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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 29, 2022

SUBJECT: Illinois Department of Revenue FY2022 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 2022.

cc: Office of the Governor
Andy Manar
Alexis Sturm
Ann Spillane
Christy George
Cameron Mock
Emily Miller
Chris Shallow

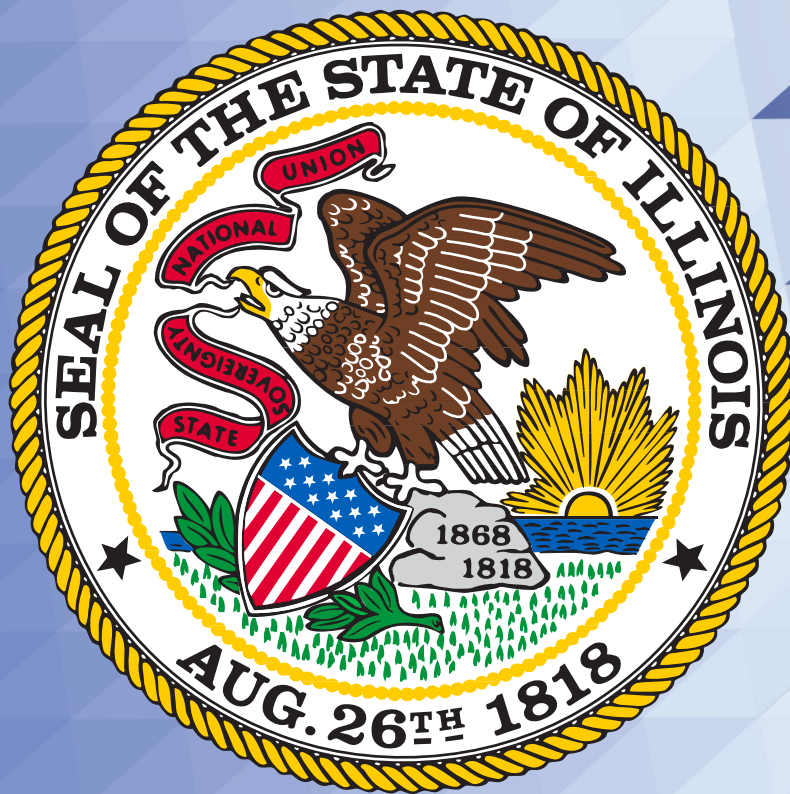
General Assembly
The Honorable John Curran, Senate Republican Leader-select
The Honorable Tony McCombie, House Republican Leader-select
Secretary of the Senate
Clerk of the House

Department of Revenue
Richard Sgro
Cory Staley
Rubina Hafeez

ILLINOIS DEPARTMENT OF REVENUE

Annual Report

Fiscal Year 2022





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Collections Remitted to the State Comptroller - All Revenue Sources

	Total
Collections by tax/type ¹	
Sales and Use.....	\$20,012,148,961.18
Motor Fuel.....	2,523,875,525.06
Cigarette	844,424,959.99
Senior Citizen Deferral.....	6,959,937.03
Liquor	319,992,488.48
Public Utility	1,330,216,419.29
Hotel.....	327,705,464.51
Real Estate	138,431,776.09
Gaming	5,275,290.60
Private Vehicle Use.....	82,980,909.80
General Office / Misc.	75,378,702.88
Business Income.....	14,289,473,388.72
Individual Income	26,691,523,489.76
Automobile Renting.....	92,997,619.23
Live Adult Entertainment.....	423,152.53
Adult Use Cannabis	466,816,883.29
	<u>\$67,208,624,967.94</u>

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

Current year	534,246,583.92
Prior year	454,494,536.47
Net change.....	<u>\$79,752,047.45</u>

Comptroller fund receipts ²

Sales and Use.....	19,995,750,946.24
Motor Fuel.....	2,523,905,194.40
Cigarette	841,366,442.87
Senior Citizen Deferral.....	6,890,167.51
Liquor	320,000,493.07
Public Utility	1,330,515,422.43
Hotel.....	321,266,512.88
Real Estate	138,471,741.09
Gaming	5,288,733.95
Private Vehicle Use.....	82,571,692.75
General Office / Misc.	75,256,984.95
Business Income.....	14,309,049,664.77
Individual Income	26,625,183,626.26
Automobile Renting.....	89,297,001.50
Live Adult Entertainment.....	423,152.53
Adult Use Cannabis	463,635,143.29
	<u>\$67,128,872,920.49</u>

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.

