

SB3051



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB3051

Introduced 1/20/2006, by Sen. Cheryl Axley

SYNOPSIS AS INTRODUCED:

35 ILCS 5/502

from Ch. 120, par. 5-502

Amends the Illinois Income Tax Act. Re-enacts the provisions of Section 502 of the Illinois Income Tax Act. This Section was amended by Public Act 88-669, which has been held to be unconstitutional as a violation of the single subject clause of the Illinois Constitution. Includes validation provisions. Effective immediately.

LRB094 18774 EFG 54168 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 1. Findings; purpose; validation.

5 (a) The General Assembly finds and declares that:

6 (1) Public Act 88-669, effective November 29, 1994,
7 amended Section 502 of the Illinois Income Tax Act. It made
8 a change relating to determining eligibility for innocent
9 spouse status. Public Act 88-669 also contained other
10 provisions.

11 (2) The Illinois Supreme Court declared Public Act
12 88-669 to be unconstitutional as a violation of the single
13 subject clause of the Illinois Constitution in *People v.*
14 *Olender*, Docket No. 98932, opinion filed December 15, 2005.

15 (b) The purpose of this Act is to re-enact the provisions
16 of Section 502 of the Illinois Income Tax Act and to minimize
17 or prevent any problems concerning those provisions that may
18 arise from the unconstitutionality of Public Act 88-669. This
19 re-enactment is intended to remove any question as to the
20 validity and content of those provisions; it is not intended to
21 supersede any other Public Act that amends the provisions
22 re-enacted in this Act. The re-enacted material is shown in
23 this Act as existing text (i.e., without underscoring) and
24 includes changes made by subsequent amendments.

25 (c) The re-enactment of the provisions of Section 502 of
26 the Illinois Income Tax Act by this Act is not intended, and
27 shall not be construed, to impair any legal argument concerning
28 whether those provisions were substantially re-enacted by any
29 other Public Act.

30 (d) All otherwise lawful actions taken before the effective
31 date of this Act in reliance on or pursuant to the provisions
32 re-enacted by this Act, as those provisions were set forth in
33 Public Act 88-669 or as subsequently amended, by any officer,

1 employee, or agency of State government or by any other person
2 or entity, are hereby validated, except to the extent
3 prohibited under the Illinois or United States Constitution.

4 (e) This Act applies, without limitation, to actions
5 pending on or after the effective date of this Act, except to
6 the extent prohibited under the Illinois or United States
7 Constitution.

8 Section 5. The Illinois Income Tax Act is amended by
9 changing Section 502 as follows:

10 (35 ILCS 5/502) (from Ch. 120, par. 5-502)

11 Sec. 502. Returns and notices.

12 (a) In general. A return with respect to the taxes imposed
13 by this Act shall be made by every person for any taxable year:

14 (1) for which such person is liable for a tax imposed
15 by this Act, or

16 (2) in the case of a resident or in the case of a
17 corporation which is qualified to do business in this
18 State, for which such person is required to make a federal
19 income tax return, regardless of whether such person is
20 liable for a tax imposed by this Act. However, this
21 paragraph shall not require a resident to make a return if
22 such person has an Illinois base income of the basic amount
23 in Section 204(b) or less and is either claimed as a
24 dependent on another person's tax return under the Internal
25 Revenue Code of 1986, or is claimed as a dependent on
26 another person's tax return under this Act.

27 (b) Fiduciaries and receivers.

28 (1) Decedents. If an individual is deceased, any return
29 or notice required of such individual under this Act shall
30 be made by his executor, administrator, or other person
31 charged with the property of such decedent.

32 (2) Individuals under a disability. If an individual is
33 unable to make a return or notice required under this Act,
34 the return or notice required of such individual shall be

1 made by his duly authorized agent, guardian, fiduciary or
2 other person charged with the care of the person or
3 property of such individual.

4 (3) Estates and trusts. Returns or notices required of
5 an estate or a trust shall be made by the fiduciary
6 thereof.

7 (4) Receivers, trustees and assignees for
8 corporations. In a case where a receiver, trustee in
9 bankruptcy, or assignee, by order of a court of competent
10 jurisdiction, by operation of law, or otherwise, has
11 possession of or holds title to all or substantially all
12 the property or business of a corporation, whether or not
13 such property or business is being operated, such receiver,
14 trustee, or assignee shall make the returns and notices
15 required of such corporation in the same manner and form as
16 corporations are required to make such returns and notices.

17 (c) Joint returns by husband and wife.

