

A New (Independent) Day for Taxpayers Contesting Illinois Liabilities

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On the last day before House Bill (H.B.) 5192 would have become law without his signature or veto, Gov. Quinn signed H.B. 5192 into law as Public Act (P.A.) 97-1129. P.A. 97-1129 creates the Illinois Independent Tax Tribunal (the “Tribunal”). Members of Reed Smith’s state tax team were part of the working group of the Illinois State Chamber of Commerce Tax Institute and the Taxpayers’ Federation of Illinois that worked on the design and terms of the legislation, although the final product reflects hard bargaining by both the Illinois Department of Revenue and these taxpayer organizations.

Commencing July 1, 2013, taxpayers administratively protesting tax adjustments will for the first time have the opportunity to appear before judges not in the employ or control of the Illinois Department of Revenue (the “Department”). The Tribunal will have jurisdiction to hear all protests of asserted tax or penalty liability, or the denial of a refund that exceeds \$15,000. The Department will retain jurisdiction over (i) protests of assessments made under the Property Tax Code, (ii) exemption applications, (iii) protests of notices of proposed assessments, (iv) tax liabilities that have become finalized by law, (v) informal administrative appeals functions, and (vi) challenges to administrative subpoenas issued by the Department. Also, a taxpayer and the Department may jointly petition the Tribunal for mediation.

The Tribunal will be composed of one Chief Administrative Law Judge (the “Chief Judge”) and up to three additional judges. All will be appointed by the governor, and will require Senate confirmation and approval. The Chief Judge will serve a five-year term and the other judges will serve staggered four-year terms. To be eligible, judges must be licensed to practice law for at least eight years, and have substantial knowledge of state tax laws and the making of a record in a tax case suitable for judicial review.

In order to file a petition with the Tribunal, a taxpayer will be required to pay a \$500 filing fee. Currently, there is no fee to file an administrative protest with the Department. The Tribunal will also be able to require a taxpayer to post a bond equal to 25 percent of the liability at issue upon motion of the Department if (i) the action is frivolous, (ii) the taxpayer is acting to delay collection of the tax, or (iii) the taxpayer is not pursuing resolution with due diligence. Currently, there is no bond requirement in administrative protests until a taxpayer appeals a sales or use tax determination by the Department to a court, and there is no bond requirement in such appeals of income tax determinations by the Department.

All decisions of the Tribunal will be able to be appealed to the Illinois Appellate Court by either party. The appeal will bypass judicial review by the circuit courts, although the review will still be governed by the Administrative Review Law.



Although P.A. 97-1129 suggests at first that taxpayers with administrative proceedings commencing prior to July 1, 2013, will have the option to transfer to the Tribunal when it becomes operational July 1, 2013, a later provision limits that irrevocable election and makes it effective only if made on or after July 1, 2013, and no later than 30 days after the date on which the protest was filed (thus excluding currently pending cases and those protests filed with the Department more than 30 days prior to July 1, 2013).

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