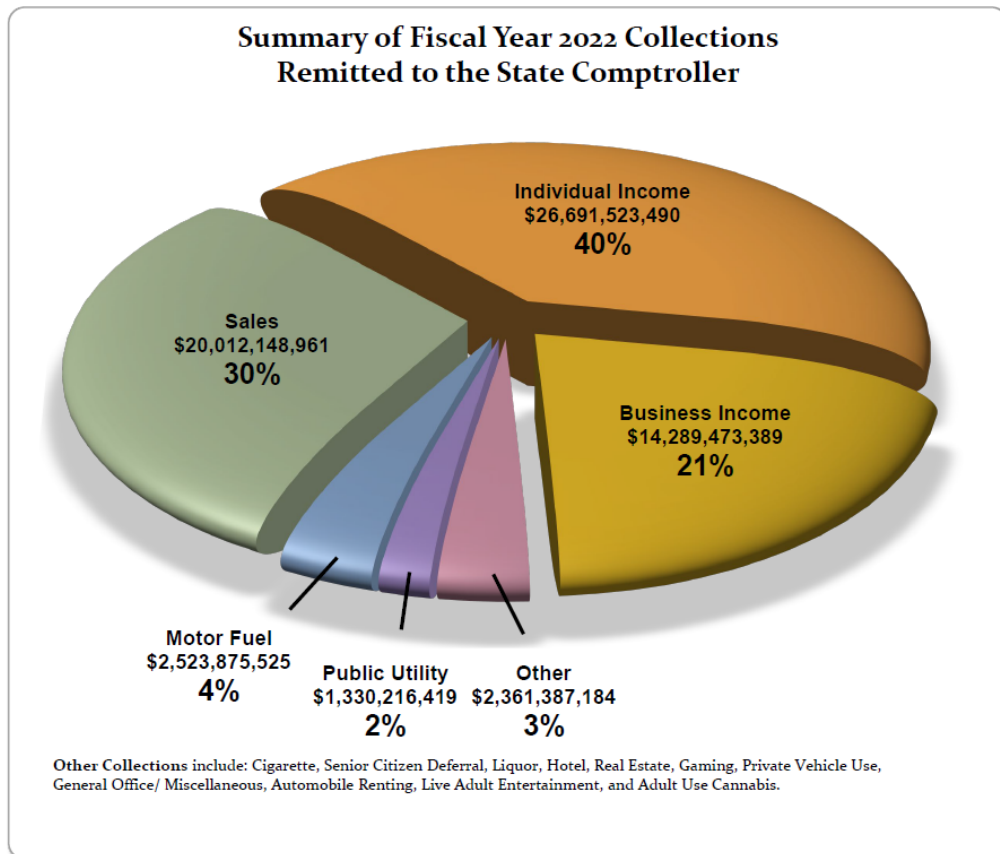
³ Collections reconciled to receipts

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, \$67,208,624,967.94" less "Collections deposited into the State Treasury and in-transit to the State Comptroller, \$79,752,047.45" is equal to "Comptroller fund receipts, \$67,128,872,920.49".)

