

Illinois Legislature Adopts Substantial Changes to Tax Laws

Overview

In the past legislative session, the Illinois General Assembly adopted substantial changes to Illinois' tax laws. One of the most potentially significant changes is the approval of S.J.R.C.A. 1, a constitutional amendment to replace the current flat income tax with a graduated income tax that is subject to ratification by the voters.¹ On June 5, 2019 Governor J.B. Pritzker signed into law Public Act 101-0008, which, contingent upon ratification of the amendment, would institute the new graduated income tax structure and raise the corporate income tax rate.² Illinois voters will decide whether the constitutional amendment, and by extension Public Act 101-0008, will be ratified pursuant to the November 2020 general election.

In addition, on June 5 and June 28, 2019, Governor Pritzker signed Public Act 101-0009 and Public Act 101-0031, respectively, which implement changes to the Illinois income tax, franchise tax, and sales and use tax provisions.³ This alert summarizes and highlights various tax law changes in the recent Illinois legislation.

Income and Franchise Taxes

Graduated Income Tax (Subject to Voter Ratification) - In November 2020, Illinois voters will decide whether to amend the state's constitution to permit the General Assembly to enact a graduated income tax.⁴ Contingent upon ratification of the constitutional amendment, Public Act 101-0008,⁵ signed into law by Governor Pritzker on June 5, 2019, sets graduated income tax rates for individual and joint filers, and raises the corporate income tax rate to 7.99% (combined with replacement tax, the total corporate tax rate will be 10.49%).⁶

- o For individuals, estates, or trusts that do not file joint tax returns and have income less than \$750,000, the tax rate structure will be as follows:⁷

<i>Marginal Tax Rate</i>	<i>Portion of Net Income</i>
4.75%	\$0 up to \$10,000
4.90%	\$10,001 - \$100,000
4.95%	\$100,001 - \$250,000
7.75%	\$250,001 - \$350,000
7.85%	\$350,001 - \$750,000
7.99% (applied to all income)	Greater than \$750,000

¹ Senate Joint Resolution Constitutional Amendment No. 1. A copy of the adopted resolution is available [here](#).

² Public Act 101-0008. A copy of the adopted law is accessible [here](#).

³ Public Act 101-0009. A copy of the adopted law is accessible [here](#); Public Act 101-0031. A copy of the adopted law is accessible [here](#).

⁴ Senate Joint Resolution Constitutional Amendment No. 1.

⁵ Public Act 101-0008.

⁶ Public Act 101-0008, adding 35 ILCS § 5/201 (b)(15).

⁷ Public Act 101-0008, adding 35 ILCS § 5/201.1(1).

External Multistate Tax Alert

- For individuals, estates, or trusts that do not file joint tax returns and have income greater than \$750,000, the law requires applying a single tax rate of 7.99% to a taxpayer's net income.⁸
- For taxpayers filing joint tax returns and have income less than \$1,000,000, the tax rate structure will be as follows:⁹

<i>Marginal Tax Rate</i>	<i>Portion of Net Income</i>
4.75%	\$0 up to \$10,000
4.90%	\$10,001 - \$100,000
4.95%	\$100,001 - \$250,000
7.75%	\$250,001 - \$500,000
7.85%	\$500,001 - \$1,000,000
7.99% (applied to all income)	Greater than \$1,000,000

- For taxpayers that file joint tax returns and have income greater than \$1,000,000, the law requires applying a single tax rate of 7.99% to the joint taxpayers' net income.¹⁰

Franchise Tax Phase-Out - Public Act 101-0009, gradually phases out the Illinois Franchise Tax by January 1, 2024.¹¹ Under the phase-out, franchise taxpayers receive an exemption on a portion of the amount they owe in successive tax years as follows:

<i>Franchise Tax Payable:</i>	<i>Exemption Amount</i>
On or after January 1, 2020 and prior to January 1, 2021	\$30
On or after January 1, 2021 and prior to January 1, 2022	\$1,000
On or after January 1, 2022 and prior to January 1, 2023	\$10,000
On or after January 1, 2023 and prior to January 1, 2024	\$100,000
On or after January 1, 2024	No Franchise Tax Due

Franchise Tax Amnesty - Public Act 101-0009 also establishes a **Franchise Tax amnesty** period, beginning on **October 1, 2019** and ending on **November 15, 2019**, for unpaid tax or license fee liabilities due to the Secretary of State from March 15, 2008 through June 30, 2019. Interest and penalties are waived for tax payments made under the amnesty program.¹²

⁸ Public Act 101-0008, adding 35 ILCS § 5/201.1(2).

⁹ Public Act 101-0008, adding 35 ILCS § 5/201.1(3).

¹⁰ Public Act 101-0008, adding 35 ILCS § 5/201.1(4).

¹¹ Public Act 101-0009, Section 30-5 adding 805 ILCS §§ 5/15.35(e)-(f) and 805 ILCS §§ 5/15.65(e)-(f).

¹² Public Act 101-0009, Section 10-50 amending 805 ILCS § 8/5-10.

