

SB3835



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3835

Introduced 1/21/2022, by Sen. Chapin Rose

SYNOPSIS AS INTRODUCED:

35 ILCS 5/902
35 ILCS 120/5j

from Ch. 120, par. 9-902
from Ch. 120, par. 444j

Amends the Illinois Income Tax Act and the Retailers' Occupation Tax Act. Eliminates the bulk sales notice requirement if the only asset sold or transferred is real estate.

LRB102 22881 HLH 32032 b

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 902 as follows:

6 (35 ILCS 5/902) (from Ch. 120, par. 9-902)

7 Sec. 902. Notice and demand.

8 (a) In general. Except as provided in subsection (b) the
9 Director shall, as soon as practicable after an amount payable
10 under this Act is deemed assessed (as provided in Section
11 903), give notice to each person liable for any unpaid portion
12 of such assessment, stating the amount unpaid and demanding
13 payment thereof. In the case of tax deemed assessed with the
14 filing of a return, the Director shall give notice no later
15 than 3 years after the date the return was filed. Upon receipt
16 of any notice and demand there shall be paid at the place and
17 time stated in such notice the amount stated in such notice.
18 Such notice shall be left at the dwelling or usual place of
19 business of such person or shall be sent by mail to the
20 person's last known address.

21 (b) Judicial review. In the case of a deficiency deemed
22 assessed under Section 903(a)(2) after the filing of a
23 protest, notice and demand shall not be made with respect to

1 such assessment until all proceedings in court for the review
2 of such assessment have terminated or the time for the taking
3 thereof has expired without such proceedings being instituted.

4 (c) Action for recovery of taxes. At any time that the
5 Department might commence proceedings for a levy under Section
6 1109, regardless of whether a notice of lien was filed under
7 the provisions of Section 1103, it may bring an action in any
8 court of competent jurisdiction within or without this State
9 in the name of the people of this State to recover the amount
10 of any taxes, penalties and interest due and unpaid under this
11 Act. In such action, the certificate of the Department showing
12 the amount of the delinquency shall be prima facie evidence of
13 the correctness of such amount, its assessment and of the
14 compliance by the Department with all the provisions of this
15 Act.

16 (d) Sales or transfers outside the usual course of
17 business-Report-Payment of Tax - Rights and duties of
18 purchaser or transferee - penalty. If any taxpayer, outside
19 the usual course of his business, sells or transfers the major
20 part of any one or more of (A) the stock of goods which he is
21 engaged in the business of selling, or (B) the furniture or
22 fixtures, or (C) the machinery and equipment, or (D) the real
23 property, of any business that is subject to the provisions of
24 this Act, the purchaser or transferee of such assets shall, no
25 later than 10 business days before the sale or transfer, file a
26 notice of sale or transfer of business assets with the

1 Department disclosing the name and address of the seller or
2 transferor, the name and address of the purchaser or
3 transferee, the date of the sale or transfer, a copy of the
4 sales contract and financing agreements which shall include a
5 description of the property sold or transferred, the amount of
6 the purchase price or a statement of other consideration for
7 the sale or transfer, and the terms for payment of the purchase
8 price, and such other information as the Department may
9 reasonably require. The notice described in this subsection
10 (d) is not required if the only asset sold or transferred is
11 real estate. If the purchaser or transferee fails to file the
12 above described notice of sale with the Department within the
13 prescribed time, the purchaser or transferee shall be
14 personally liable to the Department for the amount owed
15 hereunder by the seller or transferor but unpaid, up to the
16 amount of the reasonable value of the property acquired by the
17 purchaser or transferee. The purchaser or transferee shall pay
18 the Department the amount of tax, penalties, and interest owed
19 by the seller or transferor under this Act, to the extent they
20 have not been paid by the seller or transferor. The seller or
21 transferor, or the purchaser or transferee, at least 10
22 business days before the date of the sale or transfer, may
23 notify the Department of the intended sale or transfer and
24 request the Department to make a determination as to whether
25 the seller or transferor owes any tax, penalty or interest due
26 under this Act. The Department shall take such steps as may be

1 appropriate to comply with such request.

