

101 West Jefferson Street
Springfield, IL 62702
217.785.7570

100 West Randolph Street
Chicago, IL 60601
312.814.3190



JB Pritzker
Governor

David Harris
Director

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

TO: The Honorable JB Pritzker
Governor

The Honorable Don Harmon
Senate President

The Honorable Emanuel "Chris" Welch
Speaker of the House

The Honorable Dan McConchie
Senate Republican Leader

The Honorable Jim Durkin
House Republican Leader

FROM: David Harris
Director

DATE: December 20, 2021

SUBJECT: Illinois Department of Revenue FY2021 Annual Report

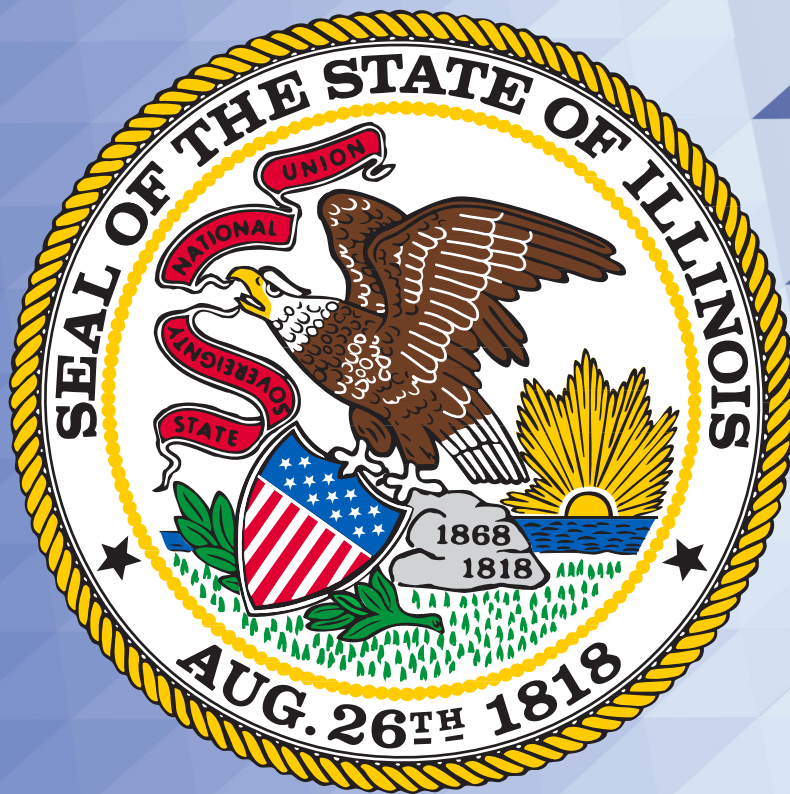
The Illinois Department of Revenue is submitting its Annual Report as required by 30 ILCS 105/3(A), including information required per 20 ILCS 2505/2505-745, for Fiscal Year 2021.

cc: Office of the Governor
Andy Manar
Alexis Sturm
Ann Spillane
Christy George
Tiffany Newbern
Cameron Mock
General Assembly
Secretary of the Senate
Clerk of the House
Department of Revenue
Richard Sgro
Cory Staley
Andy Chupick

ILLINOIS DEPARTMENT OF REVENUE

Annual Report

Fiscal Year 2021





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Collections Remitted to the State Comptroller - All Revenue Sources

| | Total |
|---|----------------------------|
| Collections by tax/type ¹ | |
| Sales and Use..... | \$17,330,456,475.40 |
| Motor Fuel..... | 2,381,062,185.94 |
| Cigarette | 903,204,225.60 |
| Senior Citizen Deferral..... | 5,354,184.73 |
| Liquor | 312,110,130.79 |
| Public Utility | 1,292,034,250.53 |
| Hotel..... | 117,431,905.55 |
| Real Estate | 107,154,310.65 |
| Gaming | 3,433,543.03 |
| Private Vehicle Use..... | 61,599,800.07 |
| General Office / Misc. | 7,255,354.64 |
| Business Income..... | 7,762,460,021.48 |
| Individual Income | 25,637,314,844.14 |
| Automobile Renting..... | 59,350,085.08 |
| Live Adult Entertainment..... | 265,684.32 |
| Adult Use Cannabis | 317,074,561.87 |
| Intergovernmental | 49,709,196.84 |
| | \$56,347,270,760.66 |