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 157, Public Act 102-0700

- **EDGE Tax Credit** - Amends the Economic Development for a Growing Economy (EDGE) Tax Credit Act.
 - Defines “startup taxpayer” to mean “a corporation, partnership, or other entity incorporated or organized no more than 5 years before the filing of an application for an Agreement that has never had any Illinois income tax liability, excluding any Illinois income tax liability of a Related Member which shall not be attributed to the startup taxpayer”.
 - Provides startup taxpayers can elect to use the EDGE tax credit against its withholding liability.
 - Extends DCEO’s authority to enter into EDGE agreements until June 30, 2027.
- **River Edge Redevelopment Zone** - Amends the River Edge Redevelopment Zone Act to amend the definition of “underserved area” effective July 1, 2022.
- **Film Production Tax Credit** - Amends the Film Production Services Tax Credit Act to impose a fee for the transfer of credits awarded under the Act. Makes other changes affecting DCEO’s administration of the credit. Changes limitation providing credits awarded cannot be taken after December 31, 2026, to credits cannot be awarded after that date.
- **Hospital Tax Credit** - Amends the Illinois Income Tax Act to extend the credit for certain hospitals to tax years ending on or before January 1, 2027.
- **Organ Donation Tax Credit** - Amends the Illinois Income Tax Act to create a withholding credit for employers granting leave for employees serving as an organ donor equal to the amount withheld with respect to wages paid but not to exceed \$1,000. Effective for reporting periods starting on or after January 1, 2023.
- **Tax Rebates** - Amends the Illinois Income Tax Act to provide for an income tax and a property tax rebate.
 - Provides for a residential real estate tax rebate of up to \$300.
 - Provides for an income tax rebate of \$50 for single filers, \$100 for joint filers and \$100 per dependent up to three (3) dependents. Provides the rebate is available to taxpayers with a federal adjusted gross income of less than \$400,000 for joint filers and less than \$200,000 for all others.
- **Earned Income Tax Credit** - Amends the Illinois Income Tax Act to expand eligibility for the earned income tax credit beginning with tax years ending on or after January 1, 2023.
 - Increases the earned income tax credit to 20% of the federal earned income tax credit.
 - Extends the earned income tax credit to taxpayers aged 18-25 without dependents.
 - Extends the earned income tax credit to taxpayers aged 65 and older without dependents.
 - Extends the earned income tax credit to ITIN (individual taxpayer identification number) filers.
- **Instructional Materials and Supplies Tax Credit** - Amends the Illinois Income Tax Act to increase the credit for instructional materials and supplies to \$500 effective for tax years beginning on or after January 1, 2023.
- **Agritourism Tax Credit** - Amends the Illinois Income Tax Act to create an income tax credit for agritourism liability insurance equal to 100% of insurance premiums but not to exceed \$1,000. Provides that the Illinois Department of Agriculture shall administer a tax credit certificate program for purposes of awarding credits under the Act for tax years beginning on or after January 1, 2022, and ending on or before December 31, 2023. Limits the amount of credits that can be awarded to \$1,000,000 in any calendar year.

Illinois Department of Revenue Legislative Summary - continued

- **Creates the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act.**

Amends the Illinois Income Tax Act to:

- Create the MICRO Illinois Credit. Provides, for taxable years beginning on or after January 1, 2025, DCEO may award tax credits for the incremental income tax attributable to new employees at an applicant's project not to exceed established parameters. Allows for an election to use the MICRO Illinois Credit against withholding.
- Create the MICRO Construction Jobs Credit. Provides, for taxable year beginning on or after January 1, 2025, DCEO may award tax credits for the incremental income tax attributable to construction wages paid in connection with the construction of the project facilities.
- Create the Investment Tax Credit for MICRO Projects. Provides, for taxable years beginning on or after January 1, 2025, the credit shall be 0.5% of the basis for such property and shall be determined in accordance with Section 239 of the Illinois Income Tax Act.

Senate Bill 1711, Public Act 102-0741

Historic Preservation Tax Credit - Amends the Historic Preservation Tax Credit Act to makes changes to the Department of Natural Resources administration of the tax credit. Provides taxpayers cannot receive tax credits under both Section 221 of the Illinois Income Tax Act and the Historic Preservation Tax Credit Act.

Senate Bill 3617, Public Act 102-1053

Recovery and Mental Health Tax Credit - Amends the Illinois Income Tax Act to create the Recovery and Mental Health tax credit. Provides the Illinois Department of Human Services shall administer a tax credit certificate program for purposes of awarding credits under the Act for tax years beginning on or after January 1, 2023. Limits the amount of credits that can be awarded to \$2,000,000 in any calendar year.

