

SNSFE QUARTERLY REVIEW

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A newsletter for our clients and friends



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Governor Rod Blagojevich recently proposed the introduction of a new tax on Illinois businesses, the Gross Receipts Tax ("GRT"), in order to raise money for various proposed social programs and to cover the State's pension funding shortfall. The GRT is an amendment to Illinois Senate Bill 429 which seeks to overhaul the present corporate taxation system in Illinois. Opponents of the GRT, including the Illinois Chamber of Commerce, argue forcefully that the tax will have disastrous effects on Illinois jobs and business.

The GRT applies to businesses with greater than \$1,000,000 in gross receipts in a given tax year. It provides for two separate tax rates, .85% to be applied to the sale of goods, and 1.85% that applies to the sale of services. A business that sells both goods and services will be subject to both rates on a per transaction basis. The lower rate would apply to "...gross receipts from sales, leases, or rentals of tangible personal property, or from construction contracts pursuant to which tangible personal property is incorporated into a structure or improvement on and becomes a part of real property..." The bill states that the lower rate applies to transactions that both occur and do not occur in Illinois so long as they would be subject to the Retailers' Occupation Tax Act, or would be subject to the Retailers' Occupation Tax Act but for the fact that the transaction is exempt because it is a resale, an occasional sale, or otherwise falls under a specific product or use-based exemption.

SB 429 defines gross receipts broadly as "the total amount realized by a taxpayer without deduction for costs of goods sold or other expenses incurred." The bill also provides a non-exhaustive list of examples of gross receipts. SB 429 also allows certain deductions from gross receipts including: cash discounts allowed and taken, returns and allowances, and bad debts. The definition of gross receipts specifically excludes: receipts from the retail sale of food to be consumed off premises; receipts from sale of medicine and medical devices to the extent that such sales are also subject to the 1% Retailers' Occupation Tax; dividends and gross receipts of a disregarded entity received by an individual; receipts by an individual from the sale of a capital asset as defined by IRC § 1221; proceeds attributable to the repayment of the principal amount of a loan; wages and benefits received by an employee; proceeds from the sale of a company's own stock or other securities; life insurance proceeds; certain legal damages not attributable to amounts that otherwise would have been gross receipts; tax refunds; sales or other taxes collected by a taxpayer which the taxpayer is required by law to collect; various other amounts received not traditionally characterized as revenue.

The proposed bill incorporates the defined term "gross receipts" into the defined term "Illinois gross receipts". Illinois gross receipts are all "gross receipts" from transactions connected to Illinois. The connection to Illinois required by SB 429 is a bit different for each type of transaction and is generally found where the goods or services are actually used in Illinois (see Client Alert at snsfe-law.com for more details).

SB 429 would give an allowable credit to taxpayers by reducing the amount of GRT owed to the State by the current amount of its Illinois Income Tax burden. Other than businesses with gross receipts of less than \$1,000,000, the GRT would not apply to charitable entities qualified under IRC § 501(a) nor to any foreign, state, or the federal government or any of their political subdivisions. It would also not be applied to businesses in the gaming industry, or to Medicaid payments to doctors and hospitals. Other exempt organizations and industries are given such status through the types of transactions excluded from the definition of gross receipts, as detailed above (e.g. retail food and drug sales).

It should be noted that SB 429 specifically disallows the direct billing of the GRT to customers (e.g. tax shown on retail sales receipt); however, there is no requirement that businesses keep their prices at pre-GRT levels, thus tempering the effect of this provision. Also, a disregarded entity will pay GRT on the entity level. And, it is entirely possible, and in fact probable, that a business that operates at a loss will be subject to the GRT.

The Illinois Chamber of Commerce is organizing opposition to the tax and may be contacted at 312.983.7100 or info@largesttaxincreaseever.com. For additional details, please refer to Client Alerts on our website. Thanks to Clint Costa for his assistance in the preparation of this letter.

IN THE NEWS:

Steve recently appeared in a Leading Lawyers Network spot in a *CRAIN'S A.M.: PEOPLE IN THE NEWS* newsletter. He was chosen for his work in commercial litigation and employment law: management.

If you'd like information on Steve's practice, please don't hesitate to contact him at 312.621.4400 or at SFilipowski@snsfe-law.com.