Collections deposited into State Treasury and in-transit to State Comptroller at year end:

| | |
|--------------------|------------------------|
| Current year | 454,494,536.47 |
| Prior year | <u>368,250,563.28</u> |
| Net change..... | \$86,243,973.19 |

Comptroller fund receipts ²

| | |
|-------------------------------|----------------------------|
| Sales and Use..... | 17,313,120,397.14 |
| Motor Fuel..... | 2,381,107,376.93 |
| Cigarette | 917,042,980.97 |
| Senior Citizen Deferral..... | 5,424,868.63 |
| Liquor | 312,101,279.11 |
| Public Utility | 1,293,117,325.71 |
| Hotel..... | 112,126,343.98 |
| Real Estate | 107,134,330.15 |
| Gaming | 3,418,938.44 |
| Private Vehicle Use..... | 61,939,757.24 |
| General Office / Misc. | 7,545,584.72 |
| Business Income..... | 7,736,563,500.86 |
| Individual Income | 25,585,422,520.37 |
| Automobile Renting..... | 59,335,205.85 |
| Live Adult Entertainment..... | 271,491.49 |
| Adult Use Cannabis | 315,645,689.04 |
| Intergovernmental | 49,709,196.84 |
| | \$56,261,026,787.47 |

Collections reconciled to receipts ³ \$0

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Additional Information

¹ Collections by tax/type

Taxpayers remit their payments to the Illinois Department of Revenue (IDOR) using prescribed payment vouchers. The monies collected are deposited into bank accounts held in the custody of the State Treasurer's Office. The amounts showing in the "Collections by tax/type" section reflect the payments received from taxpayers.

² Comptroller fund receipts

The monies collected are then receipted into State funds maintained by the State Comptroller's Office. The fund receipts are reflected in the section titled "Comptroller fund receipts". The allocation of specific monies to specific funds is governed by various tax acts. Additional information regarding fund receipts can be found in the State Ledger on the Comptroller's website.

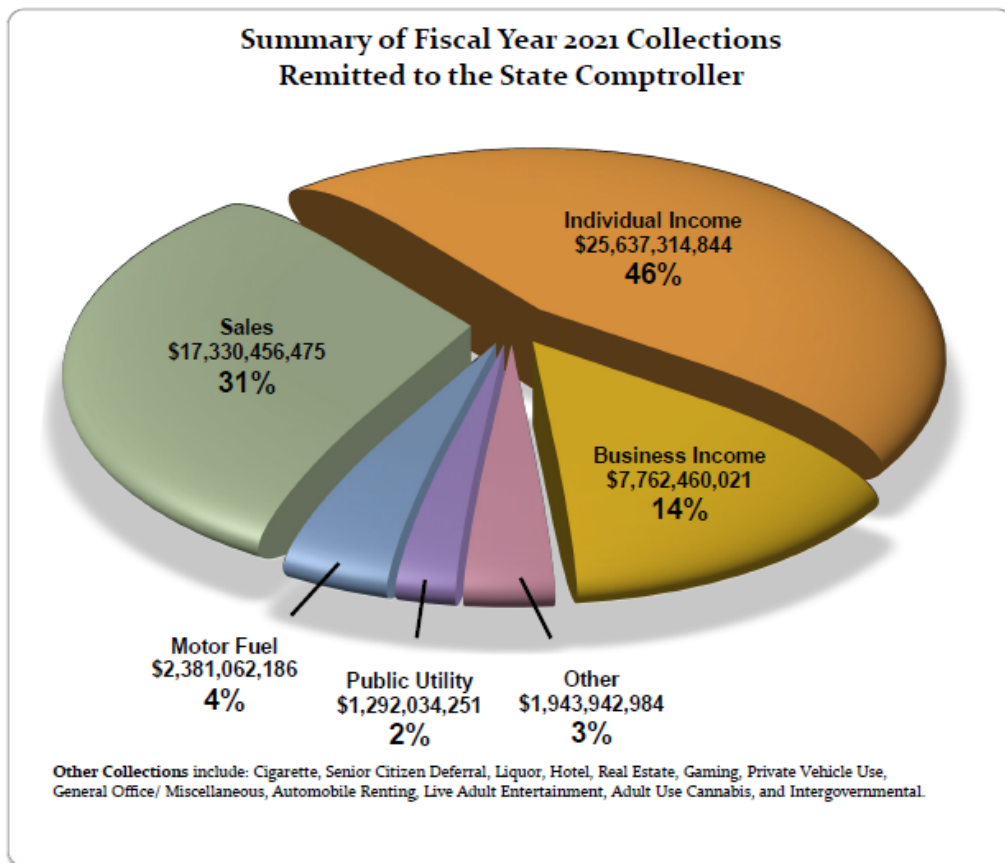
³ Collections reconciled to receipts

The line "Collections reconciled to receipts" demonstrates any discrepancies between money collected by IDOR from taxpayers and the money ultimately receipted into State funds. Variances between collections and receipts are due to timing differences related to changes in the amount of deposits in-transit to the State Comptroller at the end of the period. This information is provided in the section titled "Collections deposited into State Treasury and in-transit to State Comptroller at year end."

