



Rep. Michael J. Zalewski

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LRB100 10460 HLH 23238 a

1 AMENDMENT TO HOUSE BILL 3263

2 AMENDMENT NO. _____. Amend House Bill 3263 by replacing
3 everything after the enacting clause with the following:

4 "Section 3. The Cannabis and Controlled Substances Tax Act
5 is amended by changing Section 16 as follows:

6 (35 ILCS 520/16) (from Ch. 120, par. 2166)

7 Sec. 16. All assessments are Jeopardy Assessments - lien.

8 (a) Assessment. An assessment for a dealer not possessing
9 valid stamps or other official indicia showing that the tax has
10 been paid shall be considered a jeopardy assessment or
11 collection, as provided by Section 1102 of the Illinois Income
12 Tax Act. The Department shall determine and assess a tax and
13 applicable penalties and interest according to the best
14 judgment and information available to the Department, which
15 amount so fixed by the Department shall be prima facie correct
16 and shall be prima facie evidence of the correctness of the

1 amount of tax due, as shown in such determination. When,
2 according to the best judgment and information available to the
3 Department with regard to all real and personal property and
4 rights to property of the dealer, there is no reasonable
5 expectation of collection of the amount of tax and penalty to
6 be assessed, the Department may issue an assessment under this
7 Section for the amount of tax without penalty.

8 (b) Filing of Lien. Upon issuance of a jeopardy assessment
9 as provided by subsection (a) of this Section, the Department
10 may file a notice of jeopardy assessment lien in the office of
11 the recorder of the county in which any property of the
12 taxpayer may be located and shall notify the taxpayer of such
13 filing.

14 (c) Protest. If the taxpayer believes that he does not owe
15 some or all of the amount for which the jeopardy assessment
16 lien against him has been filed, he may protest within 20 days
17 after being notified by the Department of the filing of such
18 jeopardy assessment lien and request a hearing, whereupon the
19 Department shall hold a hearing in conformity with the
20 provisions of Section 908 of the Illinois Income Tax Act and,
21 pursuant thereto, shall notify the taxpayer of its decision as
22 to whether or not such jeopardy assessment lien will be
23 released.

24 After the expiration of the period within which the person
25 assessed may file an action for judicial review without such
26 action being filed, a certified copy of the final assessment or

1 revised final assessment of the Department may be filed with
2 the Circuit Court of the county in which the dealer resides, or
3 of Cook County in the case of a dealer who does not reside in
4 this State, or in the county where the violation of this Act
5 took place. The certified copy of the final assessment or
6 revised final assessment shall be accompanied by a
7 certification which recites facts that are sufficient to show
8 that the Department complied with the jurisdictional
9 requirements of the Act in arriving at its final assessment or
10 its revised final assessment and that the dealer had this
11 opportunity for an administrative hearing and for judicial
12 review, whether he availed himself or herself of either or both
13 of these opportunities or not. If the court is satisfied that
14 the Department complied with the jurisdictional requirements
15 of the Act in arriving at its final assessment or its revised
16 final assessment and that the taxpayer had his opportunity for
17 an administrative hearing and for judicial review, whether he
18 availed himself of either or both of these opportunities or
19 not, the court shall render judgment in favor of the Department
20 and against the taxpayer for the amount shown to be due by the
21 final assessment or the revised final assessment, plus any
22 interest which may be due, and such judgment shall be entered
23 in the judgment docket of the court. Such judgment shall bear
24 the same rate of interest and shall have the same effect as
25 other judgments. The judgment may be enforced, and all laws
26 applicable to sales for the enforcement of a judgment shall be

1 applicable to sales made under such judgments. The Department
2 shall file the certified copy of its assessment, as herein
3 provided, with the Circuit Court within 2 years after such
4 assessment becomes final except when the taxpayer consents in
5 writing to an extension of such filing period, and except that
6 the time limitation period on the Department's right to file
7 the certified copy of its assessment with the Circuit Court
8 shall not run during any period of time in which the order of
9 any court has the effect of enjoining or restraining the
10 Department from filing such certified copy of its assessment
11 with the Circuit Court.

