

Illinois 2017-2018 State Budget Bill Enacted

Overview

On July 6, 2017, the Illinois Legislature, through an override of Governor Bruce Rauner's veto, enacted S.B. 009; the newly enacted budget (Public Act 100-0022),¹ includes the following modifications to Illinois law:

- Increases the personal income tax rate from 3.75% to 4.95%
- Increases the corporate income tax rate from 5.25% to 7% (combined Income and Replacement Tax is 9.5%)
- Reinstates the research and development credit through tax years ending prior to January 1, 2022
- Requires an addition modification for any IRC §199 deductions
- Expands the definition of "United States" for determining a unitary business group
- Repeals the unitary business group "non-combination rule"
- Modifies certain exemptions, credits, and incentives
- Amends various provisions of the Illinois Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and the Retailers' Occupation Tax Act
- Replaces the replaces the Uniform Disposition of Unclaimed Property Act with the Revised Uniform Unclaimed Property Act

This Tax Alert summarizes these law changes that have various effective dates as specified in the discussion that follows.

New Personal and Corporate Income Tax Rate Effective July 1, 2017

Public Act 100-0022 amends 35 § ILCS 5/201(a)(5.3) to permanently increase the personal income tax rate to 4.95%. This rate, assessed on individuals, trusts, and estates, is effective July 1, 2017. Additionally, the corporate income tax rate is permanently increased to 7% effective July 1, 2017. Because these personal and corporate income tax rate increases are effective July 1, 2017, income earned prior to June 30, 2017 will be taxed at the lower rates (*i.e.*, at 3.75% and 5.25% for personal and corporate income taxes, respectively) for calendar and fiscal year taxpayers. Taxpayers may elect to prorate income between these two tax rate periods, or use specific accounting to determine income earned in the two tax rate periods.² Note that C corporations (including S corporations), partnerships, and trusts remain subject to the Illinois personal property replacement tax; the Illinois personal property replacement tax is assessed against C corporations at a rate of 2.5% (thus the combined Illinois income and personal property replacement tax for C corporations is 9.5% under this new law) and is assessed against partnerships, S corporations, and trusts at a rate of 1.5%³ (thus the combined Illinois income and personal property replacement tax on such entities is 6.45% under this new law).

Research and Development Credit

35 § ILCS 5/201(k) generally grants taxpayers a credit equal to 6.5% of "qualifying expenditures for increasing research activities in the states." The statute defers to IRC § 41 for the definition of "qualifying expenditures".⁴ Public Act 100-0022 explicitly states that the credit is granted continuously from tax years ending December 31, 2004 through tax years ending prior to January 1, 2022 (thereby covering the time period in which Illinois operated without a budget).⁵ This Illinois research and development credit had previously expired, and thus has been retroactively reinstated for the 2016 and 2017 tax years under this new law. On a prospective basis, this credit has been granted through tax years ending prior to January 1, 2022.

¹ Public Act 100-0022. A copy of the adopted law is accessible [here](#).

² See Informational Bulletin FY 2018-02: Illinois Income Tax Increase Guidance - Detailed Instructions For Filing Your 2016 Illinois Income Tax Return and 2017 Estimated Payments, Ill. Dept. of Rev. (July 2017), accessible [here](#).

³ 35 ILCS § 5/201(d).

⁴ 35 ILCS § 5/201(k).

⁵ Public Act 100-0022, amending 35 ILCS § 5/201(k).

Addition modification for IRC Section 199 deduction

Effective for taxable years ending on or after December 31, 2017, any deduction taken and authorized under IRC § 199 for federal income tax purposes must be added back to the taxpayer's Illinois base income.⁶

Repeal of the unitary business group "non-combination rule" and change to meaning of "United States"

Prior the enactment of Public Act 100-0022, a unitary business group could not include members that were required to use different apportionment formulas under 35 ILCS 5/204.⁷ Those members generally included insurance companies, financial organizations, federally regulated exchanges, and transportation companies. This "non-combination rule" is now only in effect for taxable years ending before December 31, 2017. For tax years ending on or after December 31, 2017, a unitary business group may include members that are required to use different apportionment formulas under 35 ILCS 5/204.