House Bill 1950, Public Act 102-0886

Hospital Tax Credit - Amends the Illinois Income Tax Act to extend the credit for certain hospitals to tax years ending on or before January 1, 2027.

House Bill 4160, Public Act 102-1060

100 Club of Illinois Tax Checkoff - Amends the Illinois Income Tax Act to create an income tax checkoff for the 100 Club of Illinois to be added to income tax returns starting with tax years beginning on or after January 1, 2022.

House Bill 5189, Public Act 102-1112*

- **Reimagining Electric Vehicles (REV) in Illinois** - Amends the REV Illinois Act to increase the maximum tax credit for retained employees. Provides if an applicant agrees to hire the required number of new employees, then the maximum amount of the credit for that applicant for retained employees at the applicant's project may be increased by an amount not to exceed 75% (now 25%) of the incremental income tax attributable to the retained employee or 100% (now 50%) if the project is in an underserved area or energy transition area. Makes other changes affecting DCEOs administration of the credit.
- **ABLE Account** - Amends the Illinois Income Tax Act to extend the sunset on the deduction for qualified ABLE account contributions to taxable years beginning prior to January 1, 2028.
- **Federal Student Loan Forgiveness** - Amends the Illinois Income Tax Act to provide for a deduction for the discharge of indebtedness attributable to the forgiveness of certain student loans that is not excluded from the taxpayer's federal adjusted gross income.
- **Live Theater Production Tax Credit** - Amends the Live Theater Production Tax Credit Act to provide that tax credits awarded in State Fiscal Year 2023 includes any commercial Broadway touring show and adds a definition of "commercial Broadway touring show". Provides that of the maximum amount of tax credits that can be awarded in State Fiscal Year 2023 no more than \$2,000,000 may be awarded to accredited theater productions that are not commercial Broadway touring shows and no more than \$2,000,000 may be awarded to commercial Broadway touring shows.

Illinois Department of Revenue Legislative Summary - continued

Sales and Related Taxes

Senate Bill 157, Public Act 102-0700

- **Biodiesel Changes** - Amends the “sales” tax acts to gradually increase the percentage of biodiesel and renewable diesel that must exist in diesel fuel for it to be tax exempt. Provides that the percentage of biodiesel and renewable diesel that must exist in diesel fuel during December through March is 10% for it to be tax exempt.
- **Sales Tax Exemption for Hospitals** - Amends the “sales” tax acts to repeal the sunset on the sales tax exemption for tangible personal property sold to certain hospitals.
- **Motor Fuel Tax** - Amends the Motor Fuel Tax Law to provide the motor fuel tax rate beginning July 1, 2022, and until January 1, 2023, shall be 39.2 cents per gallon. Provides that on January 1, 2023, the rate of tax shall be increased based upon the consumer price index. Requires motor fuel retailers to post signage notifying customers of this statutory change and imposes a \$500 fine for failure to post.
- **Tax on Groceries** - Amends the “sales” tax acts to provide from July 1, 2022, through June 30, 2023, the state of Illinois sales and use tax on groceries normally taxed at the 1 percent (1%) low rate will be 0 percent (0%). Groceries taxed at the low rate include food for human consumption that is to be consumed off the premises where it is sold.
- **School Supply Holiday** - Amends the “sales” tax acts to create a sales tax holiday for certain school related items beginning on August 5, 2022, and continuing through August 14, 2022. Exempts specified tangible personal property from the State’s 5 percent (5%) tax rate.
- **Breast Pumps and Kits** - Amends the “sales” tax acts to exempt breast pumps, breast pump collection and storage supplies and breast pump kits effective July 1, 2022.
- **Coal and Aggregate Exemption** - Amends the “sales” tax acts to extend the coal and aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment exemption until July 1, 2028.
- **Parking Excise Tax Changes** - Amends the Parking Excise Tax Act. Deletes the definitions of “booking intermediary” and “charge or fee paid for parking”. Makes conforming changes to the definition of “operator”.
- **Creates the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act.**
 - Amends the “sales” tax acts to create a sales tax exemption for building materials incorporated into real estate in a qualified facility for which a certificate of exemption has been issued by DCEO.
 - Amends the Telecommunications Excise Tax Act to create an exemption for business enterprises certified under the MICRO Act.
 - Amends the Electricity Excise Tax Law to create an exemption for electricity used at a MICRO project site.
 - Amends the Gas Revenue Tax Act to create an exemption for manufacturers under the MICRO Act.

