

Business Assistance and Regulatory Reform Act Report

2022

Submitted by

**Illinois Department of Revenue
Under section 20 of the Illinois Business Assistance
and Regulatory Reform Act
20 ILCS 608/20 (2016)**

June 29, 2022

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JB Pritzker
Governor

David Harris
Director

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

June 29, 2022

The Honorable JB Pritzker
Governor, State of Illinois
Office of the Governor
207 State Capitol
Springfield, Illinois 62706

Honorable Members of the General Assembly
Illinois State Capitol Building
Springfield, Illinois 62706

Ms. Sylvia Garcia, Director
Illinois Department of Commerce & Economic
Opportunity
500 East Monroe Street
Springfield, Illinois 62701

Dear Governor Pritzker, Members of the General Assembly, and Director Garcia:

Pursuant to Section 20 of the Business Assistance and Regulatory Reform Act (20 ILCS 608/20) (the "Act"), the Illinois Department of Revenue (the "Department") has undertaken a rigorous review of its rules and administrative regulations to identify any rules, regulations, and processes that may be unreasonable, unduly burdensome, duplicative, or onerous to small businesses. This report is being delivered to fulfill the Act's statutory directive that each State agency, including the Department, provide the results of such review to the Department of Commerce and Economic Opportunity's Office of Business Permits and Regulatory Assistance, the Governor, and the General Assembly every five years.

The Department's authority does not include the permitting of small businesses, and the Department does not impose any reporting or paperwork requirements beyond what is required by statute. The Department is committed to providing as much guidance to taxpayers as possible, simplifying compliance burdens for all taxpayers (including small businesses), and promoting voluntary compliance with Illinois tax laws. This report highlights certain of the Department's recent initiatives benefiting small businesses in Illinois.

Please do not hesitate to contact me with any questions regarding this report.

Sincerely,

DAVID HARRIS
Director

Illinois Department of Revenue's Recent Initiatives **That Benefit Small Businesses**

A. Relief for Business Taxpayers Impacted by Deadly Storms

In January 2022, Governor Pritzker and the Illinois Department of Revenue (IDOR) announced relief for taxpayers, including businesses, impacted by the December 2021 tornado outbreak.

The tax relief postponed various tax filing deadlines and relieved certain late payment penalties for businesses starting on December 10, 2021. Affected businesses were allowed until May 16, 2022, to file returns and pay income taxes that were due prior to such date, including business returns normally due on March 15, 2022, and April 18, 2022.

The relief also provided that no penalties would be assessed on quarterly withholding income tax returns businesses normally would have been required to file by January 31, 2022, and May 2, 2022, provided they were filed by the May 16, 2022, deadline. IDOR also announced that no penalties would be assessed on late payments of withholding income tax due between December 10, 2021, and December 26, 2021, provided the required payments were made by December 27, 2021.

Additionally, IDOR established an email address (REV.DisasterRelief@illinois.gov) to assist taxpayers with issues related to the disaster relief, and issued a compliance alert to notify businesses of the extended deadlines available to them.

B. Assisting Business Taxpayers Throughout the COVID-19 Pandemic

Throughout the COVID-19 pandemic, IDOR implemented numerous forms of tax relief for businesses, including certain initiatives targeted specifically at small businesses:

- IDOR extended the 2019 income tax filing and payment deadline from April 15, 2020, to July 15, 2020, for taxpayers filing a corporate return. This extension was automatic, requiring no filing or specific request by taxpayers.
- IDOR automatically extended certain Illinois sales tax exemption (or "E" number) registrations for businesses whose certificates of exemption expired within 60 days before and after the Governor's March 21, 2020, stay-at-home order. This extension was automatic, requiring no filing or specific request by taxpayers.
- IDOR waived penalties and interest that would have been imposed on late sales tax payments originally due in February, March, and April 2020, for bars and restaurants with less than \$75,000 of sales tax liability in calendar year 2019, estimated to have impacted nearly 80 percent of bars and restaurants in the state.
- IDOR waived penalties and interest through May 26, 2020, on late-filed, first quarter returns due April 30, 2020, under the International Fuel Tax Agreement (IFTA).