Corporate Income Tax Addition Modification for FDII - Effective for tax years beginning after December 31, 2018, Public Act 101-0009 requires corporate income taxpayers to addback Foreign Derived Intangible Income (FDII) deducted from a taxpayer's federal taxable income.¹³

Estates & Trusts Subtraction Modification for Excess Business Losses - Effective for tax years beginning after December 31, 2018 and before January 1, 2026, Public Act 101-0009 amends the Illinois Income Tax Act to permit estates and trusts to take a subtraction modification for excess business losses treated as NOLs on a taxpayer's federal income tax return.¹⁴

Tax Amnesty Program

Department of Revenue Tax Amnesty - Public Act 101-0009 establishes an **amnesty** period, beginning on **October 1, 2019** and ending on **November 15, 2019**, for all taxes (i.e., income taxes, sales and use taxes, payroll taxes, etc.) owed to the Illinois Department of Revenue for tax periods beginning after June 30, 2011 and ending prior to July 1, 2018. Interest and penalties will be waived for tax payments made under the amnesty program.¹⁵

Sales and Use Taxes

Remote Retailer Economic Nexus - Under Public Act 101-0031, effective July 1, 2020, Illinois adopts the economic nexus threshold of either (1) collecting \$100,000 from sales of tangible personal property to purchasers in Illinois, or (2) conducting 200 or more transactions within a 12-month period for remote retailers to purchasers in Illinois without physical presence or a representative in the state.¹⁶ Sales made by remote retailers that cross these thresholds will be sourced to the destination in Illinois at which the tangible personal property is shipped, delivered, or possession is taken.¹⁷ Remote retailers must register for and collect the applicable state and local retailers' occupation tax in lieu of the currently applicable use tax.¹⁸

Marketplace Facilitators and Marketplace Sellers - Under Public Act 101-0009, effective January 1, 2020, Illinois adopts marketplace facilitator, marketplace seller and servicemen provisions.¹⁹ As of this effective date, marketplace facilitators will be required to collect and remit Illinois use tax on sales made through the marketplace on behalf of marketplace sellers and servicemen.²⁰ A marketplace facilitator is deemed the retailer or servicemen if it meets the same economic nexus thresholds as those established for remote retailers.²¹ The marketplace facilitator amendments do not appear to change the sourcing rules applicable to the Use Tax Act or the Service Use Tax Act.

Expansion of Machinery and Equipment Exemption- Public Act 101-0009 expands the machinery and equipment exemption to include tangible personal property used or consumed in the manufacturing process (i.e., "production related tangible personal property") purchased on or after July 1, 2019.²²

¹³ Public Act 101-0009, Section 10-5 adding 35 ILCS § 5/203(b)(2)(E-18).

¹⁴ Public Act 101-0009, Section 10-5 adding 35 ILCS § 5/203(c)(2)(Z).

¹⁵ Public Act 101-0009, Section 10-35 amending 35 ILCS § 745/10.

¹⁶ Public Act 101-0031, Section 15-45 amending 35 ILCS § 120/2, Section 15-45 amending 35 ILCS § 120/1.

¹⁷ Public Act 101-0031, Section 15-45 amending 35 ILCS § 120/2-12(6).

¹⁸ Public Act 101-0031, Section 15-30 amending 35 ILCS § 105/2.

¹⁹ Public Act 101-0009, Section 10-10 adding 35 ILCS § 105/2d, Section 10-15 adding 35 ILCS § 110/2d.

²⁰ Public Act 101-0009, Section 10-10 adding 35 ILCS § 105/2d(c), Section 10-15 adding 35 ILCS § 110/2d(c).

²¹ Public Act 101-0009, Section 10-10 adding 35 ILCS §§ 105/2d(b)(1), (b)(2), Section 10-15 adding 35 ILCS §§ 110/2d(b)(1), (b)(2).

²² Public Act 101-0009, Section 25-5 amending 35 ILCS § 105/3-5(18), Section 25-10 amending 35 ILCS § 110/2, Section 25-15 amending 36 ILCS § 115/2, Section 25-20 amending 35 ILCS § 120/2-45.

Credits and Incentives

Blue Collar Jobs Act - Public Act 101-0009 enacts the "Blue Collar Jobs Act"²³ that details the applicability and availability of four credits: (1) High Impact Business Construction Jobs Credit;²⁴ (2) Enterprise Zone Construction Jobs Tax Credit;²⁵ (3) New Construction EDGE Credit;²⁶ and (4) River Edge Construction Jobs Tax Credit.²⁷

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²³ Public Act 101-0009, enacting Article 20.

²⁴ Public Act 101-0009, Section 20-5 adding 20 ILCS § 655/5.5(i).

²⁵ Public Act 101-0009, Section 20-5 adding 20 ILCS § 655/13.

²⁶ Public Act 101-0009, Section 20-15 adding 35 ILCS § 10/5-51.

²⁷ Public Act 101-0009, Section 20-20, adding 65 ILCS § 115/10-10.3.