appeal on whether Diamond was entitled to the fees earned by the firm.

The Supreme Court held that, consistent with at least 150 years of Illinois precedent, an attorney cannot represent himself or herself in a legal proceeding and charge a fee for those services. A primary public policy concern was expressed. “[W]here a fee-shifting statute is intended to remove a burden that might otherwise deter litigants from pursuing a legitimate action and was not meant to serve as a reward to successful plaintiffs or a punishment against the government, the rationale for the law is absent when a lawyer is self-represented.” Also, the Court wanted to make sure that it secured the policy of avoiding unnecessary litigation by ensuring citizens seek legal advice before filing such actions. Therefore, the Supreme Court affirmed the Appellate Court’s decision that Diamond could not collect attorney fees for its own firm.

Illinois Department of Revenue Court Cases

Horsehead Corporation v. Illinois Department of Revenue

2018 IL App (1st) 172802 (September 24, 2018)

Horsehead produces zinc, zinc oxide, and zinc powder from recycled sources and sells these products to third parties or for resale. The Department determined that Horsehead was liable for use tax on its purchases of coke used and consumed in its kilns in its manufacturing process.

The primary issue is whether the coke used by Horsehead in its kilns to reclaim zinc and metallic oxide from electric arc furnace dust meets the definition of a chemical or a chemical acting as a catalyst for purposes of qualifying for the manufacturing and assembling equipment exemption (sections 3-5(18) and 3-50) of the Use Tax Act.

When originally at the Tax Tribunal, the Tribunal noted that under the plain language of the statute, the chemicals or chemicals acting as a catalyst must affect a “direct and immediate” change upon a product being manufactured. Because the evidence produced at the hearing showed that the coke did not react with zinc or zinc oxide directly, the Tribunal concluded that the coke did not qualify for the exemption. The Tribunal also upheld the imposition of penalties because Horsehead did not present any evidence to support its claim of reasonable cause based on good faith.

At the Appellate Court, Horsehead made the same two principal arguments it had made at the Tribunal: 1) that the process involved effects a direct and immediate change as to qualify for the exemption and 2) that the penalties should be abated based on reasonable cause. Of note, in discussing the Tax Tribunal’s decision, the Appellate Court held that the Tax Tribunal possesses and employs tax expertise in resolving tax disputes such as these, so its decision is held to a higher level of deference. The Tribunal’s decision was held to not be incorrect, particularly since Horsehead had not offered any additional argument on appeal as to what “direct and immediate” should mean. Also, the Appellate Court upheld the Tax Tribunal’s decision to maintain the penalties at issue since its reasonable cause argument was based on its own erroneous reading of the exemption provisions of the Use Tax Act.

Shakman v. Illinois Department of Revenue

Circuit Court of Cook County Law Division No. 2017-L-050873 (October 5, 2018)

Mr. Shakman purchased a single-seat glider airplane and paid the required taxes under the Aircraft Use Tax Act. Thereafter, Mr. Shakman created a living trust and transferred title of the airplane to the trust. To effectuate this transfer, title for the airplane was transferred with an FAA bill of sale from Mr. Shakman to the Trust. The Department found this transfer to be a taxable event. Cross motions for Summary Judgement were filed.

Mr. Shakman argued that the actual transaction lacked economic substance, so the transfer should not be taxable. The Court disagreed and held that this case did not require a close evaluation of the economic substance. The Court was concerned that if the standard for taxability in a case such as this required a subjective evaluation of the substance of each potential transaction, there could be absurd results and an undue burden on the Department. To address this concern, the Court set a bright-line standard that “[a]ny time an aircraft owner in Illinois files an FAA bill of sale with the FAA, they will incur a tax liability” under the Aircraft Use Tax Act. Summary Judgement was found for the Department.

Illinois Department of Revenue Court Cases

Chak Fai Hau (Joye Chop Suey) v. Illinois Department of Revenue

2019 IL App (1st) 172588 (February 27, 2019) (2019 WL 983595)

This matter involved a cash business audit of a Chinese restaurant. The taxpayer did not keep proper books and records, so a markup method could not be used in the audit. Instead, the auditor used the “container method” in which the auditor used the different sized containers used in a sample period and the average of prices for items sold within those containers to derive an amount of underreporting. At the administrative hearing at the Department, the Department’s attorney submitted the relevant portions of the audit file and the Notices of Tax Liability with the Director’s certification. The auditor did not testify. Among other arguments, the taxpayer argued that the audit file documents should not have been admissible and that the auditing method was unreasonable and did not meet the required minimum standard of reasonableness. The Administrative Law Judge, Department’s Director, and Circuit Court upheld the admissibility and methodology as appropriate.

The Appellate Court upheld the lower court’s decision as to the reasonableness of the auditing methodology and admissibility of the audit file. In particular, the Court held that “the auditor was working with limited information, which was due to the actions or inactions of the taxpayer himself, and engaged in a calculated effort to obtain the best reconstruction possible.” The Court also re-affirmed that under Department statutes the Department auditor’s in-court testimony is not required to prove up the Department’s prima facie case. Further, a taxpayer needs to rebut the Department’s prima facie case with documentary evidence. In other words, it is not enough for a taxpayer to merely state that its own return is correct.

Property Tax

Midwest Palliative Hospice and Care Center v. Illinois Department of Revenue

125 N.E.3d 1196 (1st Dist. February 25, 2019)

In this case a hospice care center filed an application for tax-exempt status on the basis that it was a charitable institution. The Department denied a property tax exemption to the care center finding that the taxpayer failed to meet its burden to demonstrate by clear and convincing evidence that the property was being put to an exclusively charitable use. The Circuit Court affirmed.

The Appellate Court laid out how an entity seeking a charitable property tax exemption must demonstrate that it is both owned by a charitable institution and put to a charitable use. The Court examined the 6 Korzen factors, from *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968). The Korzen factors are: 1) the organization is set up for the benefit of an indeterminate number of people, 2) the organization has no capital, capital stock or shareholders and earns no profits or dividends, 3) it derives its funds primarily from public and private charity and holds those funds in trust for the objectives and purposes expressed in its charter, 4) it dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses, 5) the property is actually and factually used exclusively for the charitable purpose, regardless of any intent expressed in the organization’s charter or bylaws, and 6) charitable use is the primary purpose for which the property is used and not a second or incidental purpose.

Although some of these factors were met, the Court found that the vast majority of Midwest’s revenue came from non-charitable services. Also, the patients who used Midwest’s services were primarily paying customers. Finally, by taking in Medicare and Medicaid payments, Midwest was not relieving the government of a burden, as many charitable organizations may do. In sum, the Court held that “just because an institution is a non-profit and performs good deeds does not mean that the institution is using its real property exclusively for charitable purposes as that term is used in the Illinois Constitution.”



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