¶10 Sales and Use Taxes

The rate of the state retailers' occupation (sales), use, service occupation, and service use taxes is 6.25% (¶1601). A rate of 1% applies to certain food, medicine (including medical cannabis), and medical equipment. A privilege tax on the cultivation of medical cannabis (marijuana) is imposed at the rate of 7% of the sales price per ounce (¶1520).

In addition to the 6.25% state tax, home-rule counties and municipalities are authorized to levy local taxes in increments of 1/4 of 1% (¶1518, 1601). The Regional Transportation Authority and the Metro East Mass Transit District are also authorized to levy taxes at various rates (¶1518).

In lieu of the retailers' occupation and use taxes, a 5% state automobile renting occupation and use tax is imposed on persons engaged in the business of renting or leasing automobiles, and a 5% tax is imposed on the privilege of using a rented automobile (¶1517, 1601). In addition to the 5% state automobile rental taxes, cities, Cook County, the Regional Transportation Authority, and the Metro East Mass Transit District are authorized to impose automobile rental taxes of up to 1%.

Local tax rates: A local tax rate finder is available on the Department of Revenue's website at **http://www.revenue.state.il.us/Publications/taxratefinder.htm** (¶1601).

FEDERAL/STATE COMPARISON OF KEY FEATURES

¶40 Personal Income Tax Comparison

The following is a comparison of key features of federal income tax laws that have been enacted as of January 2, 2013, and the Illinois personal income tax laws. The starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶201). Illinois incorporates by reference the Internal Revenue Code as amended, as well as other federal provisions relating to federal income tax laws applicable for the taxable year (¶202). State modifications to federal adjusted gross income required by law differences are discussed beginning at ¶205.

Nonresidents and part-year residents: Nonresidents are taxed only on income as specifically modified and allocated or apportioned to Illinois. Part-year residents are taxed on all income received while a resident of Illinois and income attributable to Illinois sources while a nonresident. Allocation and apportionment of income provisions applying to nonresidents and part-year residents are discussed in Chapter 3.

The taxable income base and computation of income tax for partnerships and estates and trusts is discussed beginning at ¶207 and ¶208.

Alternative minimum tax (IRC Sec. 55—IRC Sec. 59).—There is no Illinois equivalent to the federal alternative minimum tax on tax preference items.

Asset expense election (IRC Sec. 179 and IRC Sec. 1400N).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Bad debts (IRC Sec. 166).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Capital gains and capital losses (IRC Sec. 1(h), IRC Sec. 1211, IRC Sec. 1212, and IRC Sec. 1221).—Generally, the same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202). An Illinois subtraction adjustment from federal adjusted gross income is allowed for certain capital gains on employer securities received in a lump-sum distribution and capital gain resulting from appreciation of certain property acquired before August 1, 1969 (¶205).

Charitable contributions (IRC Sec. 170 and IRC Sec. 1400S).—Illinois does not allow itemized deductions (see ¶205) and therefore, Illinois does not incorporate the federal charitable contribution deduction (IRC Sec. 170 and IRC Sec. 1400S). Illinois also does not a allow a an equivalent state subtraction for charitable contributions (see ¶205).

Child care credit (IRC Sec. 45F).—Illinois has no equivalent to the federal employer-provided child care credit.

Civil rights deductions (IRC Sec. 62).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Dependents (IRC Sec. 152).—The same as federal because Illinois adopts the federal definition of "dependent" by incorporation of IRC provisions as amended (¶202) and allows the same exemptions allowed on the federal return (see ¶213).

Depreciation (IRC Sec. 167, IRC Sec. 168 and IRC Sec. 1400N).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202). However, Illinois requires an addition to federal adjusted gross income for IRC Sec. 168(k) bonus depreciation, except the addition modification does not apply to 100% bonus depreciation allowed under the Tax Relief Act of 2010. A subtraction from federal adjusted gross income is allowed for a portion of bonus depreciation for tax years before 2006 and the entire amount of bonus depreciation for tax years thereafter (¶205).

Disaster costs (IRC Sec. 198A).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Earned Income Credit (IRC Sec. 32).—Illinois taxpayers are entitled to a refundable earned income tax credit that may be claimed against Illinois personal income tax liability equal to a portion of the federal EITC (IRC Sec. 32). The amount of the credit for nonresidents or part-year residents is based on the proportion of taxable income attributable to Illinois sources (see ¶414).

Educational benefits and deductions (IRC Sec. 62(a)(2)(D), IRC Sec. 127, IRC Sec. 221, IRC Sec. 222, IRC Sec. 529).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Foreign earned income (IRC Sec. 911 and IRC Sec. 912).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Health insurance and health savings accounts (HSAs) (IRC Sec. 106(e), IRC Sec. 162(l), IRC Sec. 223, IRC Sec. 139C, IRC Sec. 139D).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Indebtedness (IRC Sec. 108 and IRC Sec. 163).—The same as federal because the starting point for computing Illinois personal income tax liability is federal adjusted gross income (see ¶202).

Interest on federal obligations (IRC Sec. 61).—Interest on federal obligations which is exempt from Illinois personal income tax may be subtracted from federal adjusted gross income for purposes of computing state income tax liability. In addition, Illinois allows a subtraction from federal adjusted gross income for distributions from mutual funds investing exclusively in U.S. government obligations (¶211).

Interest on state and local obligations (IRC Sec. 103).—Interest on state and local obligations, except those exempt under Illinois law, must be added to federal adjusted gross income for purposes of computing Illinois personal income tax liabil-

Local rates: The legislature has not authorized the levy of any local income taxes, but a portion of the revenue from the state income tax is allocated among the cities of the state (35 ILCS 5/901(b)).

The Illinois DOR's Tax Rate Finder is available on its website at **http://www.revenue.state.il.us/Publications/taxratefinder.htm**.

• *Surcharge on income from medical marijuana*

For each of the taxable years during the Compassionate Use of Medical Cannabis pilot program (2014 through 2017), a surcharge is imposed on all taxpayers 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 any registrant organization. The amount of the surcharge is equal to the amount of federal income tax liability for the taxable year attributable to those sales and exchanges. (410 ILCS 130; 86 Ill. Adm. Code Sec. 100.2060)

The surcharge does not apply if the medical cannabis cultivation center registrant, medical cannabis dispensary registrant or the property of a registrant is transferred as a result of any of the following: bankruptcy, a receivership, or a debt adjustment initiated by or against the initial registration or the substantial owners of the initial registration; cancellation, revocation, or termination of any registration by the Illinois Department of Public Health; a determination by the Department of Public Health that transfer of the registration is in the best interests of Illinois qualifying patients as defined by the Medical Cannabis Pilot Program Act; the death of an owner of the equity interest in a registrant; the acquisition of a controlling interest in the stock or substantially all of the assets of a publicly traded company; a transfer by a parent company to a wholly owned subsidiary; or the transfer or sale to or by one person to another person where both persons were initial owners of the registration when the registration was issued.

In addition, the surcharge does not apply if the cannabis cultivation center registration, medical cannabis dispensary registration, or the controlling interest in a registrant's property is transferred to lineal descendants in which no gain or loss is recognized or to a controlled corporation in which no gain or loss is recognized. (410 ILCS 130)

¶103 Persons Subject to Tax—Individuals, Estates and Trusts, Partnerships

Law: Income Tax Act, Sec. 201 [35 ILCS 5/201]; Income Tax Act, Sec. 1501 [35 ILCS 5/1501] (CCH ILLINOIS TAX REPORTS, ¶15-005, 15-105, 15-205, 15-505).

Comparable Federal: Secs. 1—5, 112, 641—685, 701—704, 1361—1378 (U.S. MASTER TAX GUIDE ¶109—116, 301—335, 401—482, 501—590).

The Illinois income tax is imposed on every individual, estate, and trust on the privilege of earning or receiving income in or as a resident of Illinois. In addition to the income tax, partnerships and trusts are subject to the personal property replacement income tax.

A partnership as an entity is not subject to the regular income tax but is subject to the personal property tax replacement income tax (¶105).

The personal income tax and the personal property replacement income tax provisions are applicable to limited liability companies. A limited liability company will be treated as a corporation, partnership, or person if it is so classified for federal tax purposes.

All income of resident individuals, estates, and trusts is taxable by Illinois, regardless of its source. Allocation and apportionment of income provisions applying to nonresidents and part-year residents are discussed in Chapter 3.

Printing: A person not subject to the income tax will not become liable for the tax by reason of his or her ownership of tangible personal property located at the premises of a printer in Illinois with whom the person has contracted for printing or by reason of the activities of the person's employees or agents who are located at the printer's premises solely to perform services related to quality control, distribution, or printing.

• *"Resident," "nonresident," and "part-year resident" defined*

A "resident" is (35 ILCS 5/1501(a)(20)):

— an individual who is in the state for other than a temporary or transitory purpose during the taxable year;

— an individual who is domiciled in Illinois but is absent from the state for a temporary or transitory purpose during the taxable year;

— the estate of a decedent who was domiciled in Illinois at the time of his or her death;

— a trust created by the will of a decedent who was domiciled in Illinois at the time of his or her death; and

— an irrevocable trust, the grantor of which was domiciled in Illinois at the time the trust became irrevocable. A trust is considered irrevocable, for purposes of determining residence, to the extent that the grantor is not treated as the owner under IRC Secs. 671—678.

Effective April 19, 2013, the following create rebuttable presumptions of Illinois residence (86 Ill. Admin. Code Sec. 100.3020):

— an individual who is receiving a homestead exemption for Illinois property; or

— an individual who is an Illinois resident in one year and who in the following year is present in Illinois more days than he or she is present in any other state.

Previously, a presumption of Illinois residence existed if an individual spent an aggregate of more than nine months of any taxable year in Illinois. A presumption of nonresidence existed if an individual was absent from Illinois for one year or more.

The rule includes several examples and types of evidence that may be submitted by an individual to rebut the presumption of residence or nonresidence. (86 Ill. Admin. Code Sec. 100.3020)

An Illinois Appellate Court ruled that a taxpayer who was employed for a three-year term in Hong Kong was not precluded, as a matter of law, from asserting nonresident status for Illinois personal income purposes, even though he claimed a homestead exemption on property taxes and filed a joint Illinois income tax return with his wife during the tax years coinciding with his employment contract. (*Grede v. Illinois Department of Revenue*, Appellate Court of Illinois, Second District, No. 2-12-0731, April 22, 2013, CCH ILLINOIS TAX REPORTS, ¶402-650)

Practitioner Comment: Taxpayer's Intent is Key to Residency

The Illinois Court of Appeals, First District, affirmed a Circuit Court grant of summary judgment in favor of taxpayers on their complaint for a declaration that they were not required to pay resident Illinois income taxes for years during which they split their time between Illinois and Florida. For almost fifty years, the plaintiffs lived and worked in Illinois. However, for the years 1996 through 2005, they spent 1,700 days in Florida, 1,666 in Illinois, and 284 elsewhere. According to Illinois law, "individuals are considered Illinois residents if they are present in the state for other than a 'temporary or transitory purpose' or are 'domiciled' in Illinois but leave for a temporary or transitory purpose." As a result, the Department contended that the plaintiffs were domiciled in Illinois for purposes of the personal income tax. The Court disagreed, however, noting

— *Federal Intermediate Credit Banks:* income from notes, bonds, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 U.S.C.A. Sec. 2023);

— *Federal Land Banks and Federal Land Bank Associations:* income from notes, bonds, debentures, and other obligations issued by Federal Land Banks and Federal Land Bank Associations (12 U.S.C.A. Sec. 2055);

— *Federal Savings and Loan Insurance Corporation:* income from notes, bonds, debentures, and other obligations issued by the Federal Savings and Loan Insurance Corporation (12 U.S.C.A. Sec. 1725(e));

— *Financing Corporation (FICO):* income from obligations issued by the Financing Corporation (12 U.S.C.A. Sec. 1441(e)(8));

