

2018 SALES/EXCISE TAX LEGISLATION AND REGULATIONS

Legislation Enacted in 2018

P.A. 100-587 (HB 3342 - BIMP bill): Enacts *Wayfair* nexus (nexus without physical presence).

Amends the definition of “retailer maintaining a place of business in this State” in the Use Tax Act/Service Use Tax Act . Requires retailers making sales of tangible personal property to purchasers in Illinois from outside Illinois to register and collect tax if their cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more or if they enter into 200 or more transactions for the sale of tangible personal property to purchasers in Illinois. Requires retailers meeting either of these criteria to begin collecting tax for sales made on and after October 1, 2018. Emergency rules implementing the act are found at 86 Ill. Adm. Code 150.803, effective September 11, 2018. For further information see Department’s website.

P.A. 100-940 (SB 3141): Creates Penalty for Failure to Keep Books and Records or Failure to Produce Books and Records for Examination

Amends the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act and Retailers’ Occupation Tax Act to impose a penalty for failure to keep books and records or for failure to produce books and records for examination. Penalty is \$1000 for the first failure to keep books/records or produce books/records for examination and \$3000 for each subsequent failure for same. Penalties do not apply if taxpayer shows that he or she acted with ordinary business care and prudence. Authorizes the Department to promulgate rules.

Amends the Cigarette Tax Act, Cigarette Use Tax Act and the Tobacco Products Tax Act to impose a penalty for failure to keep books and records or for failure to produce books and records for examination. Penalty is \$1000 for the first failure to keep books/records or produce books/records for examination and \$3000 for each subsequent failure for same. Authorizes the Department to promulgate rules.

Amends the Cigarette Tax Act and Cigarette Use Tax Act to provide that sales of “loosies” (individual cigarettes) are prohibited and that cigarettes may only be sold in packages of 20 or 25. Penalty for violation of these new provisions is \$1000 for the first violation and \$3000 for any subsequent violation. Further provides that persons violating these provisions are guilty of a Class 4 felony. Authorizes the Department to promulgate rules to administer these penalties.

Amends the Cigarette Tax Act and Cigarette Use Tax Act to provide that whenever a retailer (in the case of the Cigarette Tax Act) or person (in the case of the Cigarette Use Tax Act) obtains cigarettes from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption is created that such cigarettes are contraband and are, or were, possessed in violation of the acts. Invoices or other documents kept in the normal course of business by a

retailer/person reflecting purchases of such cigarettes, or documents kept in the normal course of business obtained by the Department from an in-state or out-of-state distributor/person, are sufficient to establish the presumption that such cigarettes are contraband and are, or were, possessed in violation of the acts. If a presumption is raised, provisions authorize imposition of civil and criminal penalties and tax, penalty and interest.

Amends Section 13 of the Cigarette Tax Act to specifically authorize imposition of civil and criminal penalties and tax, penalty and interest whenever a presumption arises under that section that cigarettes are kept in violation of the act.

Amends the Cigarette Tax Act, the Cigarette Use Tax Act and the Tobacco Products Tax Act to create a presumption that failure to produce records for inspection upon request of the Department constitutes a failure to keep the required records. Those unable to rebut this presumption are subject to criminal penalties.

Makes various technical changes to existing records requirements in the Cigarette Tax Act and the Tobacco Products Tax Act.

Amends current provisions of the Cigarette Tax Act and the Cigarette Use Tax Act authorizing imposition of civil penalties for possession of contraband cigarettes. Provides that such penalties can be imposed not only upon persons who possess contraband cigarettes, but also upon persons who have possessed contraband cigarettes.

Amends the Cigarette Use Tax Act to provide that distributors who acquire cigarettes for use in this State and who do not pay the tax as required by Section 12 are subject to penalties. Penalties are \$1000 for the first violation and \$3000 for any subsequent violation. Authorizes promulgation of rules for administration of these penalties. Provides that the Department may, in addition to these penalties, impose any other civil or criminal penalties under the act, as well as tax, penalty and interest.

Amends the Tobacco Products Tax Act to provide that the Department may revoke, cancel or suspend the license of a retailer or distributor for violation of a rule, failure to keep books and records, or failure to make books and records available for inspection.

Amends the Tobacco Products Tax Act to require all retailers of tobacco products, whether or not possessing a license under Section 4g, to keep books and records required by Section 10-35 (b).

Act was effective August 17, 2018. Rules are being drafted.

P.A. 100-594 (HB 4415): Extends Sunset Date for Coal and Aggregate Exemption

Extends the sunset date for the exemption for coal and aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment until July 1, 2023 (absent legislation, the exemption would have sunset on August 16, 2018). Act was effective June 29, 2018. Rules have been submitted for First Notice at 42 Ill. Reg. 18780 (October 19, 2018).