12 If, when the cause of action for a proceeding in court
13 accrues against a person, he or she is out of the State, the
14 action may be commenced within the times herein limited, after
15 his or her coming into or returning to the State; and if, after
16 the cause of action accrues, he or she departs from and remains
17 out of the State, the time of his or her absence from the
18 State, the time of his or her absence is no part of the time
19 limited for the commencement of the action; but the foregoing
20 provisions concerning absence from the State shall not apply to
21 any case in which, at the time the cause of action accrues, the
22 party against whom the cause of action accrues is not a
23 resident of this State. The time within which a court action is
24 to be commenced by the Department hereunder shall not run from
25 the date the taxpayer files a petition in bankruptcy under the
26 Federal Bankruptcy Act until 30 days after notice of

1 termination or expiration of the automatic stay imposed by the
2 Federal Bankruptcy Act.

3 No claim shall be filed against the estate of any deceased
4 person or any person under legal disability for any tax or
5 penalty or part of either, or interest, except in the manner
6 prescribed and within the time limited by the Probate Act of
7 1975, as amended.

8 The collection of tax or penalty or interest by any means
9 provided for herein shall not be a bar to any prosecution under
10 this Act.

11 In addition to any penalty provided for in this Act, any
12 amount of tax which is not paid when due shall bear interest at
13 the rate determined in accordance with the Uniform Penalty and
14 Interest Act, per month or fraction thereof from the date when
15 such tax becomes past due until such tax is paid or a judgment
16 therefor is obtained by the Department. If the time for making
17 or completing an audit of a taxpayer's books and records is
18 extended with the taxpayer's consent, at the request of and for
19 the convenience of the Department, beyond the date on which the
20 statute of limitations upon the issuance of a notice of tax
21 liability by the Department otherwise run, no interest shall
22 accrue during the period of such extension. Interest shall be
23 collected in the same manner and as part of the tax.

24 If the Department determines that an amount of tax or
25 penalty or interest was incorrectly assessed, whether as the
26 result of a mistake of fact or an error of law, the Department

1 shall waive the amount of tax or penalty or interest that
2 accrued due to the incorrect assessment.

3 On and after January 1, 2018, the assessment and collection
4 of the tax under this Act is subject to the jurisdiction of the
5 Illinois Tax Tribunal to the extent provided in the Illinois
6 Independent Tax Tribunal Act of 2012.

7 (Source: P.A. 97-1129, eff. 8-28-12.)

8 Section 5. The Illinois Independent Tax Tribunal Act of
9 2012 is amended by changing Sections 1-45, 1-50, 1-55, and 1-63
10 and by adding Section 1-51 as follows:

11 (35 ILCS 1010/1-45)

12 Sec. 1-45. Jurisdiction of the Tax Tribunal.

13 (a) Except as provided by the Constitution of the United
14 States, the Constitution of the State of Illinois, or any
15 statutes of this State, including, but not limited to, the
16 State Officers and Employees Money Disposition Act, the Tax
17 Tribunal shall have original jurisdiction over all
18 determinations of the Department reflected on a Notice of
19 Deficiency, Notice of Tax Liability, Notice of Claim Denial, or
20 Notice of Penalty Liability issued under the Illinois Income
21 Tax Act, the Use Tax Act, the Service Use Tax Act, the Service
22 Occupation Tax Act, the Retailers' Occupation Tax Act, the
23 Cigarette Tax Act, the Cigarette Use Tax Act, the Tobacco
24 Products Tax Act of 1995, the Hotel Operators' Occupation Tax