C. Online Registration and Account Management Tools for Businesses

Most small businesses in Illinois are required to register with IDOR for purposes of reporting and paying sales tax, business income tax, and withholding income taxes. IDOR offers business taxpayers the ability to quickly and easily register for an online account with the department through MyTax Illinois, our online taxpayer portal. MyTax Illinois offers several benefits for small business taxpayers, including:

- Online registration for most account types;
- Online return filing for many return types;
- Online payment options;
- Viewing and printing of correspondence, certificates, and licenses;
- Searching for previous returns and submission requests; and
- Editing of registration information, including:
 - Officers
 - Responsible parties
 - Retail sales locations
 - Contacts
 - Opening new tax accounts
 - Closing existing accounts
 - Address changes

D. Information Sharing with the Department of Commerce and Economic Opportunity

Many small businesses in Illinois qualify for and receive the Illinois Small Business Jobs Credit, which is certified by the Department of Commerce and Economic Opportunity (DCEO). To claim these credits against Withholding Income Tax, the taxpayer is required to provide this certification to IDOR when filing its quarterly Withholding Income Tax returns.

IDOR has entered into an information sharing relationship with DCEO so that taxpayers are not required to provide paper documentation evidencing the credit certification. Instead, IDOR is able to verify credits through an established information-sharing process to automatically validate Illinois Small Business Jobs Credit eligibility without paper documentation from the small business taxpayer.

Additionally, small businesses may qualify for and receive any number of other income tax credits that are similarly certified by DCEO, including:

- Angel Investment Credit
- EDGE Credit
- Enterprise Zone Business Credit
- High Impact Business Credit
- Film Production Services Credit

These credits may be claimed against Business Income Tax. As with the Illinois Small Business Jobs Credit, IDOR's information-sharing relationship with DCEO to assist in the verification of these credits prevents delays in processing taxpayer returns and reduces the time necessary to approve application of the credits.

E. Fast Track Resolution Program

In late 2018, IDOR launched its Audit Fast Track Resolution Pilot Program with the goal of providing taxpayers an additional option to resolve disputed audit liabilities without exercising their formal protest rights. During the pilot, the program was limited to audits of cash businesses, including bars, restaurants, and liquor stores. In 2020, based on the pilot program's success, IDOR expanded the Fast Track Resolution Program, which now covers most sales and miscellaneous tax audits.

The Fast Track Resolution Program offers taxpayers a forum for prompt resolution of disputed audit issues while the dispute is still under the jurisdiction of IDOR's Audit Bureau. Advantages to taxpayers participating in the Fast Track Resolution Program include:

- Quick resolution of audit issues, with a goal of resolving outstanding issues during a one-day conference with IDOR;
- Avoidance of formal protest;
- Potential avoidance of the hazards of costly and time-consuming litigation; and
- Possible agreements to payment plans and other collection alternatives between the taxpayer and IDOR.

Taxpayers may participate in the program while retaining all traditional statutory, protest, and appeal rights if they are unable to reach a resolution. Taxpayers can also withdraw from the process at any time.

F. Information and Resources Provided on the Website

IDOR strives to provide accurate and up-to-date information on its website by making timely updates to existing content and developing new or expanded resources (e.g., documents, webpages, flowcharts).

- **General Information.** Businesses can benefit from IDOR's vast library of information and resources found on its website at tax.illinois.gov. General information found on the site includes:
 - legal rulings;
 - news articles;
 - questions and answers;
 - general tax information;
 - tax rate database;
 - registration information;
 - downloadable files including returns, forms, and instructions;
 - compliance alerts; and
 - informational bulletins.

- **Leveling the Playing Field Resources.** In 2019, Public Acts 101-31 and 101-604 which amended the Retailers' Occupation Tax Act and enacted the Leveling the Playing Field for Illinois Retail Act, implemented a series of structural changes to Illinois sales tax laws to require "remote retailers" to remit state and local retailers' occupation taxes beginning January 1, 2021. This legislation further refined and built upon the state's tax laws applicable to remote retailers following the United States Supreme Court's ruling in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), which overruled the longstanding physical presence rule and held that states may require businesses to collect and remit sales tax even if the business has no in-state physical presence. The changes made to Illinois' sales tax laws are intended to "level the playing field" between Illinois-based retailers and remote retailers by imposing state and local retailers' occupation taxes on Illinois retailers and remote retailers alike.

