



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2711

Introduced 02/22/05, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

35 ILCS 5/902
35 ILCS 120/5j

from Ch. 120, par. 9-902
from Ch. 120, par. 444j

Amends the Illinois Income Tax Act and the Retailers' Occupation Tax Act. Requires the purchaser or transferee of certain business assets to file a notice of the sale or transfer of those assets with the Department of Revenue within 10 business days (now, 10 days) of the sale or transfer and authorizes the purchaser or transferee to notify the Department of the sale or transfer of those assets at least 10 business days (now, 10 days) before the intended sale or transfer. Requires that any order issued by the Department to withhold from the purchase price shall be issued within 10 business days (now, 10 days) after the Department receives the notice. Requires the Department to provide written notice of the actual amount of taxes, penalties, and interest due and whether additional amounts may become due within 60 business days (now, 60 days) after the issuance of the initial order. Makes corresponding changes. Effective immediately.

LRB094 03831 MKM 33842 b

1 AN ACT concerning taxes.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 902 as follows:

6 (35 ILCS 5/902) (from Ch. 120, par. 9-902)

7 Sec. 902. Notice and Demand.

8 (a) In general. Except as provided in subsection (b) the
9 Director shall, as soon as practicable after an amount payable
10 under this Act is deemed assessed (as provided in Section 903),
11 give notice to each person liable for any unpaid portion of
12 such assessment, stating the amount unpaid and demanding
13 payment thereof. In the case of tax deemed assessed with the
14 filing of a return, the Director shall give notice no later
15 than 3 years after the date the return was filed. Upon receipt
16 of any notice and demand there shall be paid at the place and
17 time stated in such notice the amount stated in such notice.
18 Such notice shall be left at the dwelling or usual place of
19 business of such person or shall be sent by mail to the
20 person's last known address.

21 (b) Judicial review. In the case of a deficiency deemed
22 assessed under Section 903 (a) (2) after the filing of a
23 protest, notice and demand shall not be made with respect to
24 such assessment until all proceedings in court for the review
25 of such assessment have terminated or the time for the taking
26 thereof has expired without such proceedings being instituted.

27 (c) Action for recovery of taxes. At any time that the
28 Department might commence proceedings for a levy under Section
29 1109, regardless of whether a notice of lien was filed under
30 the provisions of Section 1103, it may bring an action in any
31 court of competent jurisdiction within or without this State in
32 the name of the people of this State to recover the amount of

1 any taxes, penalties and interest due and unpaid under this
2 Act. In such action, the certificate of the Department showing
3 the amount of the delinquency shall be prima facie evidence of
4 the correctness of such amount, its assessment and of the
5 compliance by the Department with all the provisions of this
6 Act.

7 (d) Sales or transfers outside the usual course of
8 business-Report-Payment of Tax - Rights and duties of purchaser
9 or transferee - penalty. If any taxpayer, outside the usual
10 course of his business, sells or transfers the major part of
11 any one or more of (A) the stock of goods which he is engaged in
12 the business of selling, or (B) the furniture or fixtures, or
13 (C) the machinery and equipment, or (D) the real property, of
14 any business that is subject to the provisions of this Act, the
15 purchaser or transferee of such assets shall, no later than 10
16 business days after the sale or transfer, file a notice of sale
17 or transfer of business assets with the Chicago office of the
18 Department disclosing the name and address of the seller or
19 transferor, the name and address of the purchaser or
20 transferee, the date of the sale or transfer, a copy of the
21 sales contract and financing agreements which shall include a
22 description of the property sold or transferred, the amount of
23 the purchase price or a statement of other consideration for
24 the sale or transfer, and the terms for payment of the purchase
25 price, and such other information as the Department may
26 reasonably require. If the purchaser or transferee fails to
27 file the above described notice of sale with the Department
28 within the prescribed time, the purchaser or transferee shall
29 be personally liable to the Department for the amount owed
30 hereunder by the seller or transferor but unpaid, up to the
31 amount of the reasonable value of the property acquired by the
32 purchaser or transferee. The purchaser or transferee shall pay
33 the Department the amount of tax, penalties, and interest owed
34 by the seller or transferor under this Act, to the extent they
35 have not been paid by the seller or transferor. The seller or
36 transferor, or the purchaser or transferee, at least 10

1 business days before the date of the sale or transfer, may
2 notify the Department of the intended sale or transfer and
3 request the Department to make a determination as to whether
4 the seller or transferor owes any tax, penalty or interest due
5 under this Act. The Department shall take such steps as may be
6 appropriate to comply with such request.