1 Act, the Motor Fuel Tax Law, the Automobile Renting Occupation
2 and Use Tax Act, the Coin-Operated Amusement Device and
3 Redemption Machine Tax Act, the Gas Revenue Tax Act, the Water
4 Company Invested Capital Tax Act, the Telecommunications
5 Excise Tax Act, the Telecommunications Infrastructure
6 Maintenance Fee Act, the Public Utilities Revenue Act, the
7 Electricity Excise Tax Law, the Aircraft Use Tax Law, the
8 Watercraft Use Tax Law, the Gas Use Tax Law, or the Uniform
9 Penalty and Interest Act. In addition, with respect to notices
10 issued on or after January 1, 2018, the Tax Tribunal shall also
11 have original jurisdiction over all determinations of the
12 Department reflected on a Notice of Deficiency, Notice of Tax
13 Liability, Notice of Claim Denial, or Notice of Penalty
14 Liability issued under the County Motor Fuel Tax Law, the Live
15 Adult Entertainment Facility Surcharge Act, the Vehicle Use
16 Tax, the Metropolitan Pier and Exposition Authority Food and
17 Beverage Tax, the Tire User Fee, the Chicago Soft Drink Tax,
18 the Drycleaning Solvent Tax, the Energy Assistance Act of 1989,
19 the Qualified Solid Waste Fee, the Illinois Hydraulic
20 Fracturing Tax Act, or the Cannabis and Controlled Substances
21 Tax Act. Jurisdiction of the Tax Tribunal is limited to Notices
22 of Tax Liability, Notices of Deficiency, Notices of Claim
23 Denial, and Notices of Penalty Liability where, for notices
24 issued prior to January 1, 2018, the amount at issue in a
25 notice, or the aggregate amount at issue in multiple notices
26 issued for the same tax year or audit period, exceeds \$15,000,

1 exclusive of penalties and interest. In notices issued prior to
2 January 1, 2018 solely asserting either an interest or penalty
3 assessment, or both, the Tax Tribunal shall have jurisdiction
4 over cases where the combined total of all penalties or
5 interest assessed exceeds \$15,000. Beginning with notices and
6 decisions issued on and after January 1, 2018, the Tax Tribunal
7 shall have jurisdiction over all Notices of Tax Liability,
8 Notices of Deficiency, Notices of Claim Denial, and Notices of
9 Penalty Liability, all notices solely asserting either an
10 interest or penalty assessment, and any decisions relating to
11 the issuance or denial of an exemption ruling for any entity
12 claiming a non-homestead exemption from any tax imposed under
13 the Property Tax Code or any exemption from a State tax
14 administered by the Department.

15 (b) Except as otherwise permitted by this Act and by the
16 Constitution of the State of Illinois or otherwise by State
17 law, including, but not limited to, the State Officers and
18 Employees Money Disposition Act, no person shall contest any
19 matter within the jurisdiction of the Tax Tribunal in any
20 action, suit, or proceeding in the circuit court or any other
21 court of the State. If a person attempts to do so, then such
22 action, suit, or proceeding shall be dismissed without
23 prejudice. The improper commencement of any action, suit, or
24 proceeding does not extend the time period for commencing a
25 proceeding in the Tax Tribunal.

26 (c) The Tax Tribunal may require the taxpayer to post a

1 bond equal to 25% of the liability at issue (1) upon motion of
2 the Department and a showing that (A) the taxpayer's action is
3 frivolous or legally insufficient or (B) the taxpayer is acting
4 primarily for the purpose of delaying the collection of tax or
5 prejudicing the ability ultimately to collect the tax, or (2)
6 if, at any time during the proceedings, it is determined by the
7 Tax Tribunal that the taxpayer is not pursuing the resolution
8 of the case with due diligence. If the Tax Tribunal finds in a
9 particular case that the taxpayer cannot procure and furnish a
10 satisfactory surety or sureties for the kind of bond required
11 herein, the Tax Tribunal may relieve the taxpayer of the
12 obligation of filing such bond, if, upon the timely application
13 for a lien in lieu thereof and accompanying proof therein
14 submitted, the Tax Tribunal is satisfied that any such lien
15 imposed would operate to secure the assessment in the manner
16 and to the degree as would a bond. The Tax Tribunal shall adopt
17 rules for the procedures to be used in securing a bond or lien
18 under this Section.

19 (d) If, with or after the filing of a timely petition, the
20 taxpayer pays all or part of the tax or other amount in issue
21 before the Tax Tribunal has rendered a decision, the Tax
22 Tribunal shall treat the taxpayer's petition as a protest of a
23 denial of claim for refund of the amount so paid upon a written
24 motion filed by the taxpayer.