Senate Bill 3661, Public Act 102-0851

Motor Fuel Reporting - Amends the Motor Fuel Tax Law to repeal the requirement that deliveries of reportable motor fuel either in interstate commerce or intrastate commerce to points within Illinois have to be reported to the Department.

Senate Bill 3685, Public Act 102-1019

- **Dyed Diesel Sales** - Amends the Motor Fuel Tax Law to require all entities involved in the dyed diesel supply chain, except for end users, to be licensed by the State of Illinois.
- **Electronic Filing of Vehicle Returns** - Amends the Retailers’ Occupation Tax Act to provide, effective January 1, 2023, that returns for certain motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of the State of Illinois are required to be filed electronically.

Illinois Department of Revenue Legislative Summary - continued

Senate Bill 3832, Public Act 102-1026

Amends the “sales” tax acts to provide that tangible personal property sold by or on behalf of the State Treasurer pursuant to the Revised Uniform Unclaimed Property Act is exempt.

House Bill 1950, Public Act 102-0886

Amends the “sales tax” acts to extend the sales tax exemption for tangible personal property sold to or used by certain hospitals until July 1, 2027.

House Bill 4132, Public Act 102-0920

Amends the Parking Excise Tax Act to codify certain exemptions contained in Rules and to additionally exempt parking at the Illinois State Fair and the DuQuoin State Fair.

House Bill 4284, Public Act 102-0762

Amends the Illinois Vehicle Code to clarify the tax rate is \$15 when the transfer of a motor vehicle is a gift to a beneficiary in the administration of an estate, and the beneficiary is not a surviving spouse, including, but not limited to, the administration of an inter vivos trust that became irrevocable upon the death of a grantor.

Property Tax

Senate Bill 157, Public Act 102-0700

Creates the **Manufacturing Illinois Chips for Real Opportunity (MICRO) Act**. Amends the Property Tax Code to provide any taxing district may abate any portion of real property taxes related to the MICRO Act.

Senate Bill 1975, Public Act 102-0895

- **Veterans Exemption Study** - Amends the Property Tax Code to require the Department to conduct a study of the impact of the Standard Homestead Exemption for Veterans with Disabilities by June 30, 2023.
- **Homestead Exemption for Persons with Disabilities** - Amends the Property Tax Code to add Optometrist to the list of disciplines that can certify an individual as a person with a disability. Provides no application is required for the exemption through taxable year 2027.
- **Homestead Exemption for Veterans with Disabilities - Amends the Property Tax Code to:**
 - Extend the exemption to the surviving spouse of a veteran under certain criteria, for taxable year 2023 and after.
 - Redefine surviving spouse to include additional circumstances when the benefit extends to the surviving spouse, for taxable year 2023 and after.
 - Provide on and after the effective date of this amendment re-application is not necessary for individuals with a combined service-connected disability of 100% and is deemed totally and permanently disabled.
- **Senior Citizens Homestead Exemption** - Amends the Property Tax Code to provide, for taxable year 2023 and after, that the maximum reduction in the collar counties is \$8,000.
- **Senior Citizens Assessment Freeze Homestead Exemption** - Amends the Property Tax Code to change the name of the exemption to the Low-Income Senior Citizens Assessment Freeze Homestead Exemption and creates a presumption that a homeowner enrolled in certain programs meets the income requirements for the exemption.
- **General Homestead Exemption** - Amends the Property Tax Code to provide, for taxable year 2023 and after, the maximum reduction in the collar counties is \$8,000.
- **Property Tax Extension Limitation Law** - Amends the Property Tax Code to provide for an alternative aggregate extension base for certain taxing districts. Allows certain taxing districts to recapture unrealized levy amounts if the taxing district did not extend the maximum amount permitted.