— *General Insurance Fund:*

a. interest derived from debentures issued by the General Insurance Fund under War Housing Insurance Law (12 U.S.C.A. Sec. 1739(d));

b. interest derived from debentures issued by the General Insurance Fund to acquire rental housing projects (12 U.S.C.A. Sec. 1747g(g));

c. interest derived from Armed Services Housing Mortgage Insurance Debentures issued by the General Insurance Fund (12 U.S.C.A. Sec. 1748b(f));

— *Guam:* interest derived from bonds issued by the government of Guam (48 U.S.C.A. Sec. 1423a). Note that this income is not presently included in federal taxable income;

— *Mutual Mortgage Insurance Fund:* income from such debentures as are issued in exchange for property covered by mortgages insured after February 3, 1988 (12 U.S.C.A. Sec. 1710(d)). Note that this income is not presently included in federal taxable income;

— *National Credit Union Administration Central Liquidity Facility:* income from the notes, bonds, debentures, and other obligations issued on behalf of the Central Liquidity Facility (12 U.S.C.A. Sec. 1795K(b));

— *Production Credit Associations:* income from notes, debentures, and other obligations issued by Production Credit Associations (12 U.S.C.A. Sec. 2098);

— *Puerto Rico:* interest derived from bonds issued by the Government of Puerto Rico (48 U.S.C.A. Sec. 745). Note that this income is not presently included in federal taxable income;

— *Railroad Retirement Act:* annuity and supplemental annuity payments as qualified under the Railroad Retirement Act of 1974 (45 U.S.C.A. Sec. 231m);

— *Railroad Unemployment Insurance Act:* unemployment benefits paid pursuant to the Railroad Unemployment Insurance Act (45 U.S.C.A. Sec. 352(e));

— *Resolution Funding Corporation:* interest from obligations issued by the Resolution Funding Corporation (12 U.S.C.A. Sec. 1441b(f)(7)(A));

— *Special Food Service Program:* assistance to children under the Special Food Service Program (42 U.S.C.A. Sec. 1760(e));

— *Student Loan Marketing Association:* interest derived from obligations issued by the Student Loan Marketing Association (20 U.S.C.A. Sec. 1087-2(h)(221));

— *Tennessee Valley Authority:* interest derived from bonds issued by the Tennessee Valley Authority (16 U.S.C.A. Sec. 831n-4(d));

— *United States Postal Service:* interest derived from obligations issued by the United States Postal Service (39 U.S.C.A. Sec. 2005(d)(4));

— *Virgin Islands:* interest derived from bonds issued by the Government of the Virgin Islands (48 U.S.C.A. Sec. 1574(b)(ii)(A)). Note that this income is not presently included in federal income;

— *American Samoa:* interest on bonds issued by the Government of American Samoa (48 USCA 1670(b));

— Northern Mariana Islands: interest on bonds issued by the Government of the Northern Mariana Islands (48 USCA 1801 note).

Flow-through tax-exempt treatment applies to interest that is earned by mutual funds from all the U.S. obligations listed above (CCH ILLINOIS TAX REPORTS, ¶400-298).

• *Interest on obligations of state and local governments*

Income from state or local obligations issued in Illinois is subject to the income tax except where authorizing legislation adopted after August 1, 1969, specifically provides for an exemption from state taxes. Authorizing legislation provides exemption for the income from securities listed below. Income from these bonds is not exempt if the bonds are owned indirectly through a mutual fund:

— Illinois Housing Development Authority, bonds and notes (except housing-related commercial facilities notes and bonds) [20 ILCS 3805/31];

— Illinois Development Finance Authority bonds (venture fund and infrastructure bonds) [20 ILCS 3505/7.61];

— Quad Cities Regional Economic Development Authority and Quad Cities Interstate Metropolitan Authority bonds and notes [70 ILCS 510/13, 510/15, and 45 ILCS 35/110];

— college savings bonds issued under the General Obligation Bond Act in accordance with the Baccalaureate Savings Act [110 ILCS 920/7];

— Higher Education Student Assistance Law Bonds [110 ILCS 947/145];

— Illinois Sports Facility Authority bonds (White Sox Bonds) [70 ILCS 3205/15];

— Illinois Development Finance Authority bonds issued under the Asbestos Abatement Finance Act [20 ILCS 3510/8];

— Rural Bond Bank Act bonds and notes [30 ILCS 360/3-12];

— Illinois Development Finance Authority Act bonds [20 ILCS 3505/7.86];

— up to $2,000 of income from investments in College Savings Programs [105 ILCS 5/30-15.8a];

— Southwestern Illinois Development Authority Bonds [70 ILCS 520/7.5];

— Home Ownership Made Easy Act [Ill. Adm. Code Sec. 100.2470];

— Will-Kankakee Regional Development Authority notes and bonds [70 ILCS 535/14].

• *Other income exempt from Illinois taxation*

Income earned on funds held in a trust fund suspense account until the final determination is made regarding the payee of the account under the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390/1—815 ILCS 390/27].

Income in the form of education loan repayments made for primary care physicians who agree to practice in designated shortage areas for a specified period of time under the terms of the Family Practice Residency Act [110 ILCS 935/4.10].

Income earned by nuclear decommissioning trusts established pursuant to Section 8-508.1 of the Public Utilities Act [220 ILCS 5/8-508.1].

¶317 Apportionment of Business Income—Property Factor

Law: Income Tax Act, Sec. 304(a)(1) [35 ILCS 5/304] (CCH ILLINOIS TAX REPORTS, ¶16-505, 16-515).

The property factor is not a part of the normal apportionment formula, although it may be included in an alternate method (¶320).

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the trade or business in Illinois during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the trade or business everywhere during the taxable year (35 ILCS 5/304(a)(1)). Property giving rise to nonbusiness income—rents, royalties, capital gains, *etc.*—that is directly allocated within or without Illinois (¶308—314) should not be included in the property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any amounts received from subrentals.

The average value of property is determined by averaging the values at the beginning and end of the taxable year. However, the Director of Revenue may require the averaging of monthly values during the taxable year if necessary to properly reflect the average value of the taxpayer's property (86 Ill. Adm. Code Sec. 100.3350, CCH ILLINOIS TAX REPORTS, ¶17-860, contains examples pertaining to apportionment of business income under the property factor).

When valuing property owned by a person for purposes of determining the property factor used in the formula for calculating nonresident business income, a taxpayer must include capitalized intangible drilling and development costs, whether or not they have been expensed for federal or state tax purposes (86 Ill. Adm. Code Sec. 100.3350, CCH ILLINOIS TAX REPORTS, ¶17-860).

¶318 Apportionment of Business Income—Payroll Factor

Law: Income Tax Act, Sec. 304(a)(2) [35 ILCS 5/304] (CCH ILLINOIS TAX REPORTS, ¶16-505, 16-515).

The payroll factor is not a part of the normal apportionment formula, although it may be included in an alternate method (¶320).

The payroll factor is a fraction, the numerator of which is the total compensation paid in Illinois during the taxable year and the denominator of which is the total compensation paid everywhere during the taxable year (35 ILCS 5/304(a)(2)). "Compensation" means wages, salaries, commissions, and any other form of remuneration paid employees for personal services.

An "employee" is any individual performing services if the relationship between the employee and the person for whom the employee performs such services is the legal relationship of employer and employee (details of the definitions of "compensation" and "employee" for purposes of apportionment appear in 86 Ill. Adm. Code Sec. 100.3360, CCH ILLINOIS TAX REPORTS, ¶17-862).

Compensation is paid in Illinois if:

— the individual's service is performed entirely within Illinois;

— the individual's service is performed both within and without Illinois, but the service performed without Illinois is incidental to the service performed within Illinois, or

— some of the service is performed in Illinois and either the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is within Illinois, or the base of operations or place from which the service is directed or controlled is not in any state in which some of the service is performed, but the individual's residence is in Illinois (86 Ill. Adm. Code Sec. 100.3120, CCH ILLINOIS TAX REPORTS, ¶17-754, contains examples of apportionment of business income under the payroll factor).

Deferred compensation: Compensation paid to a nonresident for past services is presumed to have been earned ratably over the employee's last five years of service with the employer (or any predecessor, successor, parent, or subsidiary of the employer) in the absence of clear and convincing evidence that such compensation is properly attributable to a different period of employment, or was not earned ratably over the five years (86 Ill. Adm. Code Sec. 100.3120; *General Information Letter IT 12-0031-GIL,* Illinois Department of Revenue, November 13, 2012, CCH ILLINOIS TAX REPORTS, ¶402-602). Compensation paid for past service includes amounts paid under deferred compensation plans when the amount of compensation is unrelated to the amount of service currently rendered.

Compensation of athletes: For residents of states that impose a comparable tax liability on Illinois residents, compensation is paid in Illinois if the person performs personal services under a personal service contract for a sports performance. Such services performed at a sporting event taking place in Illinois are deemed to be a performance entirely within Illinois. The income from such performance is allocated to Illinois on the basis of "duty days," as defined at ¶304. The amount of income constituting compensation paid in Illinois to such a person is determined by multiplying the person's total compensation for performing personal services by a fraction, the denominator of which is the total number of duty days and the numerator of which is the number of duty days in Illinois during the taxable year (86 Ill. Adm. Code Secs. 100.3100, 100.3120, and 100.7010, CCH ILLINOIS TAX REPORTS, ¶17-750, 17-754, and 18-102).

Stock options and stock appreciation rights: Generally, the taxation of stock options depends upon whether the option is a statutory or a nonstatutory option. Statutory options consist of employee stock purchase plans (ESPs) and incentive stock option plans (ISOs). Plans that fail to meet the statutory qualifications for ESPs and ISOs are called nonstatutory options (NSOs).

For statutory plans structured as an ESP or ISO, employees recognize income on the grant or exercise of the option when the stock is sold. Gain or loss on the sale is normally capital gain or loss. For NSOs, compensation income is recognized either when the option is exercised or later when any substantial risk of forfeiture lapses. When the stock is sold, any income is taxed at capital gain.

Tax treatment of stock options depends upon whether the option is an ESP, an ISO, or an NSO. Thus, careful attention must be directed toward whether or not the option complies with specific statutory requirements. Failure to meet any of the requirements means that ESPs and ISOs are governed by NSO rules.

In an administrative decision, a taxpayer's request for a refund of overpaid Illinois personal income taxes was denied because the taxpayer failed to prove that his gain on the value of stock options and stock appreciation rights was improperly determined to be compensation. The taxpayer argued that the gain he received in connection with the stock options and stock appreciation rights was not "compensation" within the meaning of Illinois statutes and was not allocable to Illinois. Specifically, the taxpayer admitted that the value of the stock options and stock appreciation rights upon vesting was allocable to Illinois as compensation, but argued that the increase in value after they vested was investment income and not compensation from employment.

However, the administrative law judge (ALJ) held that the taxpayer failed to meet his burden of proving that a portion of the income that he received when he sold his stock appreciation rights in 2008 was investment income that was not allocable to Illinois. The ALJ reasoned that if any of the income had actually been investment income, such as interest, dividends, or capital gains, then the taxpayer

entitled to a nonrefundable credit against their income tax liability equal to 20% of the Illinois labor expenditures for each tax year, plus 20% of the Illinois production spending for each tax year, plus 15% of the Illinois labor expenditures generated by the employment of Illinois residents in geographic areas of high poverty or high unemployment in each tax year. (35 ILCS 5/222; 35 ILCS 17/10-45; 14 Ill. Adm. Code 532.10–532.120)

Eligibility for the credit is determined by the Department of Commerce and Economic Opportunity (35 ILCS 17/10-30). A total of $2 million in credits are to be awarded each year on a first come, first served basis. The tax credit award may not be carried back and can be carried forward five years (35 ILCS 5/222(e)).

¶418 New Markets Credit

Law: New Markets Development Program Act, Sec. 663 [20 ILCS 663/1 *et seq.*](CCH ILLINOIS TAX REPORTS, ¶16-830a).