(Total "Collections by tax/type, \$56,347,270,760.66" less "Collections deposited into the State Treasury and in-transit to the State Comptroller, \$86,243,973.19" is equal to "Comptroller fund receipts, \$56,261,026,787.47".)

Information regarding the taxes imposed, rates, form/filing requirements, payment requirements, and statutory authority can be found in the Research/Tax Information section of IDOR's website at tax.illinois.gov. A more detailed version of this schedule with monthly amounts, collections by voucher type, and receipts by fund and revenue source can be found in the Information for Researchers/Tax Statistics section of the IDOR's website.

Also, updated tax statistics are available at the Research section of IDOR's website. Please see the report "Monthly Collections Remitted to the State Comptroller." This report provides additional details about monthly amounts, collections by voucher type, and receipts by fund and revenue source.





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Illinois Department of Revenue Legislative Summary

Income Tax

Senate Bill 1857, Public Act 101-0645

Student Assistance Contributions - Amends the Illinois Income Tax Act to extend the sunset date for the tax credit for student assistance contributions through tax years ending on or before December 30, 2021.

*Senate Bill 81, Public Act 102-0073 **

Ronald McDonald House Charities checkoff - Amends the Illinois Income Tax Act to create the Ronald McDonald House Charities Fund checkoff for taxable years ending on or after December 31, 2021.

*Senate Bill 340, Public Act 102-0289 **

Student Assistance Contributions - Amends the Illinois Income Tax Act to extend the sunset date on the credit for student assistance contributions to taxable years ending on or before December 31, 2024.

Senate Bill 2017, Public Act 102-0016

- **EDGE Tax Credit Extension** - Amends the Illinois Income Tax Act to require the Illinois Department of Commerce and Economic Opportunity to adopt rules in consultation with the Illinois Department of Revenue to allow for the extension of EDGE tax credits for from 5 to 10 years for taxpayers unable to use EDGE tax credits due to COVID-19.
- **Federal Bonus Depreciation** - Amends the Illinois Income Tax Act to decouple Illinois from the federal 100% bonus depreciation deduction for taxable years ending on or after December 31, 2021.
- **Foreign-Sourced Dividends** - Amends the Illinois Income Tax Act to equalize the treatment of foreign-sourced dividends with domestic dividends effective for tax years ending on or after June 30, 2021. Provides the term dividend does not include any amount treated as a dividend under Section 1248 of the Internal Revenue Code and provides that subparagraph (O) of the Illinois Income Tax Act does not apply to dividends for which a deduction is allowed under Section 245 (a) of the Internal Revenue Code.
- **Net Operating Loss (NOL) Deduction Limitation** - Amends the Illinois Income Tax Act to provide no carryover deduction shall exceed \$100,000 under Section 207 of the Illinois Income Tax Act for taxable years ending on or after December 31, 2021, and prior to December 31, 2024.
- **Tax Credit Extensions** - Amends the Illinois Income Tax Act to extend the sunset date on certain credits.
 - Extends the sunset date for the tax credit for affordable housing donations to taxable years ending on or before December 31, 2026.
 - Extends the sunset date for the angel investment credit to taxable years ending on or before December 31, 2026.
 - Extends the sunset date for the River Edge Historic Preservation Credit to taxable years ending prior to January 1, 2027.
 - Extends the sunset date for the live theater production credit to taxable years ending prior to January 1, 2027.

Illinois Department of Revenue Legislative Summary - continued

Senate Bill 2279, Public Act 102-0040

- **EDGE Tax Credit Recapture** - Amends the Illinois Income Tax Act to provide if a taxpayer ceases operations at a project location that is subject to an EDGE Agreement, that the tax imposed on that taxpayer shall be increased by the amount of any credit allowed in the year the taxpayer ceases operations.
- **Sports Wagering Winnings** - Amends the Illinois Income Tax Act to allocate sports wagering winnings from Illinois sources to Illinois and to require withholding on those winnings, if withholding is required federally.
- **Bulk Sales Notification** - Amends the Illinois Income Tax Act to provide notice of a bulk sale be submitted ten (10) days prior to the sale and to provide that the notice be submitted to the Illinois Department of Revenue's Chicago office.

