



# TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

## A note from the Co-Editor

By Mary Ann Connelly

**H**appy Holidays! This edition of *Tax Trends* features a synopsis of revenue legislation that was recently signed into law. Chair of the State and Local Taxation Section Council William Seitz provides a brief summary of the

revenue bills. This edition also features Judge Alexander White's report of the 30<sup>th</sup> Annual State & Local Tax Conference that was held on September 25, 2010 in St. Paul, Minnesota. ■

## Recent laws that impact state & local tax

By William Seitz

**T**he 2010 Session of the 96th General Assembly ended with revenue bills being enacted that cover a diverse group of specific topics.

What follows is a summary of the bills reviewed and commented upon by the ISBA State & Local Taxation Section Council that completed the legislative process and have been signed into law.

### BILLS SIGNED INTO LAW

#### Public Act 96-932 (Income Tax Act - Cooperative- Offset Loss)

Amends the Illinois Income Tax Act (Sec. 203. Base income defined - 35 ILCS 5/203(e)(2)(F) (Gross income; adjusted gross income; taxable income)). Provides that taxable income for cooperatives shall be computed without regard to the prohibition in the Internal Revenue Code against offsetting losses from patronage activities against income from nonpatronage activities. Provides that a cooperative may elect to follow its federal income tax treatment of patronage losses and nonpatronage losses. Provides that the election shall be effective for all taxable years with original returns due on or after the date of the election. Provides that the cooperative may file an amended return to give effect to the elec-

tion in prior taxable years. Provides that the Department's rules must include the standards to be used by the Director in evaluating requests to revoke elections. This amendatory Act of the 96th General Assembly is declaratory of existing law.

Effective Date: January 1, 2011 (SB1826).

#### Public Act 96-935 (Income Tax Act - Partnerships)

Amends the Illinois Income Tax Act (Sec. 203. Base income defined - 35 ILCS 5/203(d) (Partnerships)). In the provisions concerning a deduction for income distributable to an entity subject to the Personal Property Tax Replacement Income Tax, the language is removed that does not allow a deduction to publicly traded partnerships for taxable years ending on or after December 31, 2009 (subparagraph (l)).

Effective Date: June 21, 2010 (SB 3646).

#### Public Act 96-945 (Professions and Occupations - Illinois Public Accounting Act)

Makes changes to section of the Illinois Public Accounting Act dealing with expiration and renewal of licenses; peer review report on compliance with the appropriate professional standards and practices set forth in the rules of the Department of Professional Regulation. Provides

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## Recent laws that impact state & local tax

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that the Department shall not issue any new registrations as a Registered Certified Public Accountant after July 1, 2012. Provides that before July 1, 2012, certain persons may apply to the Department of Financial and Professional Regulation and may be granted a registration as a "Registered Certified Public Accountant" from the Department upon payment of the required fee. The scheduled repeal of these sections is January 1, 2014 (225 ILCS 450/4 and 16).

Effective Date: June 25, 2010 (**HB 6415**).

### **Public Act 96-1027 (Illinois Department of Revenue – Electronic Payments)**

Amends the Department of Revenue Law of the Civil Administrative Code of Illinois changing Section 2505-210, electronic funds transfer, to provide that certain taxpayers are mandated to make withholding tax payments by electronic funds transfer. Beginning October 1, 2010, a taxpayer (other than an individual taxpayer) who has an annual tax liability of \$20,000 or more and an individual taxpayer who has an annual tax liability of \$200,000 or more shall make all payments of that tax to the Department by electronic funds transfer (20 ILCS 2505/2505-210).

Beginning with calendar year 2011, payments made under the employer's return and payment of income tax withheld of more than \$12,000 per year must be made by electronic funds transfer (35 ILCS 5/704A).

Amends the Cigarette Tax Act (35 ILCS 130/1) and the Cigarette Use Tax Act (35 ILCS 135/1). Defines "secondary distributor" as any person engaged in the business of selling cigarettes who (i) purchases stamped original packages of cigarettes from a licensed distributor, (ii) sells 75% or more of those cigarettes to retailers for resale, and (iii) maintains an established business where a substantial stock of cigarettes is available to retailers for resale. Provides that secondary distributors are required to obtain a license and must maintain certain records and submit reports to the Department. Makes other changes.

Effective Date: July 12, 2010 (**HB 5833**).

### **Public Act 96-1067 (Property Tax Code - Amount of Redemption)**

Section 21-355 of the Property Tax Code

is amended to provide that the portion of a deposit for redemption that includes fees for title searches may not exceed \$150 per redemption (35 ILCS 200/21-355).

Effective Date: January 1, 2011 (**HB 5158**).