7 Any order issued by the Department pursuant to this Section
8 to withhold from the purchase price shall be issued within 10
9 business days after the Department receives notification of a
10 sale as provided in this Section. The purchaser or transferee
11 shall withhold such portion of the purchase price as may be
12 directed by the Department, but not to exceed a minimum amount
13 varying by type of business, as determined by the Department
14 pursuant to regulations, plus twice the outstanding unpaid
15 liabilities and twice the average liability of preceding
16 filings times the number of unfiled returns which were not
17 filed when due, to cover the amount of all tax, penalty, and
18 interest due and unpaid by the seller or transferor under this
19 Act or, if the payment of money or property is not involved,
20 shall withhold the performance of the condition that
21 constitutes the consideration for the sale or transfer. Within
22 60 business days after issuance of the initial order to
23 withhold, the Department shall provide written notice to the
24 purchaser or transferee of the actual amount of all taxes,
25 penalties and interest then due and whether or not additional
26 amounts may become due as a result of unpaid taxes required to
27 be withheld by an employer, returns which were not filed when
28 due, pending assessments and audits not completed. The
29 purchaser or transferee shall continue to withhold the amount
30 directed to be withheld by the initial order or such lesser
31 amount as is specified by the final withholding order or to
32 withhold the performance of the condition which constitutes the
33 consideration for the sale or transfer until the purchaser or
34 transferee receives from the Department a certificate showing
35 that no unpaid tax, penalty or interest is due from the seller
36 or transferor under this Act.

1 The purchaser or transferee is relieved of any duty to
2 continue to withhold from the purchase price and of any
3 liability for tax, penalty, or interest due hereunder from the
4 seller or transferor if the Department fails to notify the
5 purchaser or transferee in the manner provided herein of the
6 amount to be withheld within 10 business days after the sale or
7 transfer has been reported to the Department or within 60
8 business days after issuance of the initial order to withhold,
9 as the case may be. The Department shall have the right to
10 determine amounts claimed on an estimated basis to allow for
11 periods for which returns were not filed when due, pending
12 assessments and audits not completed, however the purchaser or
13 transferee shall be personally liable only for the actual
14 amount due when determined.

15 If the seller or transferor has failed to pay the tax,
16 penalty, and interest due from him hereunder and the Department
17 makes timely claim therefor against the purchaser or transferee
18 as hereinabove provided, then the purchaser or transferee shall
19 pay to the Department the amount so withheld from the purchase
20 price. If the purchaser or transferee fails to comply with the
21 requirements of this Section, the purchaser or transferee shall
22 be personally liable to the Department for the amount owed
23 hereunder by the seller or transferor up to the amount of the
24 reasonable value of the property acquired by the purchaser or
25 transferee.

26 Any person who shall acquire any property or rights thereto
27 which, at the time of such acquisition, is subject to a valid
28 lien in favor of the Department, shall be personally liable to
29 the Department for a sum equal to the amount of taxes,
30 penalties and interests, secured by such lien, but not to
31 exceed the reasonable value of such property acquired by him.

32 (Source: P.A. 86-923; 86-953.)

33 Section 10. The Retailers' Occupation Tax Act is amended by
34 changing Section 5j as follows:

1 (35 ILCS 120/5j) (from Ch. 120, par. 444j)

