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ILLINOIS INCOME AND SALES TAX LEGISLATION RECENT DEVELOPMENTS

*ILLINOIS STATE BAR ASSOCIATION
STATE AND LOCAL TAX SEMINAR
December 1, 2011*

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IL Income & Sales Tax Legislation

- ▶ Recent Illinois Legislative Changes
- ▶ Ongoing Illinois Legislative Changes
- ▶ Projected Illinois Legislative Changes
- ▶ Illinois Audit & Litigation Impacts
- ▶ National Trends & Other Impacts



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2011 – What A Year!

- ▶ January – Rate Increase/NLD Suspension
- ▶ Spring Session – Tax Issues Not Addressed
- ▶ House/Senate Joint Committee Tax Hearings
- ▶ Veto Session – Extended
- ▶ Extended Veto Session – Ended Yesterday

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Income Tax Rate Increase Legislation (S.B. 2505 – P.A. 96-1496)

- ▶ Increased corporate income tax rate from 4.8% to 7% beginning on January 1, 2011
- ▶ Enacted January 13, 2011
- ▶ Reduction of rate to 5.25% set of begin on January 1, 2015 (4.8% on January 1, 2025)
- ▶ Does not include replacement tax of 2.5%
- ▶ Total current tax rate is 9.5%
- ▶ Fiscal year taxpayer effect

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NOL Suspension Legislation (S.B. 2505 – P.A. 96–1496)

- ▶ Suspends NOLs for tax years ending after December 31, 2010 and prior to December 31, 2014
- ▶ Unexpected first quarter 2011 estimated payments required
- ▶ Applies to corporations (not S Corporations)
- ▶ The 12 year carryover for net losses will be extended for the number of years of the suspension
- ▶ Fiscal year taxpayers have 4 year suspension

Technical Corrections Bill (H.B. 2955 – P.A. 97–0507)

- ▶ Enacted August 23, 2011
- ▶ Holding company changes: definition; combination; and clarification
- ▶ Notice requirement changes – certified mailings no longer required
- ▶ Captive Insurance Company Loss Subtraction Election
- ▶ Other industry specific changes
- ▶ Other changes – IRC consistency, IITA cleanup

EDGE amendments – (S.B. 4 – P.A. 97-0002)

- ▶ Provides election to claim EDGE credit against withholding for certain industries (adds to list of taxpayers that are allowed)
- ▶ Contains recapture provisions for not meeting requirements (investments and jobs)
- ▶ Makes sunset changes to Film Production Tax Credit Act and credits awarded – 5 years after effective date

Film Credit – (S.B. 398 – P.A. 97-0003)

- ▶ Amends Film Production Services Tax Credit Act
- ▶ Allows for 10 year extension of film tax credit instead of 5 years
- ▶ Further extensions after 10 years may be for 5 year intervals

River Edge Credit (S.B. 2168 – P.A. 97-0203)

- ▶ Creates credit equal to 25% of qualifying expenditures.
- ▶ Qualifying expenditure must equal at least \$5,000 or more and exceed 50% of purchase price of property.
- ▶ Tax years beginning on or after January 1, 2012 and ending prior to January 1, 2017.

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Temporary Storage Exemption – (S.B. 401 – P.A. 97-0073)

Extends temporary storage exemption to
June 30, 2016.

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Food & Medicine Exemptions – (S.B. 0145 – P.A. 97-0038)

- ▶ Exemption for goods purchased for use by persons receiving medical assistance under Art. 5 of the Public Aid Code.
- ▶ Exemption for goods purchased for use by persons who resides in certain licensed facilities.
- ▶ A reduced 1% service occupation tax and service use tax rate for food prepared for immediate consumption and transferred incident to a sale of service by certain licensed entities.

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Click-Through Nexus – (H.B. 3659 – P.A. 96-1544)

- ▶ Effective July 1, 2011.
- ▶ \$10,000 threshold of total sales.
- ▶ No presumption that nexus exists that can be rebutted by the out-of-state retailers.
- ▶ Adopts expanded affiliate nexus provisions.

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Miscellaneous – (S.B. 43 – P.A. 97–0353)

- ▶ Department of Revenue shall make tax rate information available on its website including corporate income tax rate, municipal rate for use and occupation tax, and state and local excise rates
- ▶ Must be made available in a viewable and downloadable format and updated regularly
- ▶ IDOR's current website

Unclaimed Property (H.B. 1560 – P.A. 97–0270)

- ▶ Certain items now presumed abandoned if outstanding for more than one year.
- ▶ Effective August 8, 2011.

Ongoing Issues – R & D Credit

- ▶ P.A. 96-0937 – extends research and development credit for taxable years ending on or after December 31, 2004 and ending prior to January 1, 2011
- ▶ Credit may not be carried forward to any taxable year ending on or after January 1, 2011
- ▶ S.B. 163 and S.B. 1842 were proposed to extend credit to January 1, 2016 and to increase amount from 6.5% to 8%
- ▶ S.B. 379 – Extended Fall Veto Session

Ongoing Issues – EDGE expansion

- ▶ Bills proposed to expand the application of all EDGE credit to withholding taxes
- ▶ General application v. specific industries (current application)
- ▶ S.B. 13 – EDGE Credit Monetization
- ▶ S.B. 1359 – EDGE Credit Monetization

Ongoing Issues –Enterprise Zones

- ▶ S.B. 1633 – work in progress – this was used for another issue
- ▶ S.B. 540 – TIF Reform
- ▶ Expiring zones
- ▶ Summer Task Force Hearings
- ▶ Perception of abuse?
- ▶ Certainty?