The New Markets Development Program includes a credit against the corporate and personal income, franchise, and the insurance and gross premiums taxes for taxpayers who make qualified cash equity investments in a qualified community development entity. This credit is set to expire after 2017. (20 ILCS 663/1, 20 ILCS 663/50)

A "qualified equity investment" is any equity investment in, or long-term debt security issued by, a qualified community development entity that (1) is acquired after the effective date of this legislation at its original issuance solely in exchange for cash; (2) has at least 85% of its cash purchase price used by the issuer to make qualified low-income community investments in the state; and (3) is designated by the issuer as a qualified equity investment and is certified by the Department of Commerce and Economic Opportunity as not exceeding the annual cap. This term includes any qualified equity investment that does not meet the provisions of item (1) of this definition if the investment was a qualified equity investment in the hands of a prior holder. (20 ILCS 663/5)

Credit amount: Upon certification, taxpayers who make qualified equity investments earn a vested right to tax credits, as follows (20 ILCS 663/10):

— on each credit allowance date of the investment, the purchaser of the investment, or subsequent holder of the investment, is entitled to a tax credit during the taxable year including that credit allowance date;

— the tax credit amount is equal to the applicable percentage (0% for each of the first two credit allowance dates, 7% for the third, and 8% for the next four credit allowance dates) for such credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment; and

— the amount of the tax credit claimed can not exceed the amount of the state tax liability of the holder, or the person or entity to whom the credit is allocated for use, for the tax year for which the tax credit is claimed.

The total amount of credits allowed under this program is capped at $20 million per year (20 ILCS 663/20). Unused credits may be carried forward up to 5 years. (20 ILCS 663/15)

Credits received under the program are not refundable or saleable on the open market. Credits earned by a pass-through entity are to be allocated to the partners, members, or shareholders of that entity according to their agreement. (20 ILCS 663/15)

For additional details about this credit, see ¶1217.

¶419 Credit for Employers Who Match Employees' College Savings Contributions

Law: Income Tax Act, Sec. 203 [35 ILCS 5/203.], Income Tax Act, Sec. 218 [35 ILCS 5/218.](CCH ILLINOIS TAX REPORTS, ¶16-915).

Applicable to tax years 2009 through 2020, a credit is available for employers who make matching contributions to a College Savings Pool Account (pool) or to the Illinois Prepaid Tuition Trust Fund (trust) in the same year that a contribution is made by an employee of the taxpayer. (35 ILCS 5/203(a)(2)(D-22); 35 ILCS 5/218)

Credit amount: The credit is in the amount of 25% of the employer's contribution up to $500 per employee (35 ILCS 5/218(a)).

Planning considerations: The credit may not be carried back and may be carried forward up to five years (35 ILCS 5/218(c)).

An addition modification to the taxpayer's base income is required in the amount of the credit.

For purposes of the personal income subtraction modification for contributions made to the pool and trust, matching contributions are treated as made by the employee.

¶420 Credits for Historic Structure Rehabilitation

Law: Income Tax Act, Sec. 219 [35 ILCS 5/219.], Income Tax Act, Sec. 221 [35 ILCS 5/221.](CCH ILLINOIS TAX REPORTS, ¶12-090).

Instead of a general credit for rehabilitation or restoration of historic structures, Illinois has enacted credits for specific rehabilitation projects, as follows:

River Edge Redevelopment Zone projects

For tax years beginning after 2011 and ending prior to 2017, an historic preservation income tax credit is allowed for a portion of the qualified expenditures incurred pursuant to a qualified rehabilitation plan by a qualified taxpayer during the taxable year in the restoration and preservation of a qualified historic structure located in a River Edge Redevelopment Zone (35 ILCS 5/221). The total amount of expenditures must equal at least $5,000 and must exceed 50% of the purchase price of the property.

A "qualified historic structure" means a certified historic structure as defined under IRC Sec. 47(c)(3). A "qualified rehabilitation plan "means a project that is approved by the Historic Preservation Agency as being consistent with the standards in effect on July 28, 2011, for rehabilitation as adopted by the U.S. Secretary of the Interior. (35 ILCS 5/221(d))

A "qualified taxpayer" means the owner of the qualified historic structure or any other person who qualifies for the federal rehabilitation credit that is allowed by IRC Sec. 47 with respect to the qualified historic structure. A "qualified expenditure" means all the costs and expenses that are defined as qualified rehabilitation expenditures under IRC Sec. 47 that were incurred in connection with a qualified historic structure. (35 ILCS 5/221(d))

Credit amount: The credit is allowed in an amount equal to 25% of the qualified expenditures incurred (35 ILCS 5/221(a)), but may not reduce a taxpayer's liability to less than zero (35 ILCS 5/221(c)).

Planning considerations: In order to obtain the credit, a taxpayer must apply with the Department of Commerce and Economic Opportunity, and the department, in consultation with the Historic Preservation Agency, must determine the amount of eligible rehabilitation costs and expenses. The Historic Preservation Agency must also determine whether the rehabilitation is consistent with the standards of the U.S. Secretary of the Interior for rehabilitation. (35 ILCS 5/221(b))

to that provided for under IRC Sec. 6015, and any determination made by the Secretary of the Treasury concerning an individual's eligibility and allocation of liability will be followed by Illinois.

A federal IRC Sec. 6015 election will constitute an Illinois election. However, the election will not be effective for Illinois tax purposes until the individual has notified the Illinois Department of Revenue. A separate Illinois election filed with the Department is allowed, but will be denied if the Department determines that assets were transferred between individuals filing a joint return as part of a tax evasion scheme. An election applies to all years for which the individual and the spouse named in the election filed a joint return.

In determining the separate tax liability of a spouse seeking innocent spouse relief, an estimated tax payment or overpayment refund or credit is allocated in proportion to the separate return amount of each spouse for the taxable year as determined without regard to the estimated tax payment or credited or refunded overpayment (86 Ill. Adm. Code Sec. 100.5040).

No collection action may be commenced against an electing individual for any tax liability arising from a joint return covered by the election until the Department notifies the individual in writing that the election is invalid or of the portion of the liability the Department has allocated to the electing individual. An individual has 60 days to appeal the notification, or 150 days if the individual is outside the United States (35 ILCS 5/502(c)(4)(B)(vi)).

For additional information, see *Publication 125, Injured and Innocent Spouse Relief*, Illinois Department of Revenue, April 2010, CCH ILLINOIS TAX REPORTS, ¶402-115.

• *Amnesty*

A general tax amnesty period ran from October 1, 2010, through November 8, 2010. Under the terms of the amnesty, upon payment by a taxpayer of all taxes due for any taxable period ending after June 30, 2002, and prior to July 1, 2009 (taxable period), the department would abate and not seek to collect any interest or penalties that might apply and would not seek civil or criminal prosecution for any taxpayer for the period of time for which the amnesty was granted.

Practitioner Comment: Amnesty

In May 2008, the Illinois Appellate Court (First District) issued an unpublished order upholding the constitutionality of the Illinois Tax Delinquency Amnesty Act over statutory and constitutional challenges.

In upholding the amnesty act over a uniformity clause challenge, the appellate court found that the tax classification drawn by the amnesty act was reasonable and passed constitutional muster. To survive scrutiny under the uniformity clause, a tax classification must: (1) be based on a real and substantial difference between the persons taxed and those not taxed; and (2) bear some reasonable relationship to the object of the legislation or to public policy.

In this case, there were two types of taxpayers: (1) taxpayers with outstanding tax liabilities who paid their liabilities during the amnesty window and therefore were given amnesty from interest and penalties that otherwise would have accrued on the outstanding tax liability; and (2) taxpayers with outstanding tax liabilities who did not pay their liability during the amnesty window and therefore are subject to doubled interest and penalties on the outstanding tax liabilities.

The court found that these classifications did not run afoul of the uniformity clause because there was a real and substantial difference between the two classes of taxpayers. Furthermore, the court reasoned that the tax classifications set forth in the Amnesty Act were reasonably related to the undisputed goals of the legislation. The court held that the Amnesty Act did not arbitrarily discriminate against a narrow class, but rather set forth rational classifications that bear a reasonable relationship to a valid State objective. Accordingly, the court found no violation of the uniformity, equal protection

or due process clauses. The court also rejected the Plaintiff's argument that the Amnesty Act violated Section 4 of the Illinois Statute on Statutes (5 ILCS 70/4) by retroactively doubling interest and penalties on tax liabilities. Section 4 prohibits new laws that repeal a former law as to any penalty. The court found that Section 4 of the Statute on Statutes is implicated only if the General Assembly has not indicated whether the statute should be applied retroactively. In this case, the court found that the Amnesty Act imposed double interest and penalties on taxpayers who failed to take advantage of the Amnesty window, and that the window was prospective at the time of the statute's enactment. Accordingly, the court held that it was the plaintiff's "contemporaneous failure" to avail itself of amnesty that subjected it to double interest and penalties under the Amnesty Act.

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¶803 Criminal Penalties

Law: Income Tax Act, Sec. 1301 [35 ILCS 5/1301]; Income Tax Act, Sec. 1302 [35 ILCS 5/1302](CCH ILLINOIS TAX REPORTS, ¶17-155).

Comparable Federal: Secs. 7201 *et seq.*

Criminal penalties are discussed at ¶2503.

¶804 Records

Law: Civil Administrative Code, Sec. 39b12 [20 ILCS 2505/39b12]; Income Tax Act, Sec. 501 [35 ILCS 5/501]; Income Tax Act, Secs. 913—917 [35 ILCS 5/913—5/917]; Income Tax Act, Sec. 1301 [35 ILCS 5/1301] (CCH ILLINOIS TAX REPORTS, ¶17-155, 89-134).

Comparable Federal: Sec. 6001 (U.S. MASTER TAX GUIDE, ¶2523).

Every person liable for any income tax must keep records, render statements, make returns and notices and comply with the rules and regulations of the Department (35 ILCS 5/501(a)). If necessary, the Department may require any person to make returns and notices, render statements or keep records sufficient to show whether or not the person is liable for tax. All books and records required to be kept must be available for inspection by the Department at all times during business hours of the day (35 ILCS 5/913).

The Department may exchange tax information with federal and state officials. The Department may also exchange taxpayer information with the Illinois Department of Public Aid that may be necessary for the enforcement of a child support order. The Director of Revenue may divulge taxpayer information to any person pursuant to a request or authorization made by the taxpayer, by an authorized representative of the taxpayer, or where information from a joint return is requested, by the spouse filing the joint return with the taxpayer.

For additional information, see ¶2403.

¶805 Reallocation of Items of Income or Deduction

Law: Income Tax Act, Sec. 404 [35 ILCS 5/404] (CCH ILLINOIS TAX REPORTS, ¶11-505).

If it appears to the Director that any agreement or understanding exists between any persons to cause any person's base income allocable to Illinois to be improperly or inaccurately reflected, the Director may adjust the items of income and deduction and any factor taken into account in allocating income to Illinois in order to determine the base income properly allocable to Illinois (35 ILCS 5/404).

state's income tax, even when the partner has no other connection with the state (*General Information Letter IT 12-0028-GIL*, Illinois Department of Revenue, September 27, 2012, CCH ILLINOIS TAX REPORTS, ¶402-574).

Allocation of partnership income is discussed at ¶321.

See also *Publication 129, Pass-Through Entity Income*, Illinois Department of Revenue, January 2007, CCH ILLINOIS TAX REPORTS, ¶401-742.

Subtraction for certain wages: Partners are allowed to subtract wages for which the federal Jobs Tax Credit (nondeductible under IRC Sec. 280C) has been claimed (35 ILCS 5/203(d)(2)(J)).

- *S corporation shareholders*

Since Illinois adopts the federal income tax treatment of S corporations, as set out in IRC Secs. 1361 through 1379, income and losses, including net losses, of the S corporation flows to its shareholders (86 Ill. Adm. Code 100.9750). An S corporation is entitled to a subtraction modification for Illinois income allocable to shareholders who are themselves subject to the Illinois Personal Property Tax Replacement Income Tax (35 ILCS 5/203(b)(2)(S)). Taxation of resident and nonresident shareholders is discussed at ¶210.