25 (e) The Tax Tribunal shall not have jurisdiction to review:

26 (1) any assessment made under the Property Tax Code;

1 (2) any decisions issued prior to January 1, 2018
2 relating to the issuance or denial of an exemption ruling
3 for any entity claiming exemption from any tax imposed
4 under the Property Tax Code or any State tax administered
5 by the Department;

6 (3) a notice of proposed tax liability, notice of
7 proposed deficiency, or any other notice of proposed
8 assessment or notice of intent to take some action;

9 (4) any action or determination of the Department
10 regarding tax liabilities that have become finalized by
11 law, including but not limited to the issuance of liens,
12 levies, and revocations, suspensions, or denials of
13 licenses or certificates of registration or any other
14 collection activities;

15 (5) any proceedings of the Department's informal
16 administrative appeals function; and

17 (6) any challenge to an administrative subpoena issued
18 by the Department.

19 (f) The Tax Tribunal shall decide questions regarding the
20 constitutionality of statutes and rules adopted by the
21 Department as applied to the taxpayer, but shall not have the
22 power to declare a statute or rule unconstitutional or
23 otherwise invalid on its face. A taxpayer challenging the
24 constitutionality of a statute or rule on its face may present
25 such challenge to the Tax Tribunal for the sole purpose of
26 making a record for review by the Illinois Appellate Court.

1 Failure to raise a constitutional issue regarding the
2 application of a statute or regulations to the taxpayer shall
3 not preclude the taxpayer or the Department from raising those
4 issues at the appellate court level.

5 (Source: P.A. 97-1129, eff. 8-28-12; 98-463, eff. 8-16-13.)

6 (35 ILCS 1010/1-50)

7 Sec. 1-50. Pleadings.

8 (a) A taxpayer may commence a proceeding in the Tax
9 Tribunal by filing a petition protesting the Department's
10 determination imposing a liability for tax, penalty, or
11 interest, or denying a claim for refund or credit application.
12 The petition shall be filed within the time permitted by
13 statute for filing a protest.

14 (b) The Department shall file its answer in the Tax
15 Tribunal no later than 30 days after its receipt of the Tax
16 Tribunal's notification that the taxpayer has filed a petition
17 in the proper form or within such additional time as the Tax
18 Tribunal may specify. The Department shall serve a copy of its
19 answer on the taxpayer's representative or, if the taxpayer is
20 not represented, on the taxpayer, and shall file proof of such
21 service with the answer. Material facts alleged in the
22 petition, if not expressly admitted or denied in the answer,
23 shall be deemed admitted.

24 (c) Either party may amend a pleading once without leave at
25 any time before the period for responding to it expires. After

1 such time, a pleading may be amended only with the written
2 consent of the adverse party or with the permission of the Tax
3 Tribunal. The Tax Tribunal shall freely grant consent to amend
4 upon such terms as may be just. Except as otherwise ordered by
5 the Tax Tribunal, there shall be an answer to an amended
6 pleading if an answer is required to the pleading being
7 amended. Filing of the answer, or, if the answer has already
8 been filed, the amended answer shall be made no later than 30
9 days after the filing of the amended petition. The taxpayer may
10 not amend a petition after expiration of the time for filing a
11 petition, if such amendment would have the effect of conferring
12 jurisdiction on the Tax Tribunal over a matter that would
13 otherwise not come within its jurisdiction. An amendment of a
14 pleading shall relate back to the time of filing of the
15 original pleading only as prescribed by Section 2-616 of the
16 Code of Civil Procedure.

17 (d) For all notices issued prior to January 1, 2018, this
18 Section applies to all cases in which the amount at issue in a
19 notice, or the aggregate amount at issue in multiple notices
20 issued for the same tax year or audit period, exceeds \$15,000
21 exclusive of penalties and interest, and in all cases involving
22 notices solely asserting an interest or penalty assessment, or
23 both, where the combined total of all penalties and interest
24 assessed exceeds \$15,000.

25 (e) For all notices issued on or after January 1, 2018,
26 this Section applies to all cases in which the amount at issue

1 in a notice, or the aggregate amount at issue in multiple
2 notices issued for the same tax year or audit period, exceeds
3 \$50,000, exclusive of penalties and interest, and in all cases
4 involving notices solely asserting an interest or penalty
5 assessment, or both, where the combined total of all penalties
6 and interest assessed exceeds \$50,000.