2 Any order issued by the Department pursuant to this
3 Section to withhold from the purchase price shall be issued
4 within 10 business days after the Department receives
5 notification of a sale as provided in this Section. The
6 purchaser or transferee shall withhold such portion of the
7 purchase price as may be directed by the Department, but not to
8 exceed a minimum amount varying by type of business, as
9 determined by the Department pursuant to regulations, plus
10 twice the outstanding unpaid liabilities and twice the average
11 liability of preceding filings times the number of unfiled
12 returns which were not filed when due, to cover the amount of
13 all tax, penalty, and interest due and unpaid by the seller or
14 transferor under this Act or, if the payment of money or
15 property is not involved, shall withhold the performance of
16 the condition that constitutes the consideration for the sale
17 or transfer. Within 60 business days after issuance of the
18 initial order to withhold, the Department shall provide
19 written notice to the purchaser or transferee of the actual
20 amount of all taxes, penalties and interest then due and
21 whether or not additional amounts may become due as a result of
22 unpaid taxes required to be withheld by an employer, returns
23 which were not filed when due, pending assessments and audits
24 not completed. The purchaser or transferee shall continue to
25 withhold the amount directed to be withheld by the initial
26 order or such lesser amount as is specified by the final

1 withholding order or to withhold the performance of the
2 condition which constitutes the consideration for the sale or
3 transfer until the purchaser or transferee receives from the
4 Department a certificate showing that no unpaid tax, penalty
5 or interest is due from the seller or transferor under this
6 Act.

7 The purchaser or transferee is relieved of any duty to
8 continue to withhold from the purchase price and of any
9 liability for tax, penalty, or interest due hereunder from the
10 seller or transferor if the Department fails to notify the
11 purchaser or transferee in the manner provided herein of the
12 amount to be withheld within 10 business days after the sale or
13 transfer has been reported to the Department or within 60
14 business days after issuance of the initial order to withhold,
15 as the case may be. The Department shall have the right to
16 determine amounts claimed on an estimated basis to allow for
17 periods for which returns were not filed when due, pending
18 assessments and audits not completed, however the purchaser or
19 transferee shall be personally liable only for the actual
20 amount due when determined.

21 If the seller or transferor has failed to pay the tax,
22 penalty, and interest due from him hereunder and the
23 Department makes timely claim therefor against the purchaser
24 or transferee as hereinabove provided, then the purchaser or
25 transferee shall pay to the Department the amount so withheld
26 from the purchase price. If the purchaser or transferee fails

1 to comply with the requirements of this Section, the purchaser
2 or transferee shall be personally liable to the Department for
3 the amount owed hereunder by the seller or transferor up to the
4 amount of the reasonable value of the property acquired by the
5 purchaser or transferee.

6 Any person who shall acquire any property or rights
7 thereto which, at the time of such acquisition, is subject to a
8 valid lien in favor of the Department, shall be personally
9 liable to the Department for a sum equal to the amount of
10 taxes, penalties and interests, secured by such lien, but not
11 to exceed the reasonable value of such property acquired by
12 him.

13 (Source: P.A. 102-40, eff. 6-25-21.)

14 Section 10. The Retailers' Occupation Tax Act is amended
15 by changing Section 5j as follows:

16 (35 ILCS 120/5j) (from Ch. 120, par. 444j)

17 Sec. 5j. If any taxpayer, outside the usual course of his
18 business, sells or transfers the major part of any one or more
19 of (A) the stock of goods which he is engaged in the business
20 of selling, or (B) the furniture or fixtures, (C) the
21 machinery and equipment, or (D) the real property, of any
22 business that is subject to the provisions of this Act, the
23 purchaser or transferee of such asset shall, no later than 10
24 business days prior to the sale or transfer, file a notice of