Illinois Department of Revenue Legislative Summary - continued

Senate Bill 3069, Public Act 102-1000

Amends the Property Tax Code to provide that an association may, on behalf of all or several of the owners that constitute the association, file an appeal with the Property Tax Appeal Board or intervene in an appeal filed by a taxing body.

Senate Bill 3097, Public Act 102-1003

Amends the Property Tax Code to repeal provisions added by Public Act 102-528 that require the county clerk to mail notice of the expiration of the period of redemption within 30 days from the date of the filing of addresses with the clerk. Amends requirements for mailing notices.

Senate Bill 3189, Public Act 102-1010

Amends the Property Tax Code to create a new section dealing with southland reactivation property (property designated as a priority tax reactivation parcel, site, or property).

Senate Bill 3685, Public Act 102-1019

Amends the Property Tax Code to provide that certain trainings may be provided by the Department virtually and are not required to be held in counties with a population of more than 400,000. Provides tentative equalization factor hearings may be held virtually rather than being held in Springfield and Chicago.

Senate Bill 3895, Public Act 102-0893

Amends the Property Tax Code to provide that to receive a reduction in assessed value, an owner, for the purpose of the initial application and only until the building is put in service, may provide proof of either a deed restriction or participation in a government program that includes legally enforceable affordability requirements comparable to the requirements of this Code.

House Bill 4677, Public Act 102-0707

Amends the Property Tax Code to modify the exclusions to the definition of "aggregate extension" to include certain payments of principal and interest on bonds issued under the Metropolitan Water Reclamation District Act.

House Bill 4700, Public Act 102-0699

Amends the Counties Code to provide the State shall pay 66 2/3% of the total annual salary to be paid to a sheriff. Provides the Department shall make such payments monthly from the Personal Property Tax Replacement Fund.

House Bill 5532, Public Act 102-0815

Amends the Property Tax Code to provide certain property held by certain land banks are exempt from property taxes.

Local Government

Senate Bill 157, Public Act 102-0700

Grocery Tax Replacement Fund - Amends the State Finance Act to create the Grocery Tax Replacement Fund. Provides for the transfer of \$325,000,000 from the General Revenue Fund to the Grocery Tax Replacement Fund no later than June 30, 2022. Provides for the transfer of \$75,000,000 from the General Revenue Fund to the Grocery Tax Replacement Fund on July 1, 2022. Provides for additional transfers to cover additional amounts needed to equal the net revenue that would have been realized if not for the reduced rate from 1 percent (1%) to 0 percent (0%) on certain grocery items. Provides for transfers from the Grocery Tax Replacement Fund to the State and Local Sales Tax Reform Fund and to the Local Government Tax Fund.

Illinois Department of Revenue Legislative Summary - continued

General/Miscellaneous

Senate Bill 1975, Public Act 102-0895

Senior Citizens Real Estate Deferral - Amends the Senior Citizens Real Estate Tax Deferral Act to provide the interest rate charged pursuant to the Senior Citizens Real Estate Tax Deferral Program shall be 3 percent (3%) (currently 6 percent (6%)) per year.

Senate Bill 3179, Public Act 102-1009

- Creates the Illinois Center for Geographic Information Act and establishes the Illinois Center for Geographic Information.
- Provides the Prairie Research Institute shall form an Intergovernmental Advisory Committee and shall consist of GIS staff including one appointed by the Director of Revenue.

House Bill 4126, Public Act 102-1059

Invest in Kids Act - Amends the Invest in Kids Act to provide scholarship granting organizations (SGOs) shall give eligible students who received a scholarship during the previous school year first priority for subsequent scholarships and provides the other priority groups contained in statute shall be given second priority. Amends a provision establishing the maximum scholarship that can be granted.