2 Sec. 5j. If any taxpayer, outside the usual course of his
3 business, sells or transfers the major part of any one or more
4 of (A) the stock of goods which he is engaged in the business
5 of selling, or (B) the furniture or fixtures, (C) the machinery
6 and equipment, or (D) the real property, of any business that
7 is subject to the provisions of this Act, the purchaser or
8 transferee of such asset shall, no later than 10 business days
9 after the sale or transfer, file a notice of sale or transfer
10 of business assets with the Chicago office of the Department
11 disclosing the name and address of the seller or transferor,
12 the name and address of the purchaser or transferee, the date
13 of the sale or transfer, a copy of the sales contract and
14 financing agreements which shall include a description of the
15 property sold, the amount of the purchase price or a statement
16 of other consideration for the sale or transfer, the terms for
17 payment of the purchase price, and such other information as
18 the Department may reasonably require. If the purchaser or
19 transferee fails to file the above described notice of sale
20 with the Department within the prescribed time, the purchaser
21 or transferee shall be personally liable for the amount owed
22 hereunder by the seller or transferor to the Department up to
23 the amount of the reasonable value of the property acquired by
24 the purchaser or transferee. The seller or transferor shall pay
25 the Department the amount of tax, penalty and interest (if any)
26 due from him under this Act up to the date of the payment of
27 tax. The seller or transferor, or the purchaser or transferee,
28 at least 10 business days before the date of the sale or
29 transfer, may notify the Department of the intended sale or
30 transfer and request the Department to audit the books and
31 records of the seller or transferor, or to do whatever else may
32 be necessary to determine how much the seller or transferor
33 owes to the Department hereunder up to the date of the sale or
34 transfer. The Department shall take such steps as may be
35 appropriate to comply with such request.

36 Any order issued by the Department pursuant to this Section

1 to withhold from the purchase price shall be issued within 10
2 business days after the Department receives notification of a
3 sale as provided in this Section. The purchaser or transferee
4 shall withhold such portion of the purchase price as may be
5 directed by the Department, but not to exceed a minimum amount
6 varying by type of business, as determined by the Department
7 pursuant to regulations, plus twice the outstanding unpaid
8 liabilities and twice the average liability of preceding
9 filings times the number of unfiled returns, to cover the
10 amount of all tax, penalty and interest due and unpaid by the
11 seller or transferor under this Act or, if the payment of money
12 or property is not involved, shall withhold the performance of
13 the condition that constitutes the consideration for the sale
14 or transfer. Within 60 business days after issuance of the
15 initial order to withhold, the Department shall provide written
16 notice to the purchaser or transferee of the actual amount of
17 all taxes, penalties and interest then due and whether or not
18 additional amounts may become due as a result of unfiled
19 returns, pending assessments and audits not completed. The
20 purchaser or transferee shall continue to withhold the amount
21 directed to be withheld by the initial order or such lesser
22 amount as is specified by the final withholding order or to
23 withhold the performance of the condition which constitutes the
24 consideration for the sale or transfer until the purchaser or
25 transferee receives from the Department a certificate showing
26 that such tax, penalty and interest have been paid or a
27 certificate from the Department showing that no tax, penalty or
28 interest is due from the seller or transferor under this Act.

29 The purchaser or transferee is relieved of any duty to
30 continue to withhold from the purchase price and of any
31 liability for tax, penalty or interest due hereunder from the
32 seller or transferor if the Department fails to notify the
33 purchaser or transferee in the manner provided herein of the
34 amount to be withheld within 10 business days after the sale or
35 transfer has been reported to the Department or within 60
36 business days after issuance of the initial order to withhold,

1 as the case may be. The Department shall have the right to
2 determine amounts claimed on an estimated basis to allow for
3 non-filed periods, pending assessments and audits not
4 completed, however the purchaser or transferee shall be
5 personally liable only for the actual amount due when
6 determined.

7 If the seller or transferor fails to pay the tax, penalty
8 and interest (if any) due from him hereunder and the Department
9 makes timely claim therefor against the purchaser or transferee
10 as hereinabove provided, then the purchaser or transferee shall
11 pay the amount so withheld from the purchase price to the
12 Department. If the purchaser or transferee fails to comply with
13 the requirements of this Section, the purchaser or transferee
14 shall be personally liable to the Department for the amount
15 owed hereunder by the seller or transferor to the Department up
16 to the amount of the reasonable value of the property acquired
17 by the purchaser or transferee.

18 Any person who shall acquire any property or rights thereto
19 which, at the time of such acquisition, is subject to a valid
20 lien in favor of the Department shall be personally liable to
21 the Department for a sum equal to the amount of taxes secured
22 by such lien but not to exceed the reasonable value of such
23 property acquired by him.

24 (Source: P.A. 86-923; 86-953.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.