ILLINOIS DEPARTMENT OF REVENUE
TAX PRACTITIONERS MEETING
OCTOBER 28, 2016

SALES/EXCISE TAX UPDATE – 2016 Legislation and Rulemaking

LEGISLATION

P.A. 99-855 (SB 2746) – Provides an exemption from sales taxes for menstrual pads, tampons and menstrual cups. Effective January 1, 2016. See Informational Bulletin FY 2017-03; regulations are being amended at 86 Ill. Adm. Code 130.311.

P.A. 99-858 (SB 3047) – Provides that the preferential low rate of tax applies to products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices. Effective August 19, 2016. See Informational Bulletin FY 2017-04; regulations are being amended at 86 Ill. Adm. Code 130.311.

P.A. 99-0519 (SB 10) – Extends the provisions of the Compassionate Use of Medical Cannabis Pilot Program Act, including the Medical Cannabis Cultivation Privilege Tax Law, to July 1, 2020 (had been set to expire on January 1, 2018); makes other non-tax changes. See Informational Bulletin FY 2017-02; regulations governing this program are found at 86 Ill. Adm. Code 429.

P.A. 99-517 (HB 5598) – Makes changes to the Local Tax Collection Act to accommodate agreements between IDOR and local jurisdictions to collect certain taxes; revises confidentiality provisions in Section 11 of the Retailers' Occupation Tax to expand the group of recipients of "financial information" to include counties and adds the SIC/NAICS code of the retailer to the information shared; the legislation also clarifies that the local share of taxes reported means the amount distributed out of the Local Government Tax Fund. Effective June 30, 2016.

HRJCA 36 – Provides that a constitutional amendment be placed on the ballot which would prohibit moneys "derived from taxes, fees, excises, or license taxes … relating to operation or use of vehicles, or related to the use of highways, roads … or to fuels used for propelling vehicles" from being used for any purpose other than the "cost of administering laws related to vehicles and transportation."

REGULATIONS

86 Ill. Adm. Code 130.415/130.410 - Transportation and Delivery. Rules were amended to reflect the provisions of Kean v. Walmart; a safe harbor provision is included for transactions between the date of the Kean decision and the effective date of the regulations. Rules adopted June 24, 2016.

86 Ill. Adm. Code 150.201 – Click-Through Nexus. Regulations amended the definition of "retailer maintaining a place of business in this State" to reflect the provisions of P.A. 98-1089. That public act provides that "click-through nexus" is created when an out-of-State retailer has a contract with a person in Illinois under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer

by providing to potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. These provisions only apply if certain monetary thresholds are met, and can be rebutted if the out-of-State retailer can demonstrate that the representatives in Illinois have not engaged in solicitation activities on behalf of the retailer that are sufficient to meet the nexus standards of the U.S. Constitution during the 4 preceding quarterly periods. The regulations detail the process that the Department will require in order to rebut the presumption of nexus. Rules adopted September 12, 2016.

86 Ill. Adm. Code 660 – Tobacco Products Tax. New sections were added and existing sections were updated in this Part to reflect recent legislative changes. Highlights include provisions governing taxation of little cigars; taxation of moist snuff; retailer licenses for persons selling tobacco products; and requirements governing electronic filing of returns and schedules. Rules adopted July 29, 2016.

86 Ill. Adm. Code 750 – Payment of Taxes by Electronic Funds Transfer – Rules were updated to reflect current statutory provisions governing requirements for electronic payment of taxes; rules clarify that motor fuel taxes must be paid electronically. Rules adopted June 23, 2016.

86 Ill. Adm. Code 130.330 – Manufacturing Machinery and Equipment – Rules were amended to reflect the provisions of P.A. 98-0583, which provides that the exemption does not include equipment used to generate electricity for wholesale or retail sale, to generate or treat natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines or mains, or to treat water for wholesale or retail sale that is delivered to customers through pipes, pipelines or mains. The rules were also amended to reflect Nokomis Quarry Co. v. Department of Revenue, which held that the extractive processes of mining or quarrying may constitute manufacturing and to clarify that other types of equipment used in quarrying may also qualify for the exemption. Rules adopted on September 9, 2016.

86 Ill. Adm. Code 429.110 – Medical Cannabis Cultivation Privilege Tax Law – Rules were amended to provide guidance on the calculation of tax on sales of cannabis-infused products and concentrates. Rules adopted on June 24, 2016.

86 Ill. Adm. Code 130.340 - Rolling Stock – Rules are being amended to implement the provisions of P.A. 98-584, which sets forth the test for aircraft and watercraft used as rolling stock; proposed rules also clarify proper documentation of the exemption; add examples of intrastate movements that do and do not qualify as interstate miles/trips; and reorganize the current rule to more clearly set forth the elements of the exemption and delete outdated provisions. Regulations will soon be adopted.