18 (1) Except as provided in paragraph (3), if a husband
19 and wife file a joint federal income tax return for a
20 taxable year they shall file a joint return under this Act
21 for such taxable year and their liabilities shall be joint
22 and several, but if the federal income tax liability of
23 either spouse is determined on a separate federal income
24 tax return, they shall file separate returns under this
25 Act.

26 (2) If neither spouse is required to file a federal
27 income tax return and either or both are required to file a
28 return under this Act, they may elect to file separate or
29 joint returns and pursuant to such election their
30 liabilities shall be separate or joint and several.

31 (3) If either husband or wife is a resident and the
32 other is a nonresident, they shall file separate returns in
33 this State on such forms as may be required by the
34 Department in which event their tax liabilities shall be
35 separate; but they may elect to determine their joint net
36 income and file a joint return as if both were residents

1 and in such case, their liabilities shall be joint and
2 several.

3 (4) Innocent spouses.

4 (A) However, for tax liabilities arising and paid
5 prior to August 13, 1999, an innocent spouse shall be
6 relieved of liability for tax (including interest and
7 penalties) for any taxable year for which a joint
8 return has been made, upon submission of proof that the
9 Internal Revenue Service has made a determination
10 under Section 6013(e) of the Internal Revenue Code, for
11 the same taxable year, which determination relieved
12 the spouse from liability for federal income taxes. If
13 there is no federal income tax liability at issue for
14 the same taxable year, the Department shall rely on the
15 provisions of Section 6013(e) to determine whether the
16 person requesting innocent spouse abatement of tax,
17 penalty, and interest is entitled to that relief.

18 (B) For tax liabilities arising on and after August
19 13, 1999 or which arose prior to that date, but remain
20 unpaid as of that date, if an individual who filed a
21 joint return for any taxable year has made an election
22 under this paragraph, the individual's liability for
23 any tax shown on the joint return shall not exceed the
24 individual's separate return amount and the
25 individual's liability for any deficiency assessed for
26 that taxable year shall not exceed the portion of the
27 deficiency properly allocable to the individual. For
28 purposes of this paragraph:

29 (i) An election properly made pursuant to
30 Section 6015 of the Internal Revenue Code shall
31 constitute an election under this paragraph,
32 provided that the election shall not be effective
33 until the individual has notified the Department
34 of the election in the form and manner prescribed
35 by the Department.

36 (ii) If no election has been made under Section

1 6015, the individual may make an election under
2 this paragraph in the form and manner prescribed by
3 the Department, provided that no election may be
4 made if the Department finds that assets were
5 transferred between individuals filing a joint
6 return as part of a scheme by such individuals to
7 avoid payment of Illinois income tax and the
8 election shall not eliminate the individual's
9 liability for any portion of a deficiency
10 attributable to an error on the return of which the
11 individual had actual knowledge as of the date of
12 filing.

13 (iii) In determining the separate return
14 amount or portion of any deficiency attributable
15 to an individual, the Department shall follow the
16 provisions in subsections (c) and (d) of Section
17 6015 of the Internal Revenue Code.

18 (iv) In determining the validity of an
19 individual's election under subparagraph (ii) and
20 in determining an electing individual's separate
21 return amount or portion of any deficiency under
22 subparagraph (iii), any determination made by the
23 Secretary of the Treasury, by the United States Tax
24 Court on petition for review of a determination by
25 the Secretary of the Treasury, or on appeal from
26 the United States Tax Court under Section 6015 of
27 the Internal Revenue Code regarding criteria for
28 eligibility or under subsection (d) of Section
29 6015 of the Internal Revenue Code regarding the
30 allocation of any item of income, deduction,
31 payment, or credit between an individual making
32 the federal election and that individual's spouse
33 shall be conclusively presumed to be correct. With
34 respect to any item that is not the subject of a
35 determination by the Secretary of the Treasury or
36 the federal courts, in any proceeding involving

1 this subsection, the individual making the
2 election shall have the burden of proof with
3 respect to any item except that the Department
4 shall have the burden of proof with respect to
5 items in subdivision (ii).

6 (v) Any election made by an individual under
7 this subsection shall apply to all years for which
8 that individual and the spouse named in the
9 election have filed a joint return.

