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Illinois Legislative Update: Restricted NOLs, Extended Credits, Incentives, and an Independent Tax Tribunal in 2013

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On December 16, 2011, Governor Quinn signed into law Senate Bill 397, P.A. 97-636 (the "Act"). The new law will: (i) partially restore the net operating loss deduction limited by prior legislation; (ii) extend certain tax credits; (iii) provide incentives to certain Illinois-based companies; and (iv) create a new independent tax tribunal.

Net Operating Loss Deduction

Prior legislation signed into law in January 2011 restricted the corporate net operating loss carryforward deduction for non-S corporations for taxable years ending after December 31, 2010 and prior to December 31, 2014. Under the Act, however, a net operating loss carryforward deduction will be permitted for taxable years ending on or after December 31, 2012 and prior to December 31, 2014, but the deduction will be limited to $100,000 in such taxable years.

Tax Credits and Sales Tax Exemptions

The Act provides a general five-year extension of all tax credit programs scheduled to expire in 2011, 2012, and 2013, and it specifically extends the research and development credit, the small business job creation tax credit, and the investment credit.

Tax Incentives Targeted to Illinois-Based Companies

The Act contains incentives intended to benefit specific corporations headquartered in Illinois and thereby motivate those corporations to remain in the state. Tax incentives are provided to any Illinois taxpayer that: (i) is primarily engaged in the operation of a discount department store; (ii) maintains its corporate headquarters in Illinois; (iii) employs a minimum of 4,250 full-time employees at its Illinois headquarters; (iv) retains at least 4,250 full-time jobs in Illinois that would have been at risk of being relocated outside the state; (v) earned at least $40 billion in revenues in 2010; and (vi) makes capital improvements of at least $300 million.

Additionally, apportionment provisions were added that benefit federally regulated exchanges (such as the Chicago Mercantile Exchange). The Act provides any federally regulated exchange taxpayer with the option to apportion "business income" to Illinois by multiplying its Illinois business income by the ratio of its Illinois business income over its business income from all sources. For these purposes, the Illinois business income is the sum of: (i) receipts attributable to transactions executed on a physical trading floor located in Illinois; (ii) receipts attributable to all other matching, execution, or clearing transactions multiplied by: (a) 63.77 percent for taxable years ending on or after December 31, 2012, but before December 31, 2013, and (b) 27.54 percent for taxable years ending on or after December 31, 2013; and (iii) all other receipts to the extent the receipts would be characterized as "sales in Illinois."

Independent Tax Tribunal

The Act created a framework requiring Illinois to establish an independent tax tribunal board. On and after July 1, 2013, the Illinois Department of Revenue shall no longer hear and act upon any protest or tax deficiency concerning taxes it administers. Beginning July 1, 2013, an independent tax tribunal will assume, exercise, and administer all rights, powers, duties, and responsibilities pertaining to any protest of tax liabilities or tax deficiency. The Act also specifically prohibits any Illinois agency from assuming the independent tax tribunal's functions.

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