Senate Bill 2531, Public Act 102-0658 *

Entity-Level Tax Election - Amends the Illinois Income Tax Act to create a voluntary entity-level tax election for passthrough entities effective for tax years ending on or after December 31, 2021, and prior to January 1, 2026. Provides the tax rate is 4.95%. Includes additional provisions related to tiered partnerships, nonresidents, foreign tax, suspension of withholding and estimated tax payments. Provides that the tax election applies only with respect to taxable years for which the limitation on individual deductions applies under Section 164(b)(6) of the Internal Revenue Code.

House Bill 1769, Public Act 102-0669 *

Creates the Reimagining Electric Vehicles (REV) in Illinois Act.

- **Net Operating Loss Change** - Amends the Illinois Income Tax Act to provide for a 20-year carryover for a loss incurred in any taxable year ending on or after December 31, 2021, and for any loss incurred in a prior taxable year for which the statute of limitations has not expired.
- **REV Illinois Credits** - Amends the Illinois Income Tax Act to create income tax credits related to REV Illinois Projects.
 - Creates the **REV Illinois Credit** effective for taxable years beginning on or after January 1, 2025. Provides credits awarded may not exceed 75% (100% if in an underserved area or in an energy transition area) of the incremental income tax attributable to new employees at the applicant's project and 10% of the training costs of the new employees. Provides for additional credit criteria.
 - Creates the **REV Construction Jobs Credit** for taxable years beginning on or after January 1, 2025. Provides an eligible taxpayer a credit equal to 50% (75% if in an underserved area or in an energy transition area) of the incremental income tax attributable to construction wages paid in connection with construction of the project facilities.
 - Creates the **REV Illinois Investment Tax Credits** for taxable years beginning on or after November 16, 2021. Provides an eligible taxpayer a credit for investment in qualified property which is placed into service at a REV Illinois Project site equal to 0.5% of the basis of the property.

House Bill 2621, Public Act 102-0175 *

Tax Credit Extension - Amends the Illinois Income Tax Act to extend the sunset date for the tax credit for affordable housing donations to taxable years ending on or before December 31, 2026.

Illinois Department of Revenue Legislative Summary - continued

Sales and Related Taxes

Senate Bill 58, Public Act 102-0353 *

- **Amend Definition of Selling Price** - Amends the Retailers' Occupation Tax Act and the Use Tax Act to provide, effective January 1, 2022, "selling price" again includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000.
- **Private Vehicle Use Tax Rate Changes** - Related to private vehicle sales, amends the Illinois Vehicle Code to change, effective January 1, 2022, both the tax computed when based on the age of the vehicle and the tax computed when based on the selling price of the vehicle.

Senate Bill 2017, Public Act 102-0016

- **Menstrual Pads Exemption** - Amends the "sales tax" acts to extend the tax exemption on menstrual pads to December 31, 2026.
- **Low Rate for Food Prepared by Assisted Living Facilities (ALFs)** - Amends the Service Use Tax Act to provide tax shall be imposed at a rate of 1% on food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Assisted Living and Shared Housing Act or an entity that holds a permit issued by the Life Care Facilities Act.

Senate Bill 2066, Public Act 102-0634 *

- **Amend Definition of Marketplace Facilitator** - Amends the Retailers' Occupation Tax Act to provide "marketplace facilitator" does not include any person licensed under the Auction License Act.
- **Sales Tax Exemption** - Amends the Retailers' Occupation Tax Act to provide, beginning January 1, 2020, and through December 31, 2020, an exemption for sales of tangible personal property made by a marketplace seller over a marketplace for which tax is due under the Retailers' Occupation Tax Act but for which use tax has been collected and remitted to the Department by the marketplace facilitator.

Senate Bill 2279, Public Act 102-0040

Amends the definition of "electronic cigarette" to clarify the tax on electronic cigarettes is not imposed on certain devices, cartridges and solutions related to cannabis.

House Bill 158, Public Act 102-0004

Amends the "sales tax" acts to clarify the low rate of tax applies to all blood sugar testing materials not solely urine testing materials used by human diabetics.