The Leveling the Playing Field for Illinois Retail Act has greatly benefited local municipalities, and, in turn, the state by requiring remote retailers and marketplace facilitators meeting an established sales threshold to remit state and local retailers' occupation tax. However, the significant changes brought by this legislation created confusion among retailers, which IDOR has addressed. IDOR has promulgated rules complete with numerous examples to explain retailers' and marketplace facilitators' new obligations under the legislation, and developed numerous resources to educate taxpayers regarding these changes, including:

- flowcharts, frequently asked questions, power point presentations, and examples addressing common questions and issues raised by retailers;
- numerous publications including Bulletins and Compliance Alerts targeting specific issues and industries affected by the Act; and
- tax rate databases and the Illinois Tax Matrix to keep taxpayers informed of applicable tax rates and any rate changes. IDOR has also provided informational guides on proper filing, payment, refund, origin vs. destination-based tax rates, registration, and other retailer obligations.

All this information, as well as links to the Public Acts, IDOR's Administrative Rules, contact information, and other helpful information pertaining to the Act, is consolidated on IDOR's Resource Page for the Leveling the Playing Field for Illinois Retail Act.

<https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Level-the-Playing-Field.aspx>

G. Administrative Rulemaking

IDOR continually reviews its administrative rules and regulations to incorporate legislative changes, with the overarching goal of providing as much guidance to taxpayers as possible, simplifying compliance burdens for all taxpayers, and promoting voluntary compliance with Illinois tax laws.

- **MM&E Exemption.** Public Act 101-9, effective July 1, 2019, expanded the Manufacturing Machinery and Equipment (MM&E) exemption to include tangible personal property that is primarily used or consumed in a production-related process by a manufacturer in a manufacturing facility, or by a graphic arts producer in a graphic arts production. Prior to the expansion, the exemption was limited to purchases of conventional machinery and equipment used or consumed primarily in the process of manufacturing or assembling tangible personal property for wholesale, retail sale, or lease. Our rulemaking reflects the expansion of the MM&E exemption over time, including its application to chemicals, computer software, machinery and equipment used primarily in graphic arts production, and production-related tangible personal property. The updated rules also permit blanket certificates of exemption, reducing paperwork and compliance burdens for small businesses seeking to use the exemption.
- **Leveling the Playing Field.** IDOR has adopted amended rules in response to the Leveling the Playing Field for Illinois Retail Act to clarify, as provided in the law, that the Metropolitan Pier and Exposition Authority Retailers' Occupation Tax and the Chicago Home Rule Municipal Soft Drink Tax must be collected and remitted by food delivery services that are considered marketplace facilitators meeting a tax remittance threshold; to provide information regarding the manner in which these taxes are imposed; and to clarify that food delivery services that are considered marketplace facilitators under the law must provide food service establishments with a certification that the food delivery service assumes the rights and duties of a "retailer" under the Retailers' Occupation Tax Act and applicable local taxes. Our amendments make clear that small businesses making retail sales through a marketplace facilitator are relieved from the obligation to collect and remit Illinois Retailers' Occupation Tax and applicable local taxes, provided they have received a certification from the marketplace facilitator that the facilitator has assumed such duties, as required by law.

Additionally, IDOR has recently proposed the following rulemakings of particular interest to small businesses:

- **Verified Credits.** So-called "verified credits" represent a unique situation in sales tax administration. These credits arise when a taxpayer remits more tax than is due, and IDOR is able to verify this overpayment from the face of the return, without the need for the taxpayer to independently establish the overpayment. IDOR's proposed rule explains the nature of verified credits and provides various ways to use the credit. For instance, it may be rolled over in the taxpayer's account to offset other liabilities under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, or the Service Use Tax Act. Under our proposed rule, a taxpayer may convert a verified credit into a credit memorandum at any time after the verified credit arises, which can be assigned to another taxpayer or applied against any tax liability owing to IDOR. This proposed rule provides businesses with greater flexibility to use verified credits while clarifying the procedures to use them.

- **Bad Debt Deduction.** Section 166 of the Internal Revenue Code provides a federal income tax deduction for uncollectible debts. However, the deduction is only available for taxpayers who compute taxable income under an accrual method of accounting – i.e., cash-basis taxpayers are not able to claim the deduction on their federal income tax returns. Many small business taxpayers compute taxable income for federal purposes using a cash basis of accounting. IDOR is currently drafting an amendment to our administrative rule on the bad debt deduction to provide that cash-basis taxpayers who are ineligible for the bad debt deduction under Section 166 of the Internal Revenue Code are still permitted to file a deduction or claim for credit under the Retailers' Occupation Tax Act in situations where the retailer has paid the full amount of Retailers' Occupation Tax owing under an installment transaction, but the purchaser defaults on payments to the retailer.