- *Limited liability companies*

An LLC that elects to be taxed as a partnership is a pass-through entity in which profits and losses are passed through to members (35 ILCS 5/1501(a)(16)).

¶857 Nonresident Owners

Law: 35 ILCS 5/308 (CCH ILLINOIS TAX REPORTS, ¶15-115).

As discussed at ¶321, special allocation rules apply to nonresident partners because the Illinois nonresident federal taxable income of a nonresident partner includes only those items of income, gain, loss, deduction, or credit that are derived from Illinois sources.

S corporation shareholders: The shares of nonresident shareholders in S corporation business income allocated or apportioned to Illinois are attributed to such shareholders under federal rules. Such income is taken into account by the shareholders individually and allocated to Illinois. The shares of nonresident shareholders in S corporation nonbusiness income and deductions are also attributed under federal rules; however, such income is taken into account by the shareholders individually and allocated as if such items had been paid, incurred, or accrued directly to such shareholders in their separate or individual capacities (35 ILCS 5/308(a), (b)).

¶858 Withholding

Law: 35 ILCS 5/709.5 (CCH ILLINOIS TAX REPORTS, ¶17-155, 89-104).

Comparable Federal: Secs. 701-761, 1366, 1367 (U.S. MASTER TAX GUIDE, ¶2447).

Partnerships, S corporations, and trusts are required to withhold income tax from each nonresident partner, shareholder, or beneficiary amounts equal to the sum of:

(1) the nonresident's distributive share of business income that is apportionable to Illinois, plus

(2) for taxable years ending on or after December 31, 2014, the share of nonbusiness income of the partnership, S corporation, or trust allocated to Illinois (other than an amount allocated to the commercial domicile of the taxpayer) that is distributable to that partner, shareholder, or beneficiary under IRC Secs. 702, 704, and Subchapter S.

The total is multiplied by the applicable rates of tax for that partner or shareholder, net of the share of any credit that is distributable by the partnership, S corporation, or trust and allowable against the tax liability of that partner, shareholder, or beneficiary for a taxable year ending on or after December 31, 2014. (35 ILCS 5/709.5(a))

This amount must be withheld even if it is not actually distributed (35 ILCS 5/709.5; *Informational Bulletin FY 2009-02*, Illinois Department of Revenue, October 2008, CCH ILLINOIS TAX REPORTS, ¶401-915).

Although this is referred to as "pass-through entity withholding," it is not true withholding. Instead, the pass-through entity is required:

(1) to make a payment based on its nonresident owners' share of apportioned Illinois business income; and

(2) to notify the nonresident owner of the amount of pass-through entity payment made on his or her behalf.

Pass-through entity payments are required for all nonresident owners, except:

— individuals for whom the pass-through entity files Form IL-1023-C, Illinois Composite Income and Replacement tax return; or

— nonindividual owners, who document to the pass-through entity on Form IL-1000-E, Certificate of Exemption for Pass-through Entity Payments, that they will file a return and pay the Illinois Income Tax.

The payment is submitted with Form IL-1000, Pass-through Entity Payment Income Tax Return.

If the pass-through entity's payment covers the nonresident owner's Illinois individual Income Tax obligation, that owner need not file an Illinois individual income tax return. The nonresident owner who does file an Illinois tax return must report the income and is allowed to take a credit for the pass-through entity payment (*Informational Bulletin FY 2009-02*, Illinois Department of Revenue, October 2008, CCH ILLINOIS TAX REPORTS, ¶401-915).

Practitioner Comment: Partnership Withholding Requirement

Beginning with the 2008 tax year, partnerships (including LLCs treated as partnerships for federal tax purposes), S corporations, and trusts are required to withhold income taxes from each nonresident partner, shareholder, or beneficiary, except if such person joins in the filing of a composite tax return.

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¶859 Returns

Law: 35 ILCS 5/502, 35 ILCS 5/505, 35 ILCS 5/602(a); 86 Ill. Adm. Code 100.5100–5170; 86 Ill Adm Code 39-22-116.2 (CCH ILLINOIS TAX REPORTS, ¶17-155, 89-102).

Through taxable year 2014, composite returns may be filed on behalf of nonresident and resident individuals, trusts, and estates who derive income from Illinois and who are partners or S corporation shareholders or who transact insurance business under a Lloyds plan of operation (35 ILCS 5/502(f); 86 Ill. Adm. Code 100.5100–5170).

Effective for taxable years beginning after 2014, nonresident S corporation shareholders, members of pass-through entities classified as partnerships for federal purposes, trust beneficiaries, and certain Lloyds plan insurance underwriters are no longer permitted to file composite income and replacement tax returns (35 ILCS 5/502(f)). See ¶858 for withholding requirements.

The following discussion details the return requirements for various types of pass-through entities.

¶1006 Base Income of Regulated Investment Companies—Adjustment

Law: Income Tax Act, Sec. 203(b)(2)(C), (b)(2)(H), and (e)(2)(C) [35 ILCS 5/203](CCH ILLINOIS TAX REPORTS, ¶10-525).

Comparable Federal: Sec. 852 (U.S. MASTER TAX GUIDE, ¶2301—2323).

The federal taxable income used as the starting point in computing Illinois base income of a regulated investment company subject to the tax imposed by IRC Sec. 852 is investment company taxable income (35 ILCS 5/203(e)(2)(C)).

Although a regulated investment company makes the same modifications to investment company taxable income as an ordinary corporation does to federal taxable income (¶1010), it must also add the excess of net long-term capital gain over capital gain dividends and deduct the amount of exempt interest dividends, as defined in IRC Sec. 852(b)(5), paid to shareholders for the taxable year (35 ILCS 5/203(b)(2)(C), (H)). Once base income is computed, net income, which is the base of the Illinois income tax, is computed by application of the allocation and apportionment provisions (Chapter 11) and subtraction of the standard exemption (¶1021).

¶1007 Base Income of Real Estate Investment Trusts

Law: Income Tax Act, Sec. 203(e)(2)(D) [35 ILCS 5/203] (CCH ILLINOIS TAX REPORTS, ¶10-525).

Comparable Federal: Secs. 857, 858 (U.S. MASTER TAX GUIDE, ¶2326—2340).

The federal taxable income used as the starting point in computing Illinois base income of a real estate investment trust subject to the tax imposed by IRC Sec. 857 is real estate investment trust taxable income (35 ILCS 5/203(e)(2)(D)).

Once base income is computed, net income, which is the base of the Illinois income tax, is computed by application of the allocation and apportionment provisions (Chapter 11) and subtraction of the standard exemption (¶1021).

• *Captive REITs*

Any deduction for dividends paid to a corporation by a REIT that is allowed a real estate investment trust under IRC Sec. 857(b)(2)(B) for dividends paid must be added back. This serves to eliminate the deduction for dividends paid by captive REITs to corporate shareholders. (35 ILCS 5/203(E-15)) The attribution rules in IRC Sec. 318 are used to determine ownership for purposes of determining whether a REIT is a captive REIT (*General Information Letter IT 10-0009-GIL*, Illinois Department of Revenue, April 8, 2010, CCH ILLINOIS TAX REPORTS, ¶402-127).

The definition of a "captive REIT" provides that at least 50% of the voting power or value of the beneficial interest must be controlled by a single corporation (35 ILCS 5/1501) However, certain entities that are organized outside the U.S. are not considered to be captive REITs. Specifically, captive REITs do not include REITs with more than 50% of the voting power or value of the beneficial interest or shares owned by an entity that is organized outside the laws of the U. S. and satisfies the following:

— at least 75% of the entity's total asset value at the close of its year is represented by real estate assets (including shares or certificates of beneficial interest in any real estate investment trust), cash and cash equivalents, and U.S. Government securities;

— the entity is not subject to tax on amounts that are distributed to its beneficial owners or is exempt from entity-level taxation;

— the entity distributes at least 85% of its taxable income to the holders of its shares or certificates of beneficial interest on an annual basis;

— either the shares or beneficial interests of the entity are regularly traded on an established securities market or not more than 10% of the voting power or value in the entity is held by a single entity or individual; and

— the entity is organized in a country that has entered into a tax treaty with the U.S.

¶1008 Base Income of Cooperatives

Law: Income Tax Act, Sec. 203(e)(2)(F) [35 ILCS 5/203] (CCH ILLINOIS TAX REPORTS, ¶10-525).

Comparable Federal: Secs. 1381—1388.

The federal taxable income used as the starting point in computing Illinois base income of a cooperative corporation or association is the taxable income determined in accordance with IRC Secs. 1381—1388 (35 ILCS 5/203(e)(2)(F)).

Cooperatives make the same adjustments to federal taxable income as do ordinary corporations (¶1010). Once Illinois base income is computed, net income, which is the base of the tax, is computed by application of the allocation and apportionment provisions (Chapter 11) and subtraction of the standard exemption (¶1021).

For a cooperative corporation or association, the taxable income is determined in accordance with the provisions of IRC Secs. 1381—1388, but without regard to the prohibition against offsetting losses from patronage activities against income from nonpatronage activities, except that a cooperative corporation or association may make an election to follow its federal income tax treatment of patronage losses and nonpatronage losses. If the election is made, the losses are computed and carried over according to state net loss law and apportioned by the apportionment factor reported by the cooperative on its Illinois income tax return filed for the year in which the losses are incurred. The election is effective for all taxable years with original returns due on or after the date of the election. In addition, the cooperative may file an amended return to provide that the election shall be effective for losses incurred or carried forward for previous years. Once made, the election may only be revoked upon approval of the director of the revenue department. (35 ILCS 203(e)(2)(F))

¶1009 Base Income of S Corporations

Law: Income Tax Act, Sec. 203(e)(2)(G) [35 ILCS 5/203] (CCH ILLINOIS TAX REPORTS, ¶10-215, 10-525).

Comparable Federal: Secs. 1361—1379 (U.S. MASTER TAX GUIDE, ¶301—349).

S corporations that do business entirely within Illinois compute a hypothetical federal base income, "unmodified base income," from information reported on federal Form 1120-S (35 ILCS 5/203(e)(2)(G)). Illinois addition and subtraction modifications are then made to arrive at "base income." Taxable income is then determined by deducting a standard exemption of $1,000.

Subtraction for certain shareholders: An S corporation may subtract from unmodified base income an amount equal to income allocable to a shareholder that is subject to the personal property tax replacement income tax (*e.g.*, a corporation, partnership, or another S corporation), including amounts allocable to organizations exempt from federal income tax under IRC Sec. 501(a) (35 ILCS 5/203(b)(2)(S)).

Allocation and apportionment: Multistate S corporations subtract nonbusiness income from the modified hypothetical federal base income figure. After the remainder is apportioned, nonbusiness income allocable to Illinois is added to arrive at "base income allocable to Illinois." A standard exemption, computed by dividing the base income allocable to Illinois by the total base income and multiplying the result by $1,000, is then subtracted to arrive at taxable income.

• *Unitary business*

The complexity of business relationships contributes to the difficulty of determining the source of a corporation's income. This situation led to creation of the concept known as the "unitary business." The U.S. Supreme Court, after questioning the propriety of assigning income to a state on the basis of formal geographical or transactional accounting, explained the unitary business/formula apportionment approach in *Container Corporation of America v. Franchise Tax Board* (1983, US SCt), 103 SCt 2933 (CCH ILLINOIS TAX REPORTS, ¶201-301). In *Container Corp.*, the Court noted that the unitary business/formula apportionment method is a very different approach to the problem of taxing businesses operating in more than one jurisdiction in that it rejects geographical or transactional accounting, and instead calculates the local tax base by first defining the scope of the "unitary business" of which the taxed enterprise's activities in the taxing jurisdiction form one part, and then apportioning the total income of that "unitary business" between the taxing jurisdiction and the rest of the world on the basis of a formula taking into account objective measures of the corporation's activities within and without the jurisdiction. See also *Hans Rees' Sons, Inc. v. North Carolina ex rel. Maxwell* (1931), 283 US 123; *Bass, Ratcliff & Gretton, Ltd. v. State Tax Comm.* (1924, US SCt), 266 US 271, 45 SCt 82 [1—2 N.Y. Tax Cases] ¶312; *Underwood Typewriter Co. v. Chamberlain* (1920), 254 US 113, 41 SCt 45. The method has now gained wide acceptance, and is in one of its forms the basis for the Uniform Division of Income for Tax Purposes Act (UDITPA), which has been substantially adopted by a number of states, including Illinois.

