This Week in State Tax (TWIST)

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Illinois: Pending Legislation Amends Remote Seller Rules, Extends NOL Cap and More

Various bills have passed both chambers of the Illinois General Assembly that make significant tax changes and raise the revenues necessary to balance the state budget. Governor Pritzker has indicated he will sign the budget bills. House Bill 4951, the revenue bill, was amended in the Senate to include over 1300 pages of content. The summary below addresses the most broadly applicable provisions affecting business taxpayers as contained in the bill approved by the legislature.

Corporate and Franchise Tax Changes: On the corporate income tax side, the use of NOL carryovers was limited to $100,000 for the 2021-2023 tax years. The revenue bill adopts a new $500,000 limit on the use of NOL carryovers for tax years ending on or after December 31, 2024 and prior to December 31, 2027 Tax years when NOLs cannot be used due to the limitation are not counted for purposes of determining the 20-year carryforward period. Another corporate income tax change revises the sourcing of income from interest, dividends, net gains and other income from investment assets and activities, as well as from trading assets and activities for financial organizations. Currently, these receipts are sourced by multiplying various categories of income from such assets and activities by a fraction, the numerator of which is gross income from such assets which are properly assigned to a regular place of business of the taxpayer within Illinois and the denominator of which is the gross income from all such assets and activities.

Assuming the bill is enacted, effective for tax years ending on and after December 31, 2024, the amount of such receipts included in the Illinois numerator will be determined by multiplying all income from such assets and activities by a fraction. The numerator of the fraction is the total receipts included in the Illinois numerator under the statutory sourcing rules for various types of income of a financial organization and the denominator is all receipts, other than interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and trading assets and activities.

Under existing law, the Illinois franchise tax imposed on paid-in capital includes an exemption for the first $5,000 of franchise tax liability, The exemption level is increased to $10,000 of liability on or after January 1, 2025.

ROT Provisions: The revenue bill includes several Retailer's Occupation Tax (ROT) changes. For returns due on or after January 1, 2025, the 1.75 percent vendor's discount, which is allowed as a reimbursement for expenses incurred in collecting the ROT, use taxes, and applicable local taxes, will be capped at $1,000 per month. Currently, under Illinois law, lessors pay sales tax on purchases of tangible personal property that is subsequently leased to others, rather on the receipts from the lease stream. On and after January 1, 2025, the term "sale", includes a lease and the tern "retailer" under the ROT Act includes a lessor. As such, payments made under a lease agreement will be subject to ROT, and purchases for the purpose of leasing will be treated as sales for resale. This change does not extend to motor vehicles, watercraft, aircraft, and semitrailers. The bill also creates two new ROT exemptions for use by the lessee of (1) software transferred to a lessee subject to a license that meets certain criteria, and (2) tangible personal property that is subject to a tax on lease receipts imposed by a home rule local jurisdiction prior to January 1, 2023 (notably the Chicago Personal Property Lease Tax). Another provision in the bill prohibits banks from charging interchange fees on taxes and gratuities. Specifically, an issuer, a payment card network, an acquirer bank, or a processor may not receive or charge a merchant any interchange fee on the tax amount or gratuity amount of an electronic

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payment transaction if the merchant informs the acquirer bank of the tax or gratuity amount as part of the authorization or settlement process. A merchant that does not transmit the tax or gratuity amount at the time of the transaction may submit such tax documentation to the acquirer bank no later than 180 days after the date of the electronic payment transaction. The issuer must credit to the merchant the amount of interchange fees charged on the tax or gratuity within 30 days after receiving such information. A bank cannot increase the rate or amount of the fees applicable to or imposed upon the portion of a credit or debit card transaction not attributable to taxes or fees to circumvent the effect of the revised law. This prohibition is effective July 1, 2025.