10 (vi) After receiving a notice that the federal
11 election has been made or after receiving an
12 election under subdivision (ii), the Department
13 shall take no collection action against the
14 electing individual for any liability arising from
15 a joint return covered by the election until the
16 Department has notified the electing individual in
17 writing that the election is invalid or of the
18 portion of the liability the Department has
19 allocated to the electing individual. Within 60
20 days (150 days if the individual is outside the
21 United States) after the issuance of such
22 notification, the individual may file a written
23 protest of the denial of the election or of the
24 Department's determination of the liability
25 allocated to him or her and shall be granted a
26 hearing within the Department under the provisions
27 of Section 908. If a protest is filed, the
28 Department shall take no collection action against
29 the electing individual until the decision
30 regarding the protest has become final under
31 subsection (d) of Section 908 or, if
32 administrative review of the Department's decision
33 is requested under Section 1201, until the
34 decision of the court becomes final.

35 (d) Partnerships. Every partnership having any base income
36 allocable to this State in accordance with section 305(c) shall

1 retain information concerning all items of income, gain, loss
2 and deduction; the names and addresses of all of the partners,
3 or names and addresses of members of a limited liability
4 company, or other persons who would be entitled to share in the
5 base income of the partnership if distributed; the amount of
6 the distributive share of each; and such other pertinent
7 information as the Department may by forms or regulations
8 prescribe. The partnership shall make that information
9 available to the Department when requested by the Department.

10 (e) For taxable years ending on or after December 31, 1985,
11 and before December 31, 1993, taxpayers that are corporations
12 (other than Subchapter S corporations) having the same taxable
13 year and that are members of the same unitary business group
14 may elect to be treated as one taxpayer for purposes of any
15 original return, amended return which includes the same
16 taxpayers of the unitary group which joined in the election to
17 file the original return, extension, claim for refund,
18 assessment, collection and payment and determination of the
19 group's tax liability under this Act. This subsection (e) does
20 not permit the election to be made for some, but not all, of
21 the purposes enumerated above. For taxable years ending on or
22 after December 31, 1987, corporate members (other than
23 Subchapter S corporations) of the same unitary business group
24 making this subsection (e) election are not required to have
25 the same taxable year.

26 For taxable years ending on or after December 31, 1993,
27 taxpayers that are corporations (other than Subchapter S
28 corporations) and that are members of the same unitary business
29 group shall be treated as one taxpayer for purposes of any
30 original return, amended return which includes the same
31 taxpayers of the unitary group which joined in filing the
32 original return, extension, claim for refund, assessment,
33 collection and payment and determination of the group's tax
34 liability under this Act.

35 (f) The Department may promulgate regulations to permit
36 nonresident individual partners of the same partnership,

1 nonresident Subchapter S corporation shareholders of the same
2 Subchapter S corporation, and nonresident individuals
3 transacting an insurance business in Illinois under a Lloyds
4 plan of operation, and nonresident individual members of the
5 same limited liability company that is treated as a partnership
6 under Section 1501 (a)(16) of this Act, to file composite
7 individual income tax returns reflecting the composite income
8 of such individuals allocable to Illinois and to make composite
9 individual income tax payments. The Department may by
10 regulation also permit such composite returns to include the
11 income tax owed by Illinois residents attributable to their
12 income from partnerships, Subchapter S corporations, insurance
13 businesses organized under a Lloyds plan of operation, or
14 limited liability companies that are treated as partnership
15 under Section 1501(a)(16) of this Act, in which case such
16 Illinois residents will be permitted to claim credits on their
17 individual returns for their shares of the composite tax
18 payments. This paragraph of subsection (f) applies to taxable
19 years ending on or after December 31, 1987.

20 For taxable years ending on or after December 31, 1999, the
21 Department may, by regulation, also permit any persons
22 transacting an insurance business organized under a Lloyds plan
23 of operation to file composite returns reflecting the income of
24 such persons allocable to Illinois and the tax rates applicable
25 to such persons under Section 201 and to make composite tax
26 payments and shall, by regulation, also provide that the income
27 and apportionment factors attributable to the transaction of an
28 insurance business organized under a Lloyds plan of operation
29 by any person joining in the filing of a composite return
30 shall, for purposes of allocating and apportioning income under
31 Article 3 of this Act and computing net income under Section
32 202 of this Act, be excluded from any other income and
33 apportionment factors of that person or of any unitary business
34 group, as defined in subdivision (a)(27) of Section 1501, to
35 which that person may belong.

36 (g) The Department may adopt rules to authorize the

1 electronic filing of any return required to be filed under this
2 Section.

3 (Source: P.A. 91-541, eff. 8-13-99; 91-913, eff. 1-1-01;
4 92-846, eff. 8-23-02.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.