ILLINOIS CHAMBER OF COMMERCE
TAX INSTITUTE UPDATE
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Feedback to Connie Beard

April 5, 2007

Facts about the Proposed Illinois Gross Receipts Tax
Senate Bill 0001, Amendment #1

We know many of you have questions about the proposed GRT, so we have put together a summary of the proposed legislation in question and answer format. As we can get more details on the proposed tax, we will add to this Q&A and will maintain it here and on our special web site, www.largesttaxincreaseever.com.

We encourage you to pass this on to your tax/finance professionals and to other business associates who may have some of the same questions.

What is a "gross receipt"?

For GRT purposes, a "gross receipt" means the total amount realized by a taxpayer, without deduction for the cost of goods sold or other expenses incurred, including the fair market value of any property and any services received and any debt transferred or forgiven as consideration.

The GRT specifically defines "gross receipts" to include the following types of income:
In general:

- amounts realized from the sale, exchange, or other disposition of the taxpayer's property;
- amounts realized from the taxpayer's performance of services for another;
- amounts realized from another's use or possession of the taxpayer's property or capital.

Specifically defined as a gross receipt:

1. gross rents and royalties from real property located in Illinois;
2. gross rents and royalties from tangible personal property, to the extent it is located or used in Illinois;
3. gross receipts from the sale of electricity and electric transmission and distribution services, if the meter at which the electricity sold to the purchaser is located in Illinois;
4. gross receipts from the sale of telecommunications, broadcast, internet, or cable services, if the location of the equipment at which the services are received is located in Illinois.
5. gross receipts from the sale of real property located in this state;
6. gross receipts from the sale of tangible personal property received in Illinois by the purchaser;
7. gross receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property, to the extent that the receipts are based on the amount of use of the property in Illinois.
8. gross receipts from the sale of transportation services by a common carrier or contract carrier in proportion to the Illinois mileage traveled by the carrier during the taxable year on roadways, waterways, airways, and railways as compared to mileage everywhere;
9. gross receipts from interest and dividends, and gross receipts from "qualifying investment securities" if the payor is a resident of Illinois or is commercially domiciled in Illinois.
10. gross receipts from the sale of all other services, in proportion to the purchaser's benefit from the service in Illinois vs. the purchaser's benefit from the service everywhere.

Who is the tax imposed on?

The tax is an excise tax imposed on every taxpayer for the "privilege of doing business" in Illinois.

A "taxpayer" is defined to include virtually all business entities, including individuals/sole proprietorships, corporations, subchapter S corporations, all partnerships, limited liability companies, and all fiduciaries engaged in a trade or business conducted, in whole or in part, within Illinois.

In the case of a unitary business group required to file a combined return for Illinois corporate income tax purposes, the "taxpayer" will be the combined group. The definition of a "unitary business group" would be the same as it currently is for corporate income tax purposes.

The proposed language specifically excludes:

- Non-profit organizations (except for unrelated business income, which is subject to the GRT);
- Governmental entities;
- Any taxpayer whole Illinois gross receipts for the taxable year total $2,000,000 or less. (These taxpayers will continue to pay corporate income tax in lieu of GRT.)

When would the GRT go into effect?

For taxpayers with a calendar year tax accounting method, the tax would be effective January 1, 2008. It applies to all tax years ending on or after 12/31/08.

While it has been reported that the GRT is phased-in over 4 years, the proposed statutory language does not contain any phase-in language. The GRT is effective for most taxpayers January 1, 2008 at the full rate of tax.

The corporate income tax is not repealed by the GRT Act and taxpayers are required to pay both taxes, with a credit against GRT for any corporate income tax paid. Partnerships and other "pass-through" entities are not allowed a credit against GRT for any individual income tax paid on their distributive share of income.

What is the GRT rate?

0.85% for 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 and becomes part of real property, and

1.95% for all other gross receipts.

Is the Personal Property Replacement Tax repealed?

No. All taxpayers will continue to pay personal property replacement tax in addition to corporate income tax or GRT.

What taxes will each type of business taxpayer be liable for if the GRT passes?

Each type of entity will have to determine if they are subject to corporate income tax (CIT), gross receipts tax (GRT), individual income tax (IIT), and replacement tax (RT).

The term "pass-through entity" in the chart below includes partnerships, LLP's, subchapter S corporations and other business entities that typically flow the income down to partners or shareholders. Currently such entities are not taxed at the business level, but individual partners and shareholders pay tax on their distributive share of income from the business under the individual income tax. The GRT will apply to pass-through entities at the business level and the partners and shareholders will also be required to pay individual income tax on their distributive shares of income.

Here's a brief summary of taxes that will apply if the GRT passes:

	CIT	**GRT**	**IIT**	**RT**
$2M or less in GRs:				
Corporations	Yes, 4.8%	No	No	Yes, 2.5%
Pass Through Entities	No	No	Yes, 3%	Yes, 1.5%
Trusts	No	No	Yes, 3%	Yes, 1.5%
Estates	No	No	Yes, 3%	No
Sole Proprietors	No	No	Yes, 3%	No
More than $2M in GRs:				
Corporations	Yes, 4.8%	Yes	No	Yes