### **Public Act 96-1083 (Property Tax Code – Fair Cash Value)**

Amends the various sections in the Property Tax Code to provide that "compulsory sales" are to be considered in the assessment process for determining "fair cash value" (35 ILCS 200/1-23, 16-55, 16-65, 16-183, 17-10, 31-25). A "compulsory sale" means (i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "short sale" and (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete. Provides that boards of review and the Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments. Provides that the Department of Revenue shall include foreclosure sales and short sales in its sales ratio studies. Amends the Real Estate Transfer Tax Law in the Property Tax Code to provide that transfer declarations shall include information concerning whether the transfer is pursuant to compulsory sale. Boards of review shall consider compulsory sales in their equalization process.

Effective Date: July 16, 2010 (**SB 3334**).

### **Public Act 96-1136 (Property Tax Code – Abatement of taxes)**

Sec. 18-165 of the Property Tax Code is amended to provide that any taxing district may abate any portion of its taxes on the property of a qualified historical society for assessment years 1998 through 2013 (instead of 2008) (35 ILCS 200/18-165).

Effective Date: July 21, 2010 (**HB 4723**).

### **Public Act 96-1142 (Property Tax Code – Tax Abatement After Acquisition By Governmental Unit)**

Section 21-95 of the Property Tax Code is amended to provide that an abatement of

unpaid taxes and existing liens for property that is acquired by a unit of local government also applies to school districts or park districts (previously only applied just to counties and municipalities). Provides that property that is transferred to a county, municipality, school district, or park district under the terms of an annexation agreement, development agreement, donation agreement, plat of subdivision, or zoning ordinance by an entity that has been dissolved or is being dissolved or has been in bankruptcy proceedings or is in bankruptcy proceedings also qualifies for the abatement (35 ILCS 200/21-95).

Effective Date: July 21, 2010 (**HB 5144**).

### **Public Act 96-1248 (Property Tax Code – Payment By Credit Card in Cook County)**

Section 20-25 of the Property Tax Code, forms of payment, is amended to provide that Cook County is required to accept payment by credit card for each installment of property taxes; provided that all service charges or fees associated with the processing or accepting of a credit card payment by the county shall be paid by the taxpayer and shall not be refundable. Provides that the county shall not incur liability for or associated with the collection of a property tax payment by credit card. This does not apply to any installment of taxes that are delinquent, i.e., those taxes subject to tax sale (35 ILCS 200/20-25).

Effective Date: July 23, 2010 (**HB 6062**).

### **Public Act 96-1250 (Property Tax Code – Refuse to Accept Checks)**

Section 20-25 of the Property Tax Code, forms of payment, is amended to provide that a county collector may refuse to accept a personal or corporate check (instead of a personal check only) within 45 days (instead of 30 days) before a tax sale or at any time if a previous payment by the same payer was returned by a bank for any reason (35 ILCS 200/20-25).

Effective Date: July 23, 2010 (**HB 6125**).

### **Public Act 96-1277 (School Code – School Funding)**

Makes changes to the working cash funds provisions. Those funds may be created and maintained consistent with the limitations of the Working Cash Fund Article of the School

Code ("administered" was deleted) for the purpose of enabling the district to have in its treasury at all time sufficient money to meet demands for expenditures for corporate purposes ("ordinary and necessary" was deleted). Makes other technical corrections, including a new Section 20-10, abatement of working cash fund (105 ILCS 5/20-1 et. seq.).

Effective Date: July 26, 2010 (**HB 6041**).

**Public Act 96-1298 (Property Tax Code – Disabled Veterans Standard Homestead Exemption)**

Section 15-169 of the Property Tax Code is amended to provide that if a taxpayer has been awarded a disabled veterans standard homestead exemption, and that taxpayer subsequently becomes a resident of a facility licensed under the Nursing Home Care Act or a facility operated by the United States Department of Veterans Affairs, then the exemption shall continue (i) so long as the residence continues to be occupied by the qualifying person's spouse or (ii) if the residence remains unoccupied but is still owned by the person who qualified for the homestead exemption (35 ILCS 200/15-169).

Effective Date: January 1, 2011 (**SB 3666**).

**Public Act 96-1329 (Property Tax Code – Judgments)**

Section 21-150 of the Property Tax Code, time of applying for judgment, is amended to provide that all applications for judgment and order of sale for taxes and special assessments on delinquent properties shall be made within 90 days after the second installment due date (instead of during the month of October) (35 ILCS 200/21-150).

Effective Date: July 27, 2010 (HB 6126).

**Public Act 96-1356 (Counties Code – Recorder)**

Amends the Counties Code (55 ILCS 5/3-5018). Provides that for non-certified copies of records, a county recorder shall receive an amount not to exceed one-half of the amount of the fee for certified copies, according to a standard scale of fees, established by the county board and made public. Exempts from the fees charged for non-certified copies of records, a person or entity who obtains the records in the following manner: (i) in bulk for all documents recorded on any given day in an electronic or paper format for a negotiated amount less than the amount provided for non-certified copies, (ii) under a contractual relationship with the recorder for a negotiated amount less than the amount

provided for non-certified copies, or (iii) by means of Internet access to the records.