The unitary business principle is discussed at ¶1103.

¶1102 Illinois as UDITPA State

Law: Income Tax Act, Sec. 303 [35 ILCS 5/303]; Income Tax Act, Sec. 304 [35 ILCS 5/304]; Income Tax Act, Sec. 1501 [35 ILCS 5/1501] (CCH ILLINOIS TAX REPORTS, ¶11-505).

Illinois provisions have been adopted that are substantially similar to the Uniform Division of Income for Tax Purposes Act, except that Illinois now uses a single-factor apportionment formula instead of the three-factor formula of UDITPA (¶1102) (35 ILCS 5/303, 35 ILCS 5/304).

Illinois was a member of the Multistate Tax Compact from 1967 to 1975. Although Illinois withdrew its membership in 1975, it became an associate member in 1996. The principles of the Multistate Tax Compact are embodied in the statutory provisions of the income tax law. An overview of UDITPA and the MTC follows.

CCH Advisory: MTC Regulations

The Illinois DOR has issued a comparison table listing the MTC regulations that have been adopted by Illinois (General Information Letter IT 00-0096-GIL, Illinois Department of Revenue, December 28, 2000, CCH ILLINOIS TAX REPORTS, ¶401-205).

• *Uniform Division of Income for Tax Purposes Act (UDITPA)*

The Uniform Division of Income for Tax Purposes Act (UDITPA) is a model act for the allocation and apportionment of income among states. UDITPA was drafted to remedy the diversity that existed among the states for determining their respective shares of a corporation's income. UDITPA had been adopted, in whole or in part, by the majority of states.

UDITPA divides income into "business income," which is apportioned by means of a three-factor formula, and "nonbusiness income," which is allocated according to the type of income and property giving rise to the income. Business and nonbusiness income are distinguished at ¶1106.

• *Multistate Tax Compact*

The Multistate Tax Compact is a document to which states may subscribe in the interest of uniform taxation of multistate corporate income. The Compact created the Multistate Tax Commission and established for member states a joint audit program for multistate taxpayers. The Compact adopts UDITPA as an optional method of apportionment in member states. The option is not significant in such states as Illinois that have adopted UDITPA as their apportionment law.

¶1103 Unitary Business

Law: Income Tax Act, Sec. 1501(a)(27) [35 ILCS 5/1501]; 86 Ill. Adm. Code Sec. 100.9700 (CCH ILLINOIS TAX REPORTS, ¶11-520).

The unitary business principle, a case law doctrine (see ¶1101) that predated enactment of the Illinois income tax law, was adopted by the income tax law provisions. Under this doctrine, businesses operating in several jurisdictions that qualify as a "unitary business" are required to apportion income (*Underwood Typewriter Co. v. Chamberlain* (1920), 254 US 113, 41 SCt 45). The income of such a unitary business is attributed not to geographical segments through separate accounting of the specific transactions in a particular state but rather to all the states where business is conducted on the basis of such measuring factors as sales or property (see ¶1107 for current Illinois measuring factors). The unitary business concept also provides the rationale for combined reporting, permitted or required in several states. Combined reporting is required by Illinois (¶1104).

• *Statutory definition of "unitary business"*

The term "unitary business group" means a group of entities related through common ownership whose business activities are integrated with, dependent upon, and contribute to, each other (35 ILCS 5/1501(a)(27)). The unitary business group does not include members whose business activity outside the United States is 80% or more of any member's total business activity; "United States" means only the 50 states and the District of Columbia, and does not include any territory or possession of the U.S. or any area over which the U.S. has asserted jurisdiction or claimed exclusive rights with respect to natural resources. While a unitary business group must generally be composed exclusively of business corporations, a special rule permits the inclusion of corporate partners and partnerships for tax years ending prior to April 24, 1984 (86 Ill. Adm. Code Sec. 100.9700; CCH ILLINOIS TAX REPORTS, ¶18-920, and 86 Ill. Adm. Code Sec. 100.3380; CCH ILLINOIS TAX REPORTS, ¶17-866).

"Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of the corporations carrying on unitary business activity. One corporation has direct ownership of the outstanding voting stock of another to the extent that it owns such stock; it has indirect control to the extent that it owns the voting stock of a third corporation that owns such stock. Any combination of direct and indirect control or ownership aggregating more than 50% qualifies the corporation whose stock is owned for membership in the group. The standards of IRC Sec. 318(a)(1) are used to determine the indirect ownership by an individual.

Passive ownership of as much as 100% of related corporations will not, in the absence of any other indicia of unitary operations, lead to a conclusion that the operations of the group are unitary in nature (86 Ill. Adm. Code Sec. 100.3010; CCH ILLINOIS TAX REPORTS, ¶17-702). A regulation provides examples of common ownership and rules for determining common ownership in the case of partnerships (86 Ill. Adm. Code Sec. 100.9700; CCH ILLINOIS TAX REPORTS, ¶18-920).

Business activity is ordinarily unitary when activities of the members are (1) in the same general line, such as manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation, or finance; or (2) steps in a vertically

ported by pipeline through Illinois between origin and destination points outside of Illinois were properly included in the numerator of the apportionment formula (*Panhandle Eastern Pipeline Co. v. Hamer*, Illinois Supreme Court, No. 09 L 051281, December 7, 2012, CCH ILLINOIS TAX REPORTS, ¶ 402-593).

Practitioner Comment: Apportionment of Pipeline Revenue

The Illinois Appellate Court held that taxpayers, who operated natural gas pipelines in Illinois, were required to include all miles of natural gas pipelines that traveled through Illinois in the numerator of their apportionment factor. For tax years 1998 through 2000, the taxpayers amended their corporate income tax returns to exclude the pipeline miles that traveled through Illinois. The taxpayers argued that their revenue from "pass-through revenue miles" should be excluded from the computation of the numerator because the natural gas transportation services neither originated nor terminated in Illinois. The Circuit Court agreed with this argument, and noted that an amendment to Section 304(d)(2) of the Income Tax Act, which provides that business income from pipeline transportation must be apportioned by multiplying income by the fraction of a company's pipeline miles in Illinois over pipeline miles everywhere, was enacted subsequent to the tax years at issue. Reversing the Circuit Court, the Appellate Court noted that the taxpayers were sufficiently present in Illinois to be subject to tax and that the inclusion of the flow-through miles in the numerator did not violate the United States Constitution.

The Appellate Court ruled in favor of the Department of Revenue even though the pipeline apportionment statute in effect during the years in issue did not expressly include "pass-through" miles in the numerator and statutory but a statutory amendment, which went into effect after the years in question, expressly included pass-through miles in the numerator. Despite this seemingly substantive change in the statute, the Appellate Court concluded that the taxpayer's position would create a tax "gap" in violation of the Illinois Supreme Court's decision in *GTE Automatic Electric, Inc. v. Allphin*, 68 Ill. 2d 326 (1977). This case should also be contrasted with the Appellate Court's decision in Northwest Airlines, Inc. v. Department of Revenue, 295 Ill. App. 3d 889, 892 (1998) where the Court concluded that an airline's "fly over" miles could not be included in the numerator of the apportionment formula. (*Panhandle Eastern Pipeline Co. v. Hamer*, Illinois Supreme Court, No. 09 L 051281, December 7, 2012; CCH ILLINOIS TAX REPORTS, ¶ 402-593)

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Airline transportation services: For taxable years after 2008, business income derived from furnishing airline transportation services must be apportioned to Illinois by multiplying the income by a fraction, the numerator of which is revenue miles in the state and the denominator of which is revenue miles everywhere. A "revenue mile" is the transportation of one passenger or one net ton of freight the distance of one mile for consideration. If a person is engaged in the transportation of both passengers and freight, the fraction above is to be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the person's relative gross receipts from passenger and freight airline transportation (35 ILCS 5/304(d)(1)(B)).

Motor carriers: The Illinois Appellate Court concluded that an interstate motor carrier must include its pass-through miles driven in the numerator of its Illinois apportionment factor because it had both a physical and economic presence in Illinois. The Department contended that the taxpayer's "pass-through miles" in Illinois should be included in the taxpayer's Illinois numerator for purposes of income tax because the revenue miles were in Illinois. The Court agreed. The court found that physical presence "in this State" is more broadly defined to include, not only being within Illinois borders, but also having a presence or existence in Illinois. This broad definition encompassed plaintiff whose trucks and employees were physically present in the state as they pass-through the boundaries of Illinois. Plaintiff's trucks traveled through Illinois on its roadways.

By utilizing the state's infrastructure and roadways, plaintiff's property and employees were physically present in Illinois. Plaintiff was also conducting the economic activity of providing shipping services involving travel through Illinois. Moreover, the record demonstrated plaintiff alleged it paid Illinois fuel tax, which indicated that plaintiff engaged in additional economic activities with Illinois suppliers. The court therefore concluded that pass-through miles were In Illinois, as the taxpayer's trucks and employees maintained a physical and economic presence while driving through Illinois. (*Witte Bros. Exch., Inc. v. Dep't of Revenue*, 2013 IL App (1st) 120850, 997 N.E.2d 903, reh'g denied (Nov. 1, 2013); CCH ILLINOIS TAX REPORTS, ¶ 402-712)

¶1109 Allocation of Nonbusiness Income

Law: Income Tax Act, Sec. 301 [35 ILCS 5/301]; Income Tax Act, Sec. 303 [35 ILCS 5/303]; Income Tax Act, Sec. 305 [35 ILCS 5/305]; Income Tax Act, Sec. 1501(a)(1), (2) [35 ILCS 5/1501]; 86 Ill. Adm. Code Sec. 100.3210 (CCH ILLINOIS TAX REPORTS, ¶ 11-515).

Under UDITPA, adopted by Illinois, "business income" is apportioned, and "nonbusiness income" is allocated (¶1105). Nonbusiness income is all income other than "business income," which is defined as income arising from transactions and activities in the regular course of the taxpayer's trade or business (35 ILCS 5/1501(a)(1)). UDITPA provides rules for allocating rents and royalties from real or tangible personal property, capital gains, interest, dividends, and patent or copyright royalties to the extent that they constitute nonbusiness income. Illinois provisions for allocating nonbusiness income are substantially the same as those of UDITPA and MTC with these exceptions: (1) Illinois has not adopted the MTC rule that permits allocation of nonbusiness income regardless of whether a corporation is "taxable in another state," and (2) items of income and deduction not explicitly allocated or apportioned under the law and regulations are allocated to the state in which the corporation had its commercial domicile at the time the item was paid, incurred, or accrued. Expenses attributable to both business and nonbusiness income may be prorated to distribute the deduction fairly (86 Ill. Adm. Code Sec. 100.3010(e); CCH ILLINOIS TAX REPORTS, ¶ 17-702).

Although, Illinois has adopted the UDITPA definitions, effective for tax years beginning on or after January 1, 2003, a taxpayer may annually elect to classify income (other than compensation) as either business or nonbusiness income (see ¶1106).

Under UDITPA, once income has been determined to be allocable nonbusiness income, it is assigned on the basis of the following allocation rules. The regulations issued by the Multistate Tax Commission do not deal with rules of allocation for nonbusiness income.

Payments received from the assignment of an Illinois lottery prize are allocable to Illinois for purposes of computing income tax liability to the extent that such payments constitute nonbusiness income (35 ILCS 5/303(e)).