House Bill 1443, Public Act 102-0098 *

Amends the Compassionate Use of Medical Cannabis Program Act to add the Illinois Department of Revenue, the Illinois Department of Public Health and the Illinois Department of Agriculture to the list of agencies that may conduct random inspections of dispensing organizations and cannabis testing.

Illinois Department of Revenue Legislative Summary - continued

House Bill 1769, Public Act 102-0669 *

Creates the Reimagining Electric Vehicles (REV) in Illinois Act. Provides for certain “sales” and utility tax exemptions related to REV Illinois Projects.

- Amends the **Retailers’ Occupation Tax Act** to create an exemption for building materials that will be incorporated into real estate in an electric vehicle manufacturing facility, an electric vehicle component parts manufacturing facility, or an electric vehicle power supply manufacturing facility REV Illinois Project.
- Amends the **Telecommunications Tax Act** to provide gross charges do not include charges to electric vehicle manufacturers, electric vehicle component parts manufacturers, or electric vehicle power supply manufacturers at REV Illinois Project sites.
- Amends the **Electricity Excise Tax Act** to provide the tax is not imposed with respect to any use of electricity at a REV Illinois Project site.
- Amends the **Public Utilities Act** to provide whenever a tax is imposed upon a public utility engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption pursuant to Section 2 of the Gas Revenue Tax Act, or whenever a tax is required to be collected by a delivering supplier pursuant to Section 2-7 of the Electricity Excise Tax Act, or whenever a tax is imposed upon a public utility pursuant to Section 2-202 of this Act, such utility may charge its customers, other than customers who are high impact businesses under Section 5.5 of the Illinois Enterprise Zone Act, electric vehicle manufacturers, electric vehicle component parts manufacturers, or electric vehicle power supply equipment manufacturers at REV Illinois Project sites as certified under Section 95 of the Reimagining Electric Vehicles in Illinois Act...an additional charge equal to the amount of such taxes.

House Bill 2415, Public Act 102-0002

Provides that if an ordinance or resolution imposing a tax under the County Cannabis Retailers’ Occupation Tax Law was adopted on or before October 1, 2020 and a certified copy was filed with the Illinois Department of Revenue on or before November 1, 2020, then the Department shall proceed to administer and enforce this Section as of May 1, 2021.

Property Tax

Senate Bill 685, Public Act 101-0635

Amends the Property Tax Code to:

- Provide the homestead exemption for persons with disabilities, the homestead exemption for veterans with disabilities and the senior citizens assessment freeze homestead exemption may be granted without application for the 2020 taxable year if the property qualified for the exemption in the 2019 taxable year;
- Provide for the waiver of interest and penalties in a county with fewer than 3,000,000 inhabitants;
- Provide that under no circumstance may a tax year be offered at a scavenger sale prior to the annual tax sale for that tax year;
- Delay the annual property tax sale in Cook County until the first day of the first month during which there is no longer a statewide disaster declaration; and

Delay the annual property tax sale in counties outside of Cook for 120 days after the bill becomes law or the first day of the first month during which there is no longer a statewide disaster declaration.

Illinois Department of Revenue Legislative Summary - continued

Senate Bill 508, Public Act 102-0519 *

Amends the Property Tax Code to make changes to the Property Tax Extension Limitation Law.

- Provides for levy year 2022, the aggregate extension base of a home equity assurance program that levied at least \$1,000,000 in property taxes in levy year 2019 or 2020 under the Home Equity Assurance Act shall be the amount of that program's aggregate extension base for levy year 2021 would have been if the program had levied a property tax for levy year 2021.
- Provides, beginning in levy year 2021, a taxing district levy shall be increased by a prior year adjustment whenever an assessment decrease due to the issuance of a certificate of error, a court order issued pursuant to an assessment valuation complaint under Section 23-15, or a final administrative decision of the Property Tax Appeal Board results in a refund from the taxing district of a portion of the property tax revenue distributed to the taxing district.
- Makes various changes to tax sales and scavenger sales.
- Provides the governing commission of a home equity assurance program that levied at least \$1,000,000 in property taxes in levy year 2019 or 2020 may not levy any property tax in levy year 2021.

Senate Bill 1138, Public Act 102-0311 *

Amends the Property Tax Code to make changes to the Property Tax Extension Limitation Law. Provides for levy year 2022, the aggregate extension base of a home equity assurance program that levied at least \$1,000,000 in property taxes in levy year 2019 or 2020 under the Home Equity Assurance Act shall be the amount of that program's aggregate extension base for levy year 2021 would have been if the program had levied a property tax for levy year 2021.