1 sale or transfer of business assets with the Department
2 disclosing the name and address of the seller or transferor,
3 the name and address of the purchaser or transferee, the date
4 of the sale or transfer, a copy of the sales contract and
5 financing agreements which shall include a description of the
6 property sold, the amount of the purchase price or a statement
7 of other consideration for the sale or transfer, the terms for
8 payment of the purchase price, and such other information as
9 the Department may reasonably require. The notice described in
10 this paragraph is not required if the only asset sold or
11 transferred is real estate. If the purchaser or transferee
12 fails to file the above described notice of sale with the
13 Department within the prescribed time, the purchaser or
14 transferee shall be personally liable for the amount owed
15 hereunder by the seller or transferor to the Department up to
16 the amount of the reasonable value of the property acquired by
17 the purchaser or transferee. The seller or transferor shall
18 pay the Department the amount of tax, penalty and interest (if
19 any) due from him under this Act up to the date of the payment
20 of tax. The seller or transferor, or the purchaser or
21 transferee, at least 10 business days before the date of the
22 sale or transfer, may notify the Department of the intended
23 sale or transfer and request the Department to audit the books
24 and records of the seller or transferor, or to do whatever else
25 may be necessary to determine how much the seller or
26 transferor owes to the Department hereunder up to the date of

1 the sale or transfer. The Department shall take such steps as
2 may be appropriate to comply with such request.

3 Any order issued by the Department pursuant to this
4 Section to withhold from the purchase price shall be issued
5 within 10 business days after the Department receives
6 notification of a sale as provided in this Section. The
7 purchaser or transferee shall withhold such portion of the
8 purchase price as may be directed by the Department, but not to
9 exceed a minimum amount varying by type of business, as
10 determined by the Department pursuant to regulations, plus
11 twice the outstanding unpaid liabilities and twice the average
12 liability of preceding filings times the number of unfiled
13 returns, to cover the amount of all tax, penalty and interest
14 due and unpaid by the seller or transferor under this Act or,
15 if the payment of money or property is not involved, shall
16 withhold the performance of the condition that constitutes the
17 consideration for the sale or transfer. Within 60 business
18 days after issuance of the initial order to withhold, the
19 Department shall provide written notice to the purchaser or
20 transferee of the actual amount of all taxes, penalties and
21 interest then due and whether or not additional amounts may
22 become due as a result of unfiled returns, pending assessments
23 and audits not completed. The purchaser or transferee shall
24 continue to withhold the amount directed to be withheld by the
25 initial order or such lesser amount as is specified by the
26 final withholding order or to withhold the performance of the

1 condition which constitutes the consideration for the sale or
2 transfer until the purchaser or transferee receives from the
3 Department a certificate showing that such tax, penalty and
4 interest have been paid or a certificate from the Department
5 showing that no tax, penalty or interest is due from the seller
6 or transferor under this Act.

7 The purchaser or transferee is relieved of any duty to
8 continue to withhold from the purchase price and of any
9 liability for tax, penalty or interest due hereunder from the
10 seller or transferor if the Department fails to notify the
11 purchaser or transferee in the manner provided herein of the
12 amount to be withheld within 10 business days after the sale or
13 transfer has been reported to the Department or within 60
14 business days after issuance of the initial order to withhold,
15 as the case may be. The Department shall have the right to
16 determine amounts claimed on an estimated basis to allow for
17 non-filed periods, pending assessments and audits not
18 completed, however the purchaser or transferee shall be
19 personally liable only for the actual amount due when
20 determined.

21 If the seller or transferor fails to pay the tax, penalty
22 and interest (if any) due from him hereunder and the
23 Department makes timely claim therefor against the purchaser
24 or transferee as hereinabove provided, then the purchaser or
25 transferee shall pay the amount so withheld from the purchase
26 price to the Department. If the purchaser or transferee fails

1 to comply with the requirements of this Section, the purchaser
2 or transferee shall be personally liable to the Department for
3 the amount owed hereunder by the seller or transferor to the
4 Department up to the amount of the reasonable value of the
5 property acquired by the purchaser or transferee.

6 Any person who shall acquire any property or rights
7 thereto which, at the time of such acquisition, is subject to a
8 valid lien in favor of the Department shall be personally
9 liable to the Department for a sum equal to the amount of taxes
10 secured by such lien but not to exceed the reasonable value of
11 such property acquired by him.

12 (Source: P.A. 100-1171, eff. 1-4-19.)