

Illinois Amends Income Tax Act and Independent Tax Tribunal Act

August 22, 2013

Overview

On August 16, 2013, Illinois Governor Quinn signed House Bill (“HB”) 3157¹ an omnibus income tax bill that amended several sections of the Income Tax Act. These changes are summarized below.

On June 19, 2013, Illinois Governor Quinn also signed Senate Bill (“SB”) 1329² which delays the effective date when the Illinois Independent Tax Tribunal will have jurisdiction until January 1, 2014.

Income Tax Changes

Alternative Apportionment Methods

HB 3157 allows the Director of the Illinois Department of Revenue (the “Department”) to permit or require a taxpayer to use an alternative apportionment method if the statutory apportionment provisions do not fairly represent the market for the taxpayer’s goods, services, or other sources of business income.³ Prior to the enactment of the bill the Department was able to permit or require a taxpayer to use an alternative apportionment method if the statutory apportionment provisions did not fairly represent the extent of the taxpayer’s business activity in Illinois. The Bill provides that the revised statutory language applies for tax years ending on or after December 31, 2008. The effective dates for the alternative apportionment provision changes mirror the dates that the sourcing of services changed in Illinois from cost of performance to market sourcing.⁴

Withholding by Pass-through Entities

Illinois generally requires partnerships, S corporations, and trusts to withhold income tax on business income distributable to each nonresident partner, shareholder, or beneficiary. HB 3157 creates the requirement that partnerships, S corporations, and trusts also withhold income tax on nonbusiness income to the extent allocated to Illinois and distributable to each nonresident partner, shareholder, or beneficiary.⁵ In addition, HB 3157 provides that pass-through entity level income tax withholding may be reduced by credits distributable by the partnership, S corporation, or trust and allowable against the tax liability of the applicable nonresident partner, shareholder, or beneficiary. These changes are effective for tax years beginning on or after December 31, 2014.

Composite Individual Income Tax Returns

Under the Illinois Income Tax Act, a nonresident who is not required itself to withhold and whose Illinois income tax liability is satisfied by pass-through entity withholding is generally not required to file an Illinois income tax return.⁶ However, the Illinois Income Tax Act allowed nonresident individual partners/shareholders/beneficiaries of partnerships, S corporations, or trusts to file a composite income tax return.⁷ Pass-through entity withholding was not required for nonresident individual partners filing a composite return.⁸ HB 3157 provides that composite individual income

¹ HB 3157 Enrolled, codified as Public Act 098-0478.

² SB 1329 Enrolled, codified as Public Act 098-0024.

³ HB 3157, amending 35 ILCS 5/304(f).

⁴ 35 ILCS 5/304(a)(3)(C).

⁵ HB 3157, amending 35 ILCS 5/709.5(a).

⁶ 35 ILCS 5/502(a).

⁷ 35 ILCS 5/502(f).

⁸ 35 ILCS 5/709.5(a).

tax returns will no longer be allowed effective for tax years ending on or after December 31, 2014.⁹ To the extent withholding by the partnership, S corporation, or trust satisfies the tax liability of the nonresident partner/shareholder/beneficiary no Illinois nonresident individual income tax return will be required.

Illinois Independent Tax Tribunal

Prior to SB 1329, the Illinois Independent Tax Tribunal (the "Tribunal") was scheduled to begin the exercise of its jurisdiction on July 1, 2013. SB 1329 defers the date when the Tribunal will exercise its jurisdiction to January 1, 2014.¹⁰ Protests filed prior to January 1, 2014, will continue to be filed with and be under the jurisdiction of the Department. Any administrative proceeding commenced on or after June 1, 2013, that would otherwise be subject to the jurisdiction of the Tribunal may be conducted according to the procedures set forth in this law for the Tribunal if the taxpayer so elects. The election is irrevocable and may be made on or after January 1, 2014, but no later than February 1, 2014.

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⁹ 35 ILCS 5/502(f) as amended by HB 3157.

¹⁰ 35 ILCS § 1010/1-15(d) as amended by S.B. 1329, Sec. 5-65.