P.A. 100-1006 (HB 4724): Illinois Hydraulic Fracturing Tax Act

Provides that first purchasers are not required to obtain exemption certificates from an operator until the first high volume horizontal hydraulic fracturing permit has been approved by the Department of Natural Resources after the effective date of P.A. 100-1106. Act effective January 1, 2019.

Rules Adopted in 2018

Wayfair Nexus - Nexus Without Physical Presence – Emergency regulation at 86 Ill. Adm. Code 150.801 implements the new nexus provisions of P.A. 100-587. Effective September 11, 2018 for a period of 150 days.

Invest in Kids Act – New Part at 86 Ill. Adm. Code 1000 implements the provisions of the Invest in Kids Act, P.A. 100-465. Rules were reviewed by JCAR at its October 16, 2018 meeting and a Certificate of No Objection was issued. The rules are being prepared for adoption. Emergency regulations were previously adopted on November 13, 2017.

Trade Show Appearances – New regulation at 86 Ill. Adm. Code 150.802 provides that the presence of an out-of-State retailer at a trade show for purposes of engaging in “trade show activities” establishes nexus for the retailer. However, the rule creates a “safe harbor” for retailers meeting 3 conditions; if met, presence at trade show will not create nexus for tax collection on remote sales. Effective 7/27/2018.

Financing Companies and Other Lending Agencies – Installment Contracts – Bad Debts – 86 Ill. Adm. Code 130.1960 amended to implements the provisions of P.A. 99-217, which added Section 6d governing “Deductions for Uncollectible Debt” to the Retailers’ Occupation Tax Act. Implements new statutory procedures for claiming bad debt deductions and bad debt deductions for taxes paid on sales made with private label credit cards.

Electronic Filing of Returns or Other Documents – 86 Ill. Adm. Code 760.100 amended to reflect provisions of P.A. 100-303. Effective January 1, 2018, the rule requires retailers and servicemen whose annual gross receipts average \$20,000 or more to file all returns electronically. Includes procedures for requesting waivers of this requirement. Provides that retailers not filing electronically when required are disallowed the 1.75% discount. Also updates the regulation to reflect electronic filing requirements for income tax preparers. To be published in the October 19, 2018 *Illinois Register* (42 Ill.Reg. 19053).

Monthly Returns When Due – Contents of Returns – 86 Ill. Adm. Code 140.401 (Service Occupation Tax) amended to reflect provisions of P.A. 100-303. Effective January 1, 2018, the rule requires servicemen whose annual gross receipts average \$20,000 or more to file all returns electronically. Includes procedures for requesting waivers of this requirement. Provides that servicemen not filing electronically when required are disallowed the 1.75% discount. To be published in the October 19, 2018 *Illinois Register* (42 Ill. Reg. 19034).

General Information on Obtaining a Certificate of Registration – 86 Ill. Adm. Code 130.701 amended to reflect the provisions of P.A. 97-335 regarding new registration procedures for persons selling tangible personal property through vending machines. Rules also updated to reflect the provisions of P.A. 98-974 (changes procedures used to notify taxpayer of a delinquency prior to renewal of certificate of registration).

Vending Machine Information Returns – 86 Ill. Adm. Code 130.555 amended to reflect the provisions of P.A. 97-335 regarding the registration and informational reporting procedures for persons selling tangible personal property through vending machines.

Sub-Certificates of Registration – 86 Ill. Adm. Code 130.715 amended to reflect the provisions of P.A. 97-335 regarding the registration and informational reporting procedures for persons selling tangible personal property through vending machines.

Non-taxable Transactions – 86 Ill. Adm. Code 130.120 amended to update the “laundry list” of sales tax exemptions; provisions also added to exemptions to indicate if/when they sunset or are exempt from the Sunset Law.

Rulemakings pursuant to Executive Order 1613 - Various regulations have been amended/repealed as part of the Competitiveness Council’s Regulatory Reform Project under Executive Order 1613. In 2018, the following rules were adopted or repealed as part of this initiative:

86 Ill. Adm. Code Part 428 – repealed all regulations implementing the Cannabis and Controlled Substances Tax Act (held to be unconstitutional by the Illinois Supreme Court in *Wilson v. Department of Revenue*, 169 Ill.2d 306, 662 N.E.2d 415, 214 Ill. Dec. 849 (1996)). To be published in the October 19, 2018 *Illinois Register* (42 Ill. Reg. 19042).

86 Ill. Adm. Code 495.100, 495.120 – amended various regulations implementing the Telecommunications Excise Tax Act to remove out-of-date and obsolete language. To be published in the October 19, 2018 *Illinois Register* (42 Ill. Reg.19044).