Provides the governing commission of a home equity assurance program that levied at least \$1,000,000 in property taxes in levy year 2019 or 2020 may not levy any property tax in levy year 2021.

Senate Bill 1667, Public Act 102-0625 *

Amends the Property Tax Code to provide, effective January 1, 2022, when taxing districts submit their levy request to the county clerk, they may submit the levy requests electronically along with any supplemental or supportive documentation.

Senate Bill 1721, Public Act 102-0363 *

Amends the Property Tax Code to clarify, effective January 1, 2022, what a county may include to manage and operate delinquent property; allows costs associated with maintaining the property to be recuperated by the county when the property is sold. Reduces the maximum amount of penalty allowed to be bid at the annual tax sale from 18% to 9%.

Senate Bill 1845, Public Act 102-0528 *

Amends the Property Tax Code to provide, effective January 1, 2022, that within 30 days of filing a petition, the owner of a certificate must file the names and addresses of the owners of the property with the Clerk and those entitled to service of notice. Requires the Clerk to mail a notice within 30 days from the date of the filing of addresses with the Clerk.

Senate Bill 2017, Public Act 102-0016

Amends the Property Tax Code to provide the valuation methodology for supportive living facilities excludes certain types of income when determining the fair cash value of the facility. Provides for a non-homestead exemption for educational trade schools that meet certain criteria.

Illinois Department of Revenue Legislative Summary - continued

Senate Bill 2244, Public Act 102-0644 *

Regarding the Senior Citizens Real Estate Tax Deferral Act, increases the household income threshold to qualify to \$65,000 (now \$55,000) for tax years 2022 through 2025. Increases the amount of the deferral to \$7,500 (now \$5,000) per tax year for tax years 2022 through 2025.

Senate Bill 2408, Public Act 102-0662 *

Creates the Energy Transition Act.

- **Nuclear Power Plant Assessments** - Provides spent fuel pools and dry cask storage systems in which nuclear fuel is stored and is pending further or final disposal from a nuclear power plant that was decommissioned before January 1, 2021 shall be considered real property and be assessable.
- **Solar Energy System Assessments** - Provides for the assessment of photovoltaic (solar) electricity generation systems subject to power purchase agreements.
- **Wind Energy Assessments** - Extends the assessment of wind power systems through assessment year 2035.

House Bill 453, Public Act 102-0265 *

Amends the Property Tax Code to provide, beginning in levy year 2022, each taxing district that has an aggregate property tax levy of more than \$5,000,000 for the levy year shall make a good faith effort to collect and electronically publish data from all vendors and subcontractors doing business with the taxing district. Sets forth the data to be collected and reported.

House Bill 1769, Public Act 102-0669 *

Creates the Reimagining Electric Vehicles (REV) in Illinois Act. Amends the Property Tax Code to allow for the abatement of property taxes for REV Illinois Project facilities for electric vehicles, electric vehicle component parts, or electric vehicle power supply equipment.

House Bill 2621, Public Act 102-0175 *

Amends the Property Tax Code to require the income approach be used to value low-income housing in all counties; creates a valuation methodology for low-income housing in counties with more than 3,000,000 inhabitants. Creates a new special assessment program for low-income housing in other counties.

House Bill 3289, Public Act 102-0136 *

Homestead Exemption Applications – For levy year 2021, amends the Property Tax Code to provide, in certain situations and with county board approval, counties may temporarily suspend annual reapplication requirements for the Homestead Exemption for Persons with Disabilities, the Standard Homestead Exemption for Veterans with Disabilities and the Senior Citizens Assessment Freeze Homestead Exemption.

House Bill 3739, Public Act 102-0613 *

Lead Service Line Replacement and Notification Act - Amends the Property Tax Code to authorize, effective January 1, 2022, property tax levies to pay for lead service line replacement.

Illinois Department of Revenue Legislative Summary - continued

Local Government

Senate Bill 2017, Public Act 102-0016

Provides funds deposited into the Local CURE fund shall be paid to units of local government in accordance with Section 9901 of the American Rescue Plan of 2021 on a continuing basis by the Illinois Department of Revenue, in cooperation with the Illinois Department of Commerce and Economic Opportunity.