Effective Date: July 28, 2010 (**SB 82**).

**Public Act 96-1383 (Illinois Department of Revenue- Reciprocal Collection of Tax Liabilities of Other States)**

IDOR is authorized to collect taxes for other states that have a reciprocal law (new Reciprocal Tax Collection Act). It creates the Reciprocal Tax Collection Fund and provides for a continuing appropriation. Provides that any fee charged to the State by the collection agency may not exceed 25% of the liability referred to the collection agency unless the liability is for a tax debt. Requires the fee to be separately stated on any statement or notice of the liability to be issued to the debtor (instead of "taxpayer").

Effective Date: January 1, 2011 (**HB 5781**).

**Public Act 96-1418 (Property Tax - Homeowner Exemptions and Taxpayer Action Boards)**

**Amends Property Tax Code to** extend the Alternative General Homestead Exemption in Cook County for a period of 3 years and amends the Department of Revenue Law of the Civil Administrative Code of Illinois to create 7 Taxpayer Action Boards within the Illinois Department of Revenue to promote "sunshine in assessments" and transparency reforms, 1 for each of the following counties: Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will.

**Alternative General Homestead Exemption** - In Cook County, owner-occupied residences may be eligible for an Alternative General Homestead Exemption also known as the 7% expanded homeowner exemption. This exemption limits the increase of a property's EAV to 7% each year that is applied as an expanded version to the General Homeowner Exemption, up to a maximum amount of the exemption that varies in each year. This exemption in Cook County is extended for the City of Chicago until 2011, North Suburbs until 2012, and South Suburbs until 2013. The maximum amount of the exemption is \$20,000 in the first taxable year, \$16,000 in the second taxable year, and \$12,000 in the third taxable year (35 ILCS 200/15-176).

**Returning Veterans' Homestead Exemption** - Beginning in taxable year 2010, the returning veterans' homestead exemption also applies in the taxable year after the taxable year in which the veteran returns from active duty in an armed conflict invol-

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ing the armed forces of the United States (35 ILCS 200/15-167).

**Senior Citizens Homestead Exemption**

- In Cook County, beginning in taxable year 2010, each taxpayer who has been granted an exemption under this Section must reapply on an annual basis. The chief county assessment officer shall mail the application to the taxpayer (35 ILCS 200/15-170).

**Taxpayer Action Board**

- Each Taxpayer Action Board shall perform the functions with a particular emphasis on the transparency and disclosure and conduct a study that (i) critically evaluates the manner in which its county assesses residential property and (ii) examines the accuracy of computer-assisted mass appraisal (20 ILCS 2505/2505-560 new).

Effective Date: August 2, 2010 (SB 3638).

**Public Act 96-1477 (Property Taxes – Mobile Homes)**

The Manufactured Home Installation Act is created. It provides that a manufactured home installed on private property that is not located in a mobile home park must be installed in accordance with the manufacturer's instructions and assessed and taxed

as real property.

Amends the definition of real property in the Property Tax Code (35 ILCS 200/1-130) and the Mobile Home Local Services Tax Act (35 ILCS 515/1 et. seq.) to provide that a mobile home located outside of a mobile home park shall be assessed and taxed as real property. Provides that mobile homes that are located outside of mobile home parks and taxed under the Mobile Home Local Services Tax Act on the effective date of the Act shall not be classified, assessed, and taxed as real property until the home is sold, transferred, or relocated. Provides that mobile homes that are located inside mobile home parks must be considered chattel and must be taxed according to the Mobile Home Local Services Tax Act. Provides that the owners of certain mobile homes may file a request with the county that the home be classified, assessed, and taxed as real property.

Effective Date January 1, 2011. (HB 6241).

**AMENDATORY VETO BY GOVERNOR**

**HB 5813 (Circuit Breaker Tax Deferral)**

Amends the Senior Citizens Real Estate

Tax Deferral Act (320 ILCS 30/1). This legislation contains measures intended to prevent abuses to the Senior Citizens Real Estate Tax Deferral program and to assure the solvency of the Senior Citizens Deferred Tax Revolving Fund. Specifically, this bill (1) increases the maximum deferrable income to \$55,000 beginning in tax year 2011, (2) eliminates land held in trust from qualifying for the deferral, (3) caps the deferral at \$5,000 per tax year, and (4) allows the Department to withhold payments from the Fund to a county when that county's collector and recorder allow a transfer to occur contrary to an existing provision of the Senior Citizens Real Estate Tax Deferral Act.

On July 23, 2010, the Governor issued an amendatory veto for legislative concurrence with a recommendation to delete the language requiring the Department of Revenue to withhold senior citizens tax deferral payments to a county if the collector and recorder allow a transfer of a property to occur without collecting the deferred taxes on that property. On November 25, 2010, due to no positive action taken by the House on the amendatory veto, this bill is dead. ■

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