House Bill 4362, Public Act 102-0769

Amends the Illinois Department of Revenue Sunshine Act. Provides that the Department shall submit for publication, rather than publish, in the Illinois Register an index of any informal rulings, opinions or letters issued by the Department of Revenue during the quarter and required to be made available. Effective January 1, 2023.

House Bill 4410, Public Act 102-0934

Real Estate Valuation Task Force - Creates the Real Estate Valuation Task Force Act and establishes the Real Estate Valuation Task Force. Provides the Director of Revenue, or a designee, shall serve on the Task Force. Appointments shall be made as soon as practicable after the effective date of the Act.

House Bill 4639, Public Act 102-0941

Manufactured Home Dealers - Amends the Illinois Vehicle Code related to the Secretary of State's regulation of manufactured home dealers. Amends the Illinois Income Tax Act and the Retailers' Occupation Tax Act to authorize the Department to share information with the Secretary of State related to the Secretary of State's regulation of manufactured home dealers.

House Bill 5142, Public Act 102-0799

Health Benefits Easy Enrollment Program - Amends the Illinois Income Tax Act to provide, for tax years ending on or after December 31, 2022, the Department shall print on each individual income tax return a provision that allows taxpayers to request information about eligibility for health insurance benefits. Requires the Department of Healthcare and Family Services and the Department of Insurance to provide the Department a letter that the Department shall send to taxpayers who have requested information about benefit eligibility. Authorizes the Department to share information with the Department of Healthcare and Family Services and the Department of Insurance.

* *Public Act 102-1112 was signed in FY2023. All other legislation included in this report was passed by the General Assembly during FY2022.*



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Illinois Department of Revenue Rulemaking

86 Ill. Adm. Code § 100.2330 – NLD suspension

Incorporates the changes made by P.A. 102-0016 limiting to \$100,000 the amount of net losses that may be deducted in tax years ending on or after December 31, 2021, and before December 31, 2024. Adopted at 46 Ill. Reg. 13312, effective July 12, 2022.

86 Ill. Adm. Code § 100.3200 – Taxability in another state

Removes the stipulation regarding treaties with foreign countries in determining whether a taxpayer is subject to tax. For purposes of determining whether a taxpayer is taxable in another country, such that either the throw-back or throw-out rules in Section 304 of the Illinois Income Tax Act would apply, the previous rule contained a restriction that the taxpayer will not be considered subject to tax if a treaty exempts its activities from taxation. This rulemaking aligns section 100.3200 of the Department's rules with the Multistate Tax Commission model rule. Adopted at 46 Ill. Reg. 15317, effective August 24, 2022.

86 Ill. Adm. Code § 100.5020 – Extensions of time for filing returns

The Illinois Income Tax Act provides an automatic six-month extension for Illinois tax returns. The previous regulation allowed corporations an additional month from the federal deadline. However, beginning with the 2016 tax year, the Internal Revenue Service moved the federal deadline for many Form IL-1120 filers from March 15 to April 15. This change had the effect of moving the extended due date from September 15 to October 15, aligning it with the Illinois automatic extension deadline. As such, those taxpayers no longer qualified for the extra month to file state returns. This rulemaking restored the one additional month beyond the federal deadline for filing corporate tax returns. Adopted at 46 Ill. Reg. 18102, effective October 26, 2022.

86 Ill. Adm. Code § 131 – Leveling the Playing Field for Illinois Retail Act

Amends sections 131.105 and 131.107 to clarify key definitions and the types of retailers that are subject to the provisions. In particular, this rulemaking reversed the guidance provided by Compliance Alert 2021-01 issued regarding marketplace facilitators and the collection of the Metropolitan Pier and Exposition Authority (MPEA) Food and Beverage Tax and the Chicago Home Rule Municipal Soft Drink Retailers' Occupation Tax. Section 131.110 has been amended to provide that remote retailers that exclusively make tax-exempt sales are not subject to the provisions. Section 131.120 has been amended to specify that occasional sales are excluded when remote retailers compute the tax remittance thresholds, but Section 131.140 has been amended to require marketplace facilitators to include occasional sales when computing the tax remittance thresholds, as marketplace facilitators are deemed not to make occasional sales. Section 131.145 has been amended to clarify the recordkeeping requirements for marketplace facilitators, including documenting exempting certificates. Adopted at 46 Ill. Reg. 2697, effective January 27, 2022.