• *Rents and royalties from real and tangible personal property*

Nonbusiness net rents and royalties from real property located in the taxing state are assigned to the taxing state (35 ILCS 5/303(c)). Nonbusiness net rents and royalties from tangible personal property are assigned to the taxing state on the basis of the extent to which the property was "utilized" in the taxing state. There is also a throwback rule: if the property was utilized in a state in which the taxpayer is not taxable and the taxing state is the commercial domicile of the taxpayer, the rents and royalties from the personal property are thrown back to the taxing state in their entirety. "Commercial domicile" is defined as the principal place from which the trade or business of the taxpayer is directed or managed (35 ILCS 5/1501(a)(2)). A regulation adds that the principal place of direction is generally the offices of the principal executives. When executive authority is scattered, the place of daily operational decision making is controlling.

A "qualified taxpayer" means the owner of the qualified historic structure or any other person who qualifies for the federal rehabilitation credit that is allowed by IRC Sec. 47 with respect to the qualified historic structure. A "qualified expenditure" means all the costs and expenses that are defined as qualified rehabilitation expenditures under IRC Sec. 47 that were incurred in connection with a qualified historic structure. (35 ILCS 5/221(d))

Credit amount: The credit is allowed in an amount equal to 25% of the qualified expenditures incurred (35 ILCS 5/221(a)), but may not reduce a taxpayer's liability to less than zero (35 ILCS 5/221(c)).

Planning considerations: In order to obtain the credit, a taxpayer must apply with the Department of Commerce and Economic Opportunity, and the department, in consultation with the Historic Preservation Agency, must determine the amount of eligible rehabilitation costs and expenses. The Historic Preservation Agency must also determine whether the rehabilitation is consistent with the standards of the U.S. Secretary of the Interior for rehabilitation. (35 ILCS 5/221(b))

Jobs credit: The zone jobs credit is no longer available in river edge redevelopment zones; see ¶404.

River Edge Redevelopment Zones are authorized in Aurora, East St. Louis, Elgin, Rockford, and Peoria (65 ILCS 115/10-5.3).

• *Peoria project*

An income tax credit is available for the renovation of qualified historic structures in the city of Peoria (namely, the Hotel Pere Marquette). A "qualified taxpayer" is the owner of the qualified historic structure or any other person who may qualify for the federal rehabilitation credit allowed by IRC Sec. 47. "Qualified expenditures" means all the costs and expenses defined as qualified rehabilitation expenditures under IRC Sec. 47 that were incurred in connection with a qualified historic structure. (35 ILCS 5/219)

Credit amount: The credit is allowed in an amount equal to 25% of the qualified expenditures incurred by a qualified taxpayer during the taxable year in the restoration and preservation of the structure pursuant to a qualified rehabilitation plan, provided that the total amount of such expenditures is at least $5,000 and it exceeds 50% of the purchase price of the property.

Planning considerations: The credit may be claimed for taxable years beginning on or after January 1, 2010, and ending on or before December 31, 2015. The project must be approved by the Historic Preservation Agency as being consistent with the standards in effect for rehabilitation as adopted by the federal Secretary of the Interior. Unused credit can be carried forward for up to 10 years and may be transferred. The total amount of credits that can be awarded to one qualified rehabilitation plan is $10 million.

If the taxpayer is a corporation having a federal Subchapter S election, a partnership, or a limited liability company, the credit may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the bylaws or other executed agreement of the corporation, partnership, or limited liability company. Credits granted to a partnership, a limited liability company taxed as a partnership, or other multiple owners of property will be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting any alternate distribution method. (P.A. 96-0933 (S.B. 2534), Laws 2010)

¶1220 Angel Investor Credit

Law: Income Tax Act, Sec. 220 [35 ILCS 5/220.]; 14 Ill. Adm. Code 531.10 through 531.90 (CCH ILLINOIS TAX REPORTS, ¶12-055d).

Effective for taxable years 2011 through 2016, a nonrefundable and nontransferable tax credit may be claimed for a portion of the taxpayer's investment made directly in a qualified new business venture. Taxpayers eligible to apply for the credit include a corporation, partnership, limited liability company, or a natural person that makes an investment in a qualified new business venture. The term "applicant" does not include a corporation, partnership, limited liability company, or a natural person who has a direct or indirect ownership interest of at least 51% in the profits, capital, or value of the investment or a related member. (35 ILCS 5/220)

Credit amount: The credit may be claimed in an amount equal to 25% of the taxpayer's investment made directly in a qualified new business venture. The maximum amount of credit that a taxpayer may claim is limited to $500,000. (35 ILCS 5/220(b))

Planning considerations: A business venture must satisfy the following conditions before it can be registered as a qualified business (35 ILCS 5/220(e)):

— it has its headquarters in Illinois;

— at least 51% of its employees are employed in Illinois;

— it has the potential for increasing jobs or capital investments, or both, in Illinois and either, (1) it is principally engaged in innovation in manufacturing, biotechnology, nanotechnology, communications, agricultural sciences, clean energy creation or storage technology, processing or assembling products (including medical devices, pharmaceuticals, computer software or hardware, semiconductors, other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying proprietary technology), or providing services that are enabled by applying proprietary technology, or 2) it is undertaking pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying proprietary technology;

— it is not principally engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable energy resource, as defined in the Illinois Power Agency Act;

— it has fewer than 100 employees;

— it has been in operation in Illinois for not more than 10 consecutive years prior to the year of certification; and

— it has received not more than $10 million in aggregate private equity investment in cash and not more than $4 million in investments that qualified for tax credits under this section.

The businesses must have applied for and received certification for the taxable year in which the investment was made prior to the date on which the investment was made (35 ILCS 5/220(b)).

Unused credit may be carried forward for five years.

property at retail (*Dearborn Wholesale Grocers, Inc. v. Robert Whitler* (1980, SCt), 82 Ill2d 471, 413 NE2d 370; CCH ILLINOIS TAX REPORTS, ¶61-650.18).

The ROT is imposed on a seller's receipts from sales of tangible personal property for use or consumption. If the seller (typically an out-of-state business, such as a catalog company or a retailer making sales on the Internet) does not charge Illinois sales tax, the purchaser must pay the use tax directly to the state of Illinois (¶1511). There is no requirement that the tax be passed on to the consumer—this is a matter strictly between the seller and the buyer. However, it should be noted that in actual practice the retailer collects the *use* tax from the purchaser (the Illinois use tax is imposed on the use of tangible personal property within the state) and remits the retailers' occupation (sales) tax to the state. The retailer is not required to remit the use tax collected when the ROT applies to the gross receipts from the same transaction.

See ¶1512 for a discussion concerning use tax and Internet/electronic commerce transactions.

"Person" defined: "Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator, or other representative appointed by order of any court (35 ILCS 120/2).

"Sale at retail" defined: "Sale at retail" means any transfer, for a valuable consideration, of the ownership of, or title to, tangible personal property to a purchaser, for the purpose of use or consumption and not for the purpose of resale in any form as tangible personal property. Property is considered to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of any intentionally produced product or byproduct of manufacturing (for this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced byproduct of manufacturing) (35 ILCS 120/2).

Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a sale at retail are not sales at retail.

Airlines: Airlines are subject to the retailers' occupation tax and the use tax on food and beverages purchased in Illinois and given to passengers without a separate charge (86 Ill. Adm. Code Sec. 130.2145; CCH ILLINOIS TAX REPORTS, ¶62-396). Airlines are also liable for tax on purchases of meals served to crew members.

Sales of airline tickets are not considered a sale of tangible personal property and are not subject to sales or use tax (*General Information Letter ST 12-0058-GIL*, Illinois Department of Revenue, November 2, 2012, CCH ILLINOIS TAX REPORTS, ¶402-613).

Meeting facilities: When meeting rooms are rented or leased with food provided, the taxability of the food depends on the outcome of the true-object test—if only snacks or nonalcoholic beverages are transferred incidental to the renting of a room, the true object of the transaction will be deemed to be the rental of the room, and the charges for the room rental will not be subject to tax. However, if any food other than snacks is provided or alcohol is served, the true object of the transaction will be deemed to be the sale of food or beverages, and the charges for the room rental will be considered part of the seller's taxable gross receipts. (86 Ill. Adm. Code Sec. 130.2145)

Maintenance agreements: Tangible personal property purchased by a serviceperson (¶1508) is subject to the retailers' occupation tax when it is purchased for transfer by the service provider pursuant to a completion of a maintenance agreement.

Tire retailers—Fee for recycling used tires: Retailers of tires must collect a fee on each tire sold and delivered in Illinois for the purpose of recycling and disposing of used tires (¶2212). The fee is to be added to the sales price of the tire and is not includible in taxable gross receipts. For guidance on the tire user fee, see *PIO-55, Tire User Fee*, Illinois Department of Revenue, March 2011, CCH ILLINOIS TAX REPORTS, ¶402-299.

¶1505 ROT—Seller Must Determine Whether or Not a Sale Is for Resale

Law: Retailers' Occupation Tax Act, Sec. 2c [35 ILCS 120/2c] (CCH ILLINOIS TAX REPORTS, ¶60-650).

A seller of tangible personal property must determine, at the time the seller makes sales to a purchaser who may use or consume the property or who may resell the property, whether the purchaser is, in fact, buying for purposes of resale or for purposes of use (35 ILCS 120/2c). Except for sales to totally exempt purchasers, sellers should obtain a certificate of resale from purchasers making purchases for resale. The Illinois Supreme Court has held that wholesalers are not required to obtain resale certificates because the resale certificate requirement applies only to retailers (¶1504). A sale is tax-free as a sale for resale if the purchaser has an active registration number or resale number from the Department of Revenue and furnishes that number to the seller. Further, the statutes create a rebuttable presumption that a sale is not for resale when the purchaser fails to present an active registration number or resale number and certification to the seller.

This determination is not necessary as to sales made to a totally exempt body, such as a governmental body or a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes (¶1702).

A purchaser who is not registered with the Department and who makes purchases for resale must apply to the Department for a resale number, unless the purchaser is an out-of-state purchaser who will always resell and deliver the property to customers outside Illinois (35 ILCS 120/2c). See also *General Information Letter ST 13-0018-GIL*, Illinois Department of Revenue, April 23, 2013, CCH ILLINOIS TAX REPORTS, ¶402-657.

Blanket and percentage exemption certificates: If all the sales made by a seller to a particular purchaser are for resale, the seller may accept a blanket resale certificate covering all sales to the purchaser. Or, if all sales of certain types of goods to a particular purchaser are for resale, the seller may accept a blanket resale certificate covering purchases of that item.

If a purchaser knows that a certain percentage of all purchases from a seller will be made for resale, the seller may accept a percentage certificate of resale specifying that a certain portion of the sales made by the seller to the purchaser will be made for resale. (*General Information Letter ST 11-0063-GIL*, Illinois Department of Revenue, August 12, 2011, CCH ILLINOIS TAX REPORTS, ¶402-406)

Practitioner Comment: Resale Certificates

All sales in Illinois are presumed to be at retail. It is the seller's obligation to establish that the sale is not subject to tax because it is a sale for resale. Illinois does not have a particular form that must be used as a resale certificate; however, either the Department's Form CRT-61, or the Multistate Tax Commission's Uniform Sales & Use Tax Certificate may be used. To be valid and create a presumption that the sale is for resale, the form or statement must include: (1) the seller's name and address; (2) the purchaser's name and address; (3) a description of the property being purchased; (4) a statement that the property is being purchased for resale; (5) the purchaser's signature

retailers. (*General Information Letter ST 11-0109-GIL,* Department of Revenue, December 29, 2011, CCH ILLINOIS TAX REPORTS,¶ 402-441; see also *General Information Letter ST 13-0061-GIL,* Illinois Department of Revenue, October 22, 2013, CCH ILLINOIS TAX REPORTS,¶ 402-741).