7 (Source: P.A. 97-1129, eff. 8-28-12.)

8 (35 ILCS 1010/1-51 new)

9 Sec. 1-51. Pleadings in small dollar cases.

10 (a) For all notices issued on or after January 1, 2018,
11 this Section applies to all cases in which the amount at issue
12 in a notice, or the aggregate amount at issue in multiple
13 notices issued for the same tax year or audit period, does not
14 exceed \$50,000 exclusive of penalties and interest, in all
15 cases involving notices solely asserting an interest or penalty
16 assessment or both the combined total of all penalties and
17 interest assessed does not exceed \$50,000, and any decisions
18 relating to the issuance or denial of an exemption ruling for
19 any entity claiming a non-homestead exemption from any tax
20 imposed under the Property Tax Code or any exemption from a
21 State tax administered by the Department.

22 (b) In all matters governed by this Section, protests, in
23 order to be deemed sufficient as a matter of law, may be filed
24 on forms promulgated by the Tax Tribunal and must include the
25 following at a minimum:

1 (1) the taxpayer's identification number, i.e., FEIN,
2 or individual or business account number;

3 (2) the date of issuance of the notice which is being
4 contested;

5 (3) the tax year or years and, if applicable, the
6 filing period and audit period involved;

7 (4) to the extent possible, the factual and legal
8 grounds upon which the objections to the notices are based;

9 (5) A certification that the facts stated are true,
10 correct, and complete to the best of the affiant's
11 knowledge and belief.

12 (35 ILCS 1010/1-55)

13 Sec. 1-55. Fees.

14 (a) The Tax Tribunal shall impose a fee of

15 (1) \$500 for the filing of petitions under Section
16 1-50; or-

17 (2) a fee of \$100 for the filing of petitions under
18 Section 1-51 in which the amount at issue exceeds \$5000 and
19 any petition related to the issuance or denial of an
20 exemption ruling.

21 (b) The Tax Tribunal may fix a fee, not in excess of the
22 fees charged and collected by the clerk of the circuit courts,
23 for comparing, or for preparing and comparing, a transcript of
24 the record, or for copying any record, entry, or other paper
25 and the comparison and certification thereof.

1 (c) Fees collected under this Section shall be deposited
2 into the Illinois Independent Tax Tribunal Fund, a special fund
3 created in the State treasury. Moneys deposited into the Fund
4 shall be appropriated to the Tax Tribunal to reimburse the Tax
5 Tribunal for costs associated with administering and enforcing
6 the provisions of this Act.

7 (d) The Tax Tribunal shall not assign any costs or
8 attorney's fees incurred by one party against another party.
9 Claims for expenses and attorney's fees under Section 10-55 of
10 the Illinois Administrative Procedure Act shall first be made
11 to the Department of Revenue. If the claimant is dissatisfied
12 because of the Department's failure to make any award or
13 because of the insufficiency of the award, the claimant may
14 petition the Court of Claims for the amount deemed owed.

15 (Source: P.A. 97-1129, eff. 8-28-12; 98-463, eff. 8-16-13.)

16 (35 ILCS 1010/1-63)

17 Sec. 1-63. Automatic Remand and Mediation.

18 (a) Every case governed by this Act shall be remanded
19 automatically to the Department of Revenue for a period ending
20 90 days following the filing of the petition (the "remand
21 period"). During the remand period, the parties shall meet and
22 confer in good faith, making particular efforts to resolve the
23 case by settlement, if possible. All parties may by agreement
24 extend the remand period for an additional period approved by
25 the administrative law judge assigned to the case, waive the

1 remand period, or have a case returned to the Tax Tribunal at
2 any time.

3 (b) At any point in the proceedings before the Tax Tribunal
4 after the expiration of the remand period, but prior to the
5 hearing under Section 1-65 of this Act, the parties may jointly
6 petition the Tax Tribunal for mediation. The purpose of the
7 mediation shall be to attempt to settle any contested issues or
8 the case in its entirety. An administrative law judge other
9 than the one initially assigned to hear the case shall serve as
10 the mediator.

11 (Source: P.A. 97-1129, eff. 8-28-12.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law."