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Illinois Department of Revenue Court Cases

Income Tax

PepsiCo Inc. and Affiliates v. Illinois Department of Revenue, 16 TT 82 and 17 TT 16 (September 12, 2022)**

The Illinois Department of Revenue issued Notices of Deficiency to PepsiCo for tax years ending December 31, 2011, December 31, 2012, and December 31, 2013, which contained audit adjustments by the Department disallowing PepsiCo's treatment of a member of its business group, Frito-Lay North America, Inc. ("FLNA"), as an excluded 80/20 company. The Department's audit adjustment added FLNA's income, approximately \$2.5 billion each year, to the PepsiCo unitary group's income for purposes of calculating its Illinois income taxes. PepsiCo challenged the Department's Notices of Deficiency in the Tax Tribunal, arguing that FLNA should be treated as an 80/20 company and that the reorganization of its foreign operations under FLNA and the creation of a global mobility entity as a subsidiary of FLNA have economic substance.

On May 4, 2021, the Tax Tribunal granted the Department's Motion for Summary Judgment, concluding that PepsiCo failed in its burden to prove that it is entitled to claim FLNA as an 80/20 company, and that its global mobility subsidiary must be disregarded as it has no economic substance. The Department's Notices of Deficiency, as they pertain to the 80/20 issue, were upheld.

PepsiCo subsequently moved to abate approximately \$2.1 million in penalties on the 80/20 issue, arguing that it acted in good faith and exercised ordinary business care and prudence when it determined to classify FLNA as an 80/20 company, and noting its strong history of federal, state/local, and international tax compliance. On September 12, 2022, the Tax Tribunal granted the Department's Motion for Summary Judgment upholding the imposition of penalties, finding that PepsiCo had "created a shell company to avoid state income taxes", "ignored the reality of the sham transaction it structured and the existing case law that forbade the use of such a strategy", and that it had not exercised ordinary business care and prudence.

Sales and Related Taxes

Midwest Medical Equipment Solutions, Inc. v. Illinois Department of Revenue, 17 TT 120, 19 TT 93, and 21 TT 77 (September 6, 2022)**

Midwest Medical, a licensed provider of durable medical equipment such as breast pumps and nebulizers, challenged the Department's assessment of retailers' occupation tax ("ROT") on transactions involving Medicaid enrollees covered under Managed Care Organization ("MCO") plans. Before the State began contracting with MCOs, the State would reimburse Midwest Medical for equipment provided to Medicaid enrollees by issuing payment directly. Those transactions were treated as exempt from ROT under the "government body exemption", which exempts sales to the government from ROT.

During the audit periods at issue, the State entered into contracts with MCOs to handle claims for Medicaid enrollees. Midwest Medical entered into its own contracts with the MCOs, under which Midwest Medical supplied items to Medicaid enrollees and invoiced and received payment from the MCOs.

At the Tax Tribunal, Midwest Medical argued that, notwithstanding that payment was no longer coming directly from the State, it was still entitled to claim the government body exemption. On September 6, 2022, the Tax Tribunal rejected Midwest Medical's arguments, finding that under the applicable contracts, the MCOs were the true purchasers of the medical products, and not mere intermediaries. The Tax Tribunal also held that the MCOs were not acting as agents of the State, and even if they were, as a matter of law the government body exemption applies only to government bodies, and not agents thereof. The Tax Tribunal also noted that Midwest Medical's failure to obtain exemption certificates provided an additional basis for the assessment, and upheld the imposition of late-payment penalties based on a lack of reasonable cause to excuse non-payment.

This case is presently on appeal to the First District Appellate Court.

** Court decisions were made in FY 2023.





IDORRPT1 (12/2022)

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