Medical cannabis: Beginning January 1, 2014, medical cannabis and medical cannabis-infused products sold by a registered dispensing organization are considered prescription and nonprescription medicines and drugs subject to the low 1% tax rate. Cannabis paraphernalia is subject to the general merchandise rate of 6.25%. Medical cannabis is also subject to the Metro East Mass Transit District Retailers' Occupation Tax and the Regional Transportation Authority Retailers' Occupation Tax. (86 Ill. Adm. Code Sec. 130.311)

Automobile, aircraft, and watercraft rental and use taxes: A 5% tax is imposed upon persons in the business of renting automobiles, and a 5% tax is imposed on the rental price paid upon the privilege of using an automobile, pursuant to the Illinois automobile renting and occupation and use tax. The aircraft use tax and the watercraft use tax are imposed at the rate of 6.25%.

Hotel operators' occupation tax: The hotel operators' occupation tax is imposed at a rate of 5% of 94% of the gross rental receipts, plus an additional tax of 1% of 94% of gross rental receipts.

As a result of the combination of the statewide rate, together with mass transit district taxes (metro-east mass transit district (MED) and regional transportation authority (RTA)), the Metropolitan Pier and Exposition Authority (MPEA) food and beverage tax, county home-rule tax, county public-safety tax, water commission taxes, municipal home-rule occupation and use taxes, and non-home rule occupation and use taxes, the actual sales tax rate may be higher. In addition, all counties, municipalities, the MED, and the RTA have the authority to impose automobile rental occupation and use taxes up to 1%. The Illinois Department of Revenue is authorized to collect for, and to share collected revenues with, state and local governments.

Sourcing: Sourcing of local taxes is discussed at ¶ 1518.

Prepayment of tax on motor fuels: See ¶ 1802.

• *Wireless 911 surcharge*

Beginning January 1, 2012, a 1.5% prepaid wireless 911 surcharge is imposed on purchases of prepaid wireless telecommunications services. A home rule municipality with a population over 500,000 may impose a 911 surcharge not to exceed 7%. Entities exempt from Illinois sales tax are exempt from the 911 surcharge. (Prepaid Wireless 9-1-1 Surcharge Act, Sec. 15 [50 ILCS 753/15]; *Informational Bulletin FY 2012-01,* Department of Revenue, September 2011, CCH ILLINOIS TAX REPORTS,¶ 402-416; see also *Publication 113, Retailer's Overview of Sales and Use Tax and Prepaid Wireless E911 Surcharge,* Department of Revenue, October 2011, CCH ILLINOIS TAX REPORTS,¶ 402-422)

Temporary rates: Illinois legislation temporarily restricts the amount of the emergency telephone system monthly surcharge and temporarily increases the prepaid wireless 911 surcharge for certain municipalities from June 6, 2014, until July 1, 2015. The amount of the emergency telephone system monthly surcharge that may be imposed per network connection by a municipality with a population of 500,000 or more cannot exceed the highest monthly surcharge imposed as of January 1, 2014, by any other county or municipality during the statutory time frame. The amount of the prepaid wireless 911 surcharge imposed by a home rule municipality with a population of 500,000 or more cannot exceed 9% per retail transaction sourced to that jurisdiction. On or after July 1, 2015, the wireless surcharge cannot exceed 7%. (50 ILCS 753/15(a-5))

The 911 surcharges must be separately stated on customer invoices or receipts or must otherwise be disclosed to customers. A separately stated 911 surcharge is not subject to sales tax, other fees or surcharges (50 ILCS 753/15). When prepaid wireless telecommunications service is sold with one or more other products or services for a single, nonitemized price, then the 911 surcharge is applied to the entire nonitemized price unless the seller applies the 911 surcharge to:

— the dollar amount of the service if that amount is disclosed to the customer; or

— the portion of the price attributable to the service if the seller can identify that portion by reasonable and verifiable standards from the books and records it keeps in the regular course of business, including, but not limited to, books and records kept for non-tax purposes.

If a minimal amount of service is sold with a prepaid wireless device for a single, non-itemized price, the seller may choose not to apply the 911 surcharge. An amount of service is minimal if it is 10 minutes or less or $5 or less. (*General Information Letter ST 11-0111-GIL,* Department of Revenue, December 29, 2011; CCH ILLINOIS TAX REPORTS,¶ 402-439)

The 911 surcharge is administered and enforced under existing sales tax provisions to the extent practicable. Procedures for registration and payment of the 911 surcharge are substantially the same as those that apply for sales tax purposes. (50 ILCS 753/20)

State and local 911 surcharges are imposed on customers, but sellers are liable for remitting all 911 surcharges they collect (Sec. 15(c), P.A. 97-463 (S.B. 2063), Laws 2011). For the first 12 months after January 1, 2012, a seller may deduct and retain 5% of the 911 surcharges it collects and timely remits to the Illinois Department of Revenue with a timely filed return (50 ILCS 753/20(b)). After the first 12 months, the collection discount is reduced to 3%.

• *Regional tax rates*

RTA taxes: The Regional Transportation Authority (RTA) ROT is imposed in Cook County at the following rates: (1) 1.25% on sales of food for off-premises consumption (except alcohol, soft drinks, and food prepared for immediate consumption), prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, and syringes and needles used by diabetics; and (2) 1% on other taxable sales. In DuPage, Kane, Lake, McHenry, and Will Counties, the RTA tax is imposed at the rate of 0.75% on all taxable sales. (70 ILCS 3615/4.03(e); *Informational Bulletin FY 2008-13,* Illinois Department of Revenue, February 2008, CCH ILLINOIS TAX REPORTS, ¶ 401-862)

The RTA's SOT is imposed at the same rates as listed above for the ROT, except that in Cook County it is also imposed on food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Hospital Licensing Act, the Specialized Mental Health Rehabilitation, or the Nursing Home Care Act. (70 ILCS 3615/4.03(f))

The RTA's use tax is imposed at the rate of 1% in Cook County and 0.75% in DuPage, Kane, Lake, McHenry, and Will Counties (collar counties). (70 ILCS 3615/4.03(g); *Informational Bulletin FY 2008-13,* Illinois Department of Revenue, February 2008, CCH ILLINOIS TAX REPORTS, ¶ 401-862)

MED-MT taxes: A Metro East Mass Transit District (MED-MT) may impose retailers' occupation tax, service occupation tax, and use tax at the rate of 0.25%. (70 ILCS 3610/5.01(b), (c), (d)) Some taxing districts, but not all, within Madison County and St. Clair County have imposed the MED-MT retailers' occupation tax.

purpose of reselling it; however, sales by limited liability companies are excluded from this exemption. (35 ILCS 115/3-5; 35 ILCS 120/2-5)

• *Photo-processing equipment*

Photo-processing equipment, including repair and replacement parts and equipment purchased for lease, certified by the purchaser to be used primarily for photo processing, is not subject to state use tax, service use tax, and retailers' occupation (sales) tax (35 ILCS 115/3-5; 35 ILCS 110/3-5; 35 ILCS 115/3-5; 35 ILCS 120/2-5). For purposes of the exemption, photo processing is deemed to be a manufacturing process of tangible personal property for resale. However, the use of photographs, including negatives and positives, that are the product of photo processing is subject to the state use tax and retailers' occupation (sales) tax with the exception of photographs produced to advertise motion pictures.

• *River Edge redevelopment project*

An exemption is allowed for qualified sales of building materials to be incorporated into real estate within a River Edge redevelopment zone by remodeling, rehabilitating, or new construction as part of an industrial or commercial project for which a Certificate of Eligibility for Sales Tax Exemption has been issued to the taxpayer (35 ILCS 120/2-54; 86 Ill. Adm. Code 130.1954).

• *Rolling stock*

The following sales of rolling stock moving in interstate commerce are exempt: (1) sales to interstate carriers; or (2) sales to lessors for which a lease of one year or longer to interstate carriers is executed or in effect at the time of sale (35 ILCS 105/3-55; 35 ILCS 110/2; 35 ILCS 115/2; 35 ILCS 120/2-5; 86 Ill. Adm. Code 130.340). The sale of property that is utilized by interstate carriers or attached to rolling stock moving in interstate commerce is also exempt.

"Rolling stock" includes the transportation vehicles of any kind of interstate transportation company for hire (railroad, bus line, airline, trucking company, etc. (86 Ill. Adm. Code 130.340(b)). The exemption for the use of rolling stock moving in interstate commerce is limited to transportation vehicles that, during a 12-month period, have carried persons or property for hire in interstate commerce for greater than 50% of either their total trips or total miles (35 ILCS 105/3-61(e); 35 ILCS 110/3-51(e); 35 ILCS 115/2d(e); 35 ILCS 120/2-51(e)). The taxpayer must make an irrevocable election at the time of purchase whether to use the trips or mileage method. The election to use either trips method or the mileage method will remain in effect for the duration of the purchaser's ownership of the item. For purposes of determining qualifying trips or miles, motor vehicles that carry persons or property for hire, even just between points in Illinois, will be considered used for hire in interstate commerce if the motor vehicle transports persons whose journeys or property whose shipments originate or terminate outside Illinois.

For motor vehicles, the exemption is available only for limousines and motor vehicles whose gross vehicle weight rating exceeds 16,000 pounds (35 ILCS 105/3-51(c); *Informational Bulletin FY 2008-03*, Illinois Department of Revenue, October 2007, CCH ILLINOIS TAX REPORTS, ¶401-818).

Documentation: A trucking company may use intrastate trips to qualify its trucks for the Illinois rolling stock exemption from retailers' occupation (sales) tax if the company can document that the shipment of products either originated or terminated outside Illinois. If the initial documentation for a shipment of products from outside Illinois indicates that the Illinois destination is a specific warehouse, any subsequent shipment of the products from that warehouse to another Illinois destination will not qualify as part of an interstate trip for purposes of the rolling stock exemption. However, if the initial documentation indicates that the ultimate destination is an Illinois location via the Illinois warehouse, then the travel of products from

the warehouse to the destination can count as part of the interstate trip. (*General Information Letter ST 10-0019-GIL*, Illinois Department of Revenue, March 19, 2010, CCH ILLINOIS TAX REPORTS, ¶402-105)

• *Sales for resale*

A sale of tangible personal property for the purpose of resale is exempt (35 ILCS 105/2; 35 ILCS 120/1). See ¶1505.

• *Schools*

Sales by teacher-sponsored student organizations affiliated with Illinois elementary or secondary schools are exempt.

Personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts is exempt from sales and use taxes if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children. These exemptions do not apply to personal property purchased through fundraising events (1) for the benefit of private home instruction or (2) for which the fundraising entity purchases the personal property sold at the events from another individual or entity that sold the property for the purpose of resale by the fundraising entity and that profits from the sale to the fundraising entity. These exemptions are not subject to any sunset date provisions and, thus, are available indefinitely.

• *Telecommunications*

Telecommunications generally are subject to the telecommunications excise tax and the telecommunications infrastructure maintenance fee, discussed at ¶2207.

Equipment installed in aircraft: Proceeds from sales and use of equipment that is operated by a telecommunications provider licensed as a common carrier by the FCC and that is permanently installed in or affixed to aircraft moving in interstate commerce are exempt.

Prepaid calling arrangements: Prepaid telephone calling arrangements are subject to retailers' occupation (sales), service occupation (sales), use, and service use tax as tangible personal property, regardless of the form the arrangements may be embodied or transmitted. Prepaid telephone calling arrangements are not considered "telecommunications" subject to the telecommunications infrastructure maintenance fee (35 ILCS 635/10(b)).

The term "prepaid telephone calling arrangements" means the right to exclusively purchase prepaid telephone or telecommunications services in order to originate intrastate, interstate, or international telecommunications using an access number or authorization code and includes the recharge of such services. However, purchases that are reflected by the service provider as a credit on a customer account under an existing subscription plan are not included (35 ILCS 120/2-27). for additional information, see *General Information Letter ST 13-0009-GIL*, Illinois Department of Revenue, February 5, 2013, CCH ILLINOIS TAX REPORTS, ¶402-639 and *General Information Letter ST 13-0053-GIL*, Illinois Department of Revenue, September 11, 2013, CCH ILLINOIS TAX REPORTS, ¶402-738.