General / Miscellaneous

Senate Bill 2017, Public Act 102-0016

Invest in Kids Act - Amends the Invest in Kids Act. Provides for donations to a technical academy. Provides credits awarded for donations made to a technical academy shall not exceed 15% of the annual statewide program cap. Extends the credit to tax years ending prior to January 1, 2024 (currently January 1, 2023).

Senate Bill 2279, Public Act 102-0040

- **High Risk Designation** - Amends the Department of Revenue Law of the Civil Administrative Code of Illinois and the Retailers' Occupation Tax Act to provide the Illinois Department of Revenue can consider past due liabilities for the last 23 years when determining if a taxpayer is high risk.
- **Local Government Revenue Recapture Act Changes** - Amends the Local Government Revenue Recapture Act. Makes several technical changes to the Act to achieve internal consistency and provide clarity.
- **Statute of Limitations Extension** - Amends several tax acts to automatically extend, effective June 25, 2021, the statute of limitations six (6) months if a claim for credit or refund is filed within six (6) months of the statute of limitations expiring.

Senate Bill 2408, Public Act 102-0662 *

Creates the Energy Transition Act. Provides electric utilities shall remit all moneys received as payment of the Energy Transition Assistance Charge to the Illinois Department of Revenue.

House Bill 34, Public Act 102-0108 *

Amends the Illinois Enterprise Zone Act to allow, effective January 1, 2022, the Illinois Department of Commerce and Economic Opportunity to provisionally decertify an Enterprise Zone for failure to file required reports. Allows the Illinois Department of Commerce and Economic Opportunity to decertify an Enterprise Zone if it determines 80% or more of the businesses receiving tax incentives failed to report.

House Bill 414, Public Act 102-0262 *

Creates the Water and Sewer Financial Assistance Act. Provides each water or sewer provider shall assess, collect, and remit a monthly Water and Sewer Assistance Charge to the Illinois Department of Revenue.

Illinois Department of Revenue Legislative Summary - continued

***Senate Bill 265, Public Act 102-0176 *; Senate Bill 2017, Public Act 102-0016 *;
House Bill 594, Public Act 102-0671 *, House Bill 3666, Public Act 102-0673 ****

Amends the Energy Assistance Act to increase, effective January 1, 2022, the energy assistance charge utilities are required to assess their customers. Provides utilities required to assess this charge are those that have more than 100,000 customers as of January 1, 2021. Provides for energy assistance charge increases in future years if no less than 80% of the previous fiscal year's Supplemental Low-Income Energy Assistance Fund funding is exhausted.

** The legislation included in this report was passed by the General Assembly during FY2021.
Public Acts 102-0073 through 102-0673 were signed in FY2022.*



Annual Report FY2021

Illinois Department of Revenue Court Cases

Income Tax

Todd Christopher, as representative for T. Christopher Holding Company v. Illinois Department of Revenue, 19 TT 131 (Nov. 24, 2020)

The Petitioner, TODD CHRISTOPHER, as representative, for T. CHRISTOPHER HOLDING COMPANY (“Holding Company”), is a Florida corporation formed in 2013 to hold equity interests in Vogue International, LLC (“Operating Company”), a nation-wide developer, distributor and marketer of hair and skin care products. In 2014, the Holding Company sold part of the Operating Company for a gain. After an audit, the Illinois Department of Revenue (“Department”) issued a notice of deficiency against the Holding Company for additional Illinois replacement income tax on the gain, pursuant to section 35 ILCS 5/201(c) of the Illinois Income Tax Act (“IITA”), 35 ILCS 5/201(c).

The Holding Company filed a four-count petition in the Tax Tribunal challenging the deficiency assessment for replacement income tax alleging various regulatory, statutory, and constitutional errors. It has now moved for summary judgment on Count I. In Count I, the Holding Company claimed that section 201(c) of the IITA does not apply to the capital gain it earned on the Operating Company’s sale as a matter of law.

Judge Barov concluded that the Holding Company did not meet its burden for summary judgment in its favor on Count I. The plain language of section 201(c) of the IITA did not preclude the replacement tax’s application here. The Petitioner’s motion for summary judgment on Count I of its petition was denied.

PepsiCo Inc. and Affiliates v. Illinois Department of Revenue, 16 TT 82 and 17 TT 16 (May 4, 2021)

The Petitioner, PepsiCo Inc. and Affiliates (“PepsiCo”), filed Illinois Income and Replacement Tax Returns on a combined basis for tax years ending December 31, 2011, December 31, 2012, and December 31, 2013. The Illinois Department of Revenue audited PepsiCo and ultimately issued Notices of Deficiency to PepsiCo covering those three tax years. Those Notices contained audit adjustments by the Department disallowing PepsiCo to treat a member of its business group, Frito-Lay North America, Inc. (“FLNA”), as an excluded 80/20 company and by the Department adding FLNA’s income, approximately \$2.5 billion each year, to PepsiCo’s unitary group’s income.