The Illinois definition of a unitary business group continues to exclude "those members whose business activity outside the United States is 80% or more of any such member's total business activity⁸." However, for tax years ending on or after December 31, 2017, Public Act 100-0022 extends the definition of the "United States" to include "the 50 states, the District of Columbia, and any area over which the United States has asserted jurisdiction or claimed exclusive rights, with respect to the exploration for or exploitation of natural resources, but does not include any territory or possession of the United States."⁹ This change in definition may have implications for some taxpayers when determining their "unitary business group" and for those members operating on the continental shelf.¹⁰

Exemptions, Additional Credits, and Incentives

For tax years beginning on or after January 1, 2017, Public Act 100-0022 generally provides that the personal exemption¹¹, the residential real property tax credit¹², and educational expense credit¹³ are disallowed for individuals with adjusted gross income over \$250,000 and for joint taxpayers with adjusted gross income over \$500,000. Additionally, the amount of the earned income tax credit for Illinois income tax purposes is increased to 14% of the federal tax credit for tax years beginning on or after January 1, 2017, and is then further increased to 18% of the federal tax credit for tax years beginning on or after January 1, 2018.¹⁴ Finally, the educational expense credit is increased from \$500 to \$750 for tax years ending on or after December 31, 2017.¹⁵

Sales and Use Tax

As of July 1, 2017, the Illinois incentive for gasohol sunsets and thus 100% of gasohol sale proceeds are subject to the Illinois Use Tax.¹⁶ Under Public Act 100-0022, an incentive for majority blended ethanol fuel that exempts 100% of sales proceeds is extended through December 31, 2023.¹⁷ Additionally, beginning on or after July 1, 2017, graphic arts machinery and equipment is included in the manufacturing and assembling section of the manufacturing machinery and equipment exemption; and this exemption is now permanent and no longer subject to sunset provisions.¹⁸

⁶ Public Act 100-0022, amending 35 ILCS § 5/203(a)(D-24).

⁷ 35 ILCS § 5/1501(a)(27)(B).

⁸ 35 ILCS § 5/1501(a)(27)(A).

⁹ Public Act 100-0022, amending 35 ILCS § 5/1501(27)(B).

¹⁰ See, 35 ILCS § 5/1501(a)(27)(A) (excluding any member of the unitary business group when that member's business activity outside the United States is 80% or more of any such member's total business activity.)

¹¹ Public Act 100-0022, 35 ILCS § 5/204(b).

¹² Public Act 100-0022, 35 ILCS § 5/208.

¹³ Public Act 100-0022, 35 ILCS § 5/201(m).

¹⁴ Public Act 100-0022, amending 35 ILCS § 5/212.

¹⁵ Public Act 100-0022, amending 35 ILCS § 5/201(m).

¹⁶ Public Act 100-0022, amending 35 ILCS § 105/3-10.

¹⁷ Public Act 100-0022, amending 35 ILCS § 105/3-10.

¹⁸ Public Act 100-0022, amending 35 ILCS § 105/3-5(6)&(18); 35 ILCS § 105/3-50(5)&(7); 35 ILCS § 115/2(e); 35 ILCS § 120/2-5(4)&(14). Graphic arts equipment generally is defined in Illinois as graphic arts machinery and equipment including repair and replacement parts, both new and used, and including that manufactured on special order, certified by the purchaser to be used primarily for graphic art production; it includes machinery and equipment purchased for lease. Such equipment also generally includes chemicals and/or chemicals acting as catalysts but only if the chemicals or chemicals acting as a catalyst effect a direct and immediate change upon a graphic arts product.

External Multistate Tax Alert

Enactment of the State Tax Lien Registration Act and Revised Uniform Unclaimed Property Act

The State Tax Lien Registration Act establishes a “statewide system for filing notices of tax liens that are in favor of or enforced by” the Illinois Department of Revenue.¹⁹ The Revised Uniform Unclaimed Property Act replaces the Uniform Disposition of Unclaimed Property Act.²⁰

Contacts

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¹⁹ Public Act 100-0022, Article 1.

²⁰ Public Act 100-0022, Article 15.