Ongoing Issues – Bonus Depreciation

- ▶ Currently no decoupling from most recent federal bonus depreciation
- ▶ 12/31/10 – Returns filed – no decoupling
- ▶ 12/31/11 – no current decoupling
- ▶ Future years – no current decoupling
- ▶ Perceived “Corporate Tax Loophole”
- ▶ Impact on taxpayers

Ongoing Issues – Estimated payments

- ▶ S.B. 1741 – provides that if a taxpayer is entitled to a refund after the payment of the 4th quarter estimated payment, the amount of the refund may be applied to the 1st quarter estimated payment due in the next taxable year

Ongoing Issues – Sales sourcing

- ▶ S.B. 2094 – designed to codify existing Department of Revenue regulations
- ▶ Provides that sales are attributed to the unit of local government where the purchase order is accepted, subject to certain exceptions
- ▶ Opposed by Regional Transportation Authority (“RTA”) and the City of Chicago

Ongoing Issues – Franchise Tax

- ▶ Attempt by Illinois Secretary of State to change Allocation Factor Interrogatories
- ▶ Changes to sourcing of “investment property”
- ▶ Changes withdrawn and reinstated old Allocation Factor Interrogatories
- ▶ Look for proposed regulatory change?



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Extended Veto Session

- ▶ House Revenue Committee Hearings – November 16th, 18th and 28th.
- ▶ Rep. Bradley and Rep. Harris filed S.B. 397 Amendment 3 on Sunday, November 27th.
- ▶ S.B. 397 Amendment 3 – Out of House Revenue Committee on November 28th. Did not get called for House vote.
- ▶ H.B. 1883 – Senate passed 36–18 on November 29th. Did not pass in House 99–8 on November 29th.

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Extended Veto Session–S.B.397 Amendment 3

- Extension of Sears economic development area for 15 years & EDGE credit use against withholding tax.
- Federally regulated exchange income tax sourcing provisions requested by CME – elective 27.54% apportionment rate & throwout removed, ...
- \$100,000 Net Loss Deduction carryforward.
- Extension of R&D credit for 5 years.

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Extended Veto Session–S.B.397 Amendment 3 (Continued)

- Increases Estate Tax Exemption to \$3 million in 2012 and \$3.5 million for 2013 and thereafter.
- Automatic extension of all income and sales tax exemptions, credits and deductions expiring under sunset provisions in 2011, 2012 or 2013.
- Establishes an Independent Tax Tribunal to replace administrative hearings at IDOR by July 1, 2013.
- Establishes Live Theater Production credit for pre-Broadway or long-run stage productions in Illinois.

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Extended Veto Session–S.B.397 Amendment 3 (Continued)

- Increases the standard income tax deduction for individuals from \$2000 to \$2050 per year for tax years ending on or after December 31, 2012.
- Increases the earned income tax credit (EITC) from 5% to 7.5% of the federal credit for 2012.
- Extends for 5 years the beneficial sales tax treatment afforded sales of gasohol, majority blended ethanol products and certain biodiesel blended products.

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Extended Veto Session–H.B.1883

- ▶ Included provisions of S.B. 397 Amendment 3
- ▶ In 2013 starts indexing standard deduction for individuals based on increases in the CPI.
- ▶ In 2013 and thereafter increases the earned income tax credit (EITC) from 7.5% to 10%.
- ▶ Live Theater Production Credit cap increased from \$1,000,000 to \$2,000,000 per year.

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Projected Changes

- ▶ R&D Extension
- ▶ EDGE Credit Applied Against Withholding Tax
- ▶ Exemption/Deduction/Credit Review
- ▶ Income Tax Rate Reductions
- ▶ Franchise Tax Reform
- ▶ Uniform Penalty and Interest Act Reductions
- ▶ Industry Specific Apportionments (CME)
- ▶ Sales Tax Sourcing
- ▶ Independent Tax Tribunal



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Audit & Litigation Impacts

- ▶ Residency Challenges
- ▶ Unitary Business Groups
- ▶ Business/NonBusiness Income
- ▶ Addition/Subtraction Modifications
- ▶ Math Error Notices
- ▶ Sales Factor – Sourcing, Throwback, Throwout, Distortion, Alternative Methods
- ▶ NLD Support
- ▶ Penalty & Amnesty Issues



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National Trends & Other Impacts

- ▶ Nexus
- ▶ Unitary Groups
- ▶ Intangible Holding Companies
- ▶ Addbacks
- ▶ Sales Factor Sourcing – Distortion
- ▶ Sales Factor Throwback and Throwout
- ▶ Sales Factor Market Based Sourcing
- ▶ State Budget Shortfalls – Amnesty, Increased Penalties, Aggressive Audits,

Questions?

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