• *Transportation*

Sales tax exemptions have been created in conjunction with enactment of the Illinois Public-Private Partnerships for Transportation Act. One of the express intentions of the Act is to authorize transportation agencies to enter into public-private agreements related to the development, operation, and financing of transportation facilities (Sec. 5, P.A. 97-502 (H.B. 1091), Laws 2011).

The tax is due nine months after death. Extensions are based on allowed federal extensions.

If the federal estate tax is paid in installments, the Illinois tax may be paid in installments. Illinois Form 4350 is a computation worksheet for installment payments, but note that gross values are used to determine the percentage subject to deferral—not adjusted values, as on the federal return.

Illinois also has a generation skipping tax (see Illinois Form 700). The tax is incurred when a state credit is allowable against the federal generation-skipping tax, which only occurs in an indirect skip situation.

For further information, contact:

Office of the Attorney General, State of Illinois
Estate Tax Section
100 West Randolph Street, 13th Floor
Chicago, Illinois 60601
Telephone: (312) 814-2491

In Springfield, contact the Estate Tax Section at:

500 South Second Street
Springfield, Illinois 62706
Telephone: (217) 524-5095

The full text of the law is reproduced beginning at ¶112-100.

Complete details are contained in CCH Inheritance, Estate, and Gift Tax Reports.

¶1902 Rates and Exemptions

For persons dying in 2014, the federal exemption for federal estate tax purposes is $5,340,000, and the exemption equivalent for Illinois estate tax purposes is $4 million. Therefore, tentative taxable estates with adjusted taxable gifts between those amounts will owe an Illinois estate tax without any corresponding federal liability. In those cases, the estate representative must prepare and file the Illinois Estate Tax Return, Form 700, together with a federal Form 706, Federal Estate Tax Return. When the tentative taxable estate plus adjusted taxable gifts exceeds $5,340,000, Illinois Form 700 is prepared in the same manner for 2014 as for 2013 and 2012 and must, therefore, include a copy of Form 706 with all attachments. For resident and nonresident decedents, the tax base will be calculated assuming all assets are located within Illinois. The percentage of Illinois assets to total assets is then computed with the percentage applied to the tax base for apportionment purposes to determine the amount of Illinois estate tax due. (*2014 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Office of Illinois Attorney General, July 29, 2014)

2013.—For persons dying in 2013, the federal exemption for federal estate tax purposes is $5,250,000, and the exemption equivalent for Illinois estate tax purposes is $4 million. (*2013 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Office of Illinois Attorney General, February 20, 2013)

2011-2012.—In 2011, the estate and generation-skipping transfer tax was amended and the exclusion amount is, for persons dying

— prior to 2012, $2 million;
— during 2012, $3.5 million; and
— after 2012, $4 million.

(35 ILCS 405/2) For persons dying in 2012, the federal estate tax exemption is $5,120,000; therefore, tentative taxable estates with adjusted taxable gifts between $3.5 million and $5.12 million will owe an Illinois estate tax without a corresponding

federal estate tax liability. The portability and carry-over of the unused federal exemption to the surviving spouse is inapplicable to the computation and assessment of the Illinois estate tax. (*2012 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Office of Illinois Attorney General, January 2012)

(**CCH Note:** The 2011-2012 Important Notice cited below was issued prior to the 2011 amendment that changed the exclusion amounts for 2012 and thereafter, as noted above. Consequently, the notice became inapplicable to persons dying in 2012.) Prior to the 2011 amendments, the Illinois estate tax was reinstated applicable to the estates of decedents dying on or after January 1, 2011. The definition of the term "state tax credit" for persons dying after 2010 was amended to make it an amount equal to the full credit calculable under the federal estate tax law, as in effect on December 31, 2001. The amended definition did not recognize the reduction and termination of the state death tax credit, which occurred after 2001 for purposes of federal transfer taxes. The Illinois statute provides for an exclusion of $2 million, as well as for a reduction to the adjusted taxable estate for any qualified terminable interest property election. (35 ILCS 405/2)

The tax previously had been decoupled from federal law to offset the effects of the phase-out of the federal estate tax over 10 years and the reduction of the state tax credit over four years. The Illinois Attorney General issued periodic notices throughout that period to explain the impact of the federal phase-out and ultimate reinstatement of the federal estate tax to track the effect on the Illinois estate tax.

For persons dying in Illinois during 2011-2012, the state estate tax exemption was $2 million, as compared to the exemption equivalent of $5 million for federal estate tax purposes. Therefore, tentative taxable estates with adjusted taxable gifts between $2 million and $5 million owed an Illinois estate tax without any corresponding federal liability. When the tentative taxable estate plus adjusted taxable gifts exceeded $5 million, the Illinois estate tax return was to be prepared for 2011-2012 as it was for 2009 and must, therefore, include a copy of the federal Form 706 with all attachments. In addition, the portability and carry-over of the unused federal exemption to the surviving spouse was inapplicable to the computation and assessment of the state estate tax. (*2011-2012 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Illinois Attorney General, April 2011)

2010.—There was no Illinois estate tax for decedents dying in 2010. Although the U.S. Congress reinstated the federal estate tax for decedents dying in 2010, the Illinois Legislature did not amend the law to impose a state estate tax for calendar year 2010. (*2010 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Illinois Attorney General, April 2011)

2009.—For persons dying in 2009, the federal exemption for federal estate tax purposes is $3.5 million, while the Illinois "exemption equivalent" remains at $2 million. Therefore, tentative taxable estates with adjusted taxable gifts between $2 million and $3.5 million will owe an Illinois estate tax without any corresponding federal estate tax liability. (*2009 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Illinois Attorney General, October 2009)

2006-2008.—For decedents dying after 2002 and before 2005, the estate tax was no longer linked to the "allowable" state death tax credit against the federal estate tax. Instead, the state tax was the full amount that could be computed under the State Death Tax Credit Table (Table B of the instructions for the Federal Estate Tax Return, Form 706) without recognizing the reductions and eventual termination of the credit contained in recent federal legislation. (*2006-2008 Important Notice Regarding Illinois Estate Tax and Fact Sheet*, Illinois Attorney General, October 2007)

For 2006-2008 decedents, the "exemption equivalent" is $2 million. The Illinois estate tax will still follow the federal "exemption equivalent" until it exceeds $2 million. At that point for persons dying in 2009, the Illinois exemption will remain at

some counties by credit card. Cook County generally is required to accept payment by credit card for each installment of property taxes, although the taxpayers must also pay any credit card service charges or fees (35 ILCS 200/20-25(b)). However, the county need not accept payment by credit card for delinquent payments or for purposes of any tax sale or scavenger sale.

There is no extension of time for payment and discounts are not given for early payment.

Payment under specification: A tax collector may, but is not required to, receive taxes on part of a property when a particular specification of the part is furnished. If the tax on the remainder of the property remains unpaid, the collector must enter that specification in his or her return so that the part on which the tax remains unpaid may be clearly known (35 ILCS 200/20-210; see *Bigelow Group, Inc. v. Rickert*, Illinois Appellate Court, Second District, No. 2-06-0879, October 24, 2007, CCH ILLINOIS TAX REPORTS, ¶401-828).

Military personnel: A person in the military service is afforded protection under federal law from the loss of real or personal property through enforcement of the collection of taxes when the property is occupied by his or her dependents as a dwelling or by employees for professional, business, or agricultural purposes (50 USC §560). Property may be sold to enforce tax collection only by court permission upon application by the tax collector.

Unpaid Illinois property tax due on property owned by a National Guard member or reservist in the Armed Forces of the United States called to active duty outside the United States is not deemed delinquent and no interest or penalty will accrue until 180 days after the reservist returns from active duty (35 ILCS 200/21-15).

• *Tax bills—Notice*

Tax bills are mailed by the county or town collector the year following the year the assessments are made. Tax bills are prepared in triplicate for each installment and mailed at least 30 days before the due date. Where tax bills are mailed to a mortgage lender, a copy of the bill must be sent by the lender to the borrower within 15 days of the receipt of the bill. If the county uses the accelerated billing method, the copy is mailed to the borrower with the final installment. Failure to mail a bill or to receive one, however, does not affect the validity of the tax or relieve the taxpayer of tax liability.

As an alternative to mailing the bill and at the request of the taxpayer, the bill can be sent by e-mail (35 ILCS 200/20-20). Beginning in 2015, the taxpayer's request must be in writing. A taxpayer who makes such a request must notify the collector of any subsequent change in the e-mail address.

The county tax bill or a separate statement accompanying the bill must show:

(1) the assessed value of the property;

(2) the county and state equalization factors;

(3) the equalized assessment resulting from the application of the equalization factors;

(4) the dollar amount of tax levied allocable to a school district for payment of community college district tuition;

(5) itemization of the tax rates extended by each of the taxing districts; and

(6) information that certain taxpayers may be eligible for tax exemptions, abatements, and other assistance programs.

Tax bills issued by counties that utilize electronic data processing equipment will also include the dollar amount of tax that is allocated to each taxing district, the total tax rate, the total amount due, and the amount by which the total tax and the tax

allocable to each taxing body differs from the previous tax bill. Payment postmarked on or before the due date are considered timely.

Assessment notices: For all Illinois counties except Cook County, the chief county assessment officer must publish a list of property for which assessments have been added or changed since the preceding assessment, together with the amounts of the assessments (except those changed by equalization) (35 ILCS 200/12-10). Publication of assessments in each year of general assessments must include:

— a statement that property generally is required to be assessed at 331/3 % of fair market value;

— contact information, including any website, of the local assessor;

— advice to taxpayers of steps to follow if they believe the full fair market value of the house is incorrect or the assessment is not uniform;

— a statement of the deadline date for filing an appeal;

— a brief explanation of the relationship between the assessment and the tax bill; and

— a notice of possible eligibility for some homestead exemptions.

Effective January 1, 2013, notice of an increase or decrease in property tax assessment by a board of review can under certain circumstances be given to the taxpayer's attorney or, in Cook County, by e-mail. A board of review in Cook County may send electronic notices of assessment changes to taxpayers whose e-mail address appears on either the assessment records or a complaint filed with the board. If the taxpayer has been represented by an attorney, the notice will be sent to the attorney, whether by mail or by e-mail. In all other counties, the notice will be mailed to the taxpayer's attorney if the taxpayer was represented by an attorney. Previously, the notice was mailed to the taxpayer. (35 ILCS 200/12-50)

A complaint that property in Cook County was overassessed, underassessed, or exempt may be filed electronically and signed with the electronic signature of either the complaining party or the complaining party's attorney (35 ILCS 200/16-115). The legislation provides definitions for "electronic," "electronic record," and "electronic signature."

• *Time for payment*

With certain exceptions discussed below, all real estate taxes are payable in two equal installments. The first installment is due on the later of June 1 or the day after the date specified on the real estate tax bill as the first installment due date, and the second installment is due on the later of September 1 or the day after the date specified on the real estate tax bill as the second installment due date. These dates may be modified by ordinance. If either due date falls on a Sunday or legal holiday, the due date is extended to the succeeding business day. Payments postmarked on or before the due date are considered timely (35 ILCS 200/21-15).

Cook County: Cook County accelerates its tax payment procedure. Under this system, the first installment, billed January 31, is equal to 50% of the preceding year's tax bill and is due by March 1 (or no later than June 1, by ordinance). The second installment is to be mailed June 30 and covers the balance of taxes due, computed by subtracting the first billing from the total taxes for the present year.

Omitted property: County assessors may assess properties that may have been omitted from local Illinois property tax assessments for up to three years prior to the current assessment year. County property taxes based on an omitted assessment must be prepared and mailed at the same time as the estimated first installment property tax bill for the preceding year. The omitted assessment tax bill will be due on the date on which the second installment property tax bill for the preceding year becomes due. Any taxes for omitted assessments will be deemed delinquent after the