PepsiCo filed two petitions with the Tax Tribunal, 16 TT 82 and 17 TT 16, which were consolidated for purposes of proceedings before the Tax Tribunal.

In its Petitions and Summary Judgment Motion, PepsiCo argued that 1) FLNA should be treated as an 80/20 company, 2) that the payroll factor used to determine FLNA’s eligibility as an 80/20 company should be calculated by including payroll costs reported by PepsiCo Global Mobility, LLC (“PGM LLC”), a single member LLC owned by FLNA and created in 2011 following a 2010 PepsiCo global reorganization, as compensation paid to expatriate employees, 3) that the expatriate employees who were transferred to related foreign host companies of PepsiCo through secondments should be considered employees of FLNA through PGM LLC, and 4) the reorganization of foreign operations under FLNA and the creation of PGM LLC have economic substance and, in any event, cannot be equitably recast or reversed by the economic substance doctrine as a matter of law.

In its Brief in Response to PepsiCo’s Summary Judgment Motion, the Department argued 1) PGM LLC should not be considered the common-law employer of the expatriates and compensation paid to expatriates should not be included in FLNA’s 80/20 payroll factor, 2) that the exclusion of FLNA’s domestic profits from PepsiCo’s combined income is contrary to the purpose of Illinois’ water’s edge combined apportionment rule and grossly distorts income attributable to PepsiCo’s Illinois business activities, 3) FLNA has not met its burden in proving that it conducts 80% or more of its business activities outside the United States, and 4) the substance over form doctrine is applicable and requires that FLNA be included in PepsiCo’s unitary group by excluding expatriate compensation from FLNA’s payroll factor.

Illinois Department of Revenue Court Cases - continued

Judge Conway concluded that PepsiCo failed in its burden to prove it is entitled to claim PGM LLC as an 80/20 company and PGM LLC must be disregarded as it has no economic substance. Similarly, it cannot be considered the employer of the expatriates. As a consequence, FLNA cannot be considered an 80/20 company and FLNA must be considered a company conducting business within the United States. FLNA must be included in the PepsiCo Illinois unitary group. The Department's Notices of Deficiency, as they pertain to the 80/20 issue, were upheld. PepsiCo's Motion for Summary Judgment was denied, and the Department's Motion for Summary Judgment was granted.

Sales and Related Taxes

State of Illinois ex. rel Richard Lindblom and Ralph Lindblom v. Lowe's Home Centers, LLC

2015-L-50776 (Cook County, Mar. 31, 2021)

False Claims Act case brought by owners of an independent appliance retailer.

Relators alleged that Lowe's violated the False Claims Act by improperly designating the sales of certain installed appliances (e.g., dishwashers and microwaves) as sales incidental to construction contracts rather than retail sales, thus avoiding retailers' occupation tax on those sales.

Following trial, the court determined that Lowe's is not a contractor and the substance of these transactions was the retail sale of appliances, with the installation services incidental to the retail sales.

Further, the court determined that Lowe's acted "knowingly" as required for False Claims Act liability by disregarding contrary advice from consultants and by continuing this practice in spite of a 2015 Compliance Alert indicating how installed appliance sales transactions are to be taxed. (CA-2015-14)

Hotel Operators' Occupation Tax (HOOT)

Golden Triangle Whitetails, Inc. v. Illinois Department of Revenue, 20-TT-34 (Jan. 1, 2021)

Operator of Adams County hunting lodge challenged assessment of hotel operators' occupation tax.

Retroactive impact of changes to the definition of the term "hotel" in section 2(1) of the Hotel Operators' Occupation Tax Act, 35 ILCS 145/2(1), ("HOOT").

Pre-2017 definition: "The term includes inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses."

2017 amendment expressly added "hunting lodges" to the enumerated list: "The term includes, but is not limited to, inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses, retreat centers, conference centers, and hunting lodges."

Judge Barov concluded that the original term "includes" in the original definition and the term "includes, but is not limited to" in the amended definition are synonymous. Thus, the addition of hunting lodges to the non-exclusive list does not alter the meaning of section 2(1) and did not add a new type of facility not previously taxable under HOOT.





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