HOOT Expansion: Under Illinois law, a specific hotel occupancy tax is imposed upon hotel operators based on gross rental receipts. House Bill 4951 amends the Hotel Operators' Occupation Tax (HOOT) Act to provide that a hotel "operator" means a person engaged in the business of renting, leasing, or letting rooms in a hotel. Currently, the definition means a person operating a hotel. A new definition of "re-renter of hotel rooms" means a person who is not employed by the hotel operator, but who, either directly or indirectly, through agreements or arrangements with third parties, collects or processes the payment of rent for a hotel room located in Illinois and (i) obtains the right or authority to grant control of, access to, or occupancy of a hotel room in Illinois to a guest of the hotel or (ii) facilitates the booking of a hotel room located in Illinois. A person who obtains those rights or authorities is not considered a re-renter of a hotel room if the person operates under a shared hotel brand with the operator. The definition of rent is expanded to include any fee, charge, or commission received from a guest by a re-renter of hotel rooms specifically in connection with the re-rental of hotel rooms.

Beginning on July 1, 2024, if the renting, leasing, or letting of a hotel room is done through a re-renter of hotel rooms, the re-renter is the hotel operator for purposes of the hotel taxes. If the re-renter is headquartered outside of Illinois and has no presence in Illinois other than its business as a re-renter, conducted remotely, then the re-renter is the hotel operator for the purposes of the hotel taxes if it meets one of the following thresholds: (1) the cumulative gross receipts from rentals in Illinois by the re-renter of hotel rooms are $100,000 or more; or (2) the re-renter of hotel rooms cumulatively enters into 200 or more separate transactions for rentals in Illinois. Interestingly, the bill envisions that the re-renter will remit the taxes on the receipts related to a re-rented hotel room, but it will be allowed a credit against the tax owed for the amount it paid to the hotel for the room that is re-rented. The hotel will remit the taxes on the amount the re-renter pays for the hotel room. There is no resale exemption allowed for the transaction between the re-renter and the hotel. The bill also addresses the monthly returns to be filed by hotel operators, which may need to include the address of each hotel from which rental receipts are received. Online travel companies facilitating sales of hotel rooms will need to carefully review these provisions in light of the impending effective date. The bill also adopts a definition of a hosting platform that facilitates short term rentals and provides that for purposes of re-renters of hotel rooms only, a "hotel" does not include a short-term rental.

Senate Bill 3362: Under Senate Bill 3362, beginning on January 1, 2025, a "retailer maintaining a place of business in Illinois" (as defined in the Use Tax Act) that makes retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois is liable for all applicable state and local ROT administered by the Department of Revenue. Currently, such retailers collect state use tax and Chicago use tax (other localities do not impose use tax). Further, also beginning January 1, 2025, for sales that would otherwise be sourced outside Illinois, a retailer maintaining a place of business in Illinois that makes sales of

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tangible personal property to Illinois customers from a location outside Illinois is engaged in the business of selling at the Illinois location where the property is shipped or delivered, or at which possession is taken by the purchaser.

Senate Bill 3282: This bill would require Direct Pay Permit holders to perform an annual review of their purchase activity. By March 31, 2025, and by March 31 of each year thereafter, each holder of a Direct Pay Permit must review its purchase activity to verify that the purchases made during the prior calendar year were sourced correctly and that the correct tax rate was applied. If the holder of the Direct Pay Permit discovers an error during the review process, the Direct Pay Permit holder must, by April 20th of the year in which the report occurs, file an amended return to correct the error. A Direct Pay Permit that fails to properly verify purchase activity and correct sourcing and tax rate errors, as required under the revised statute and rules to be adopted by the Department of Revenue, will be liable to pay a penalty of $6,000. However, the penalty will not be imposed if the Department finds that at least 95 percent of the Direct Pay Permit holder's transactions for the applicable 12-month review period are correctly sourced and the correct taxes have been remitted or the permit holder acted with ordinary business care and prudence.

House Bill 3144: Effective January 1, 2026, food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy, and food that has been prepared for immediate consumption) would be exempt from ROT. The bill would allow counties and municipalities to impose a new Grocery Occupation Tax at a rate of one percent tax on persons engaged in selling groceries. The term "groceries" is generally defined the same as "food for human consumption." The local Grocery Occupation tax would be imposed on the seller but collected from the customer and paid over to the Department of Revenue.

Next Steps and Contacts: These bills have either been presented to Governor Pritzker or soon will be. Please contact Drew Olson with questions on the ROT changes. For corporate tax questions, please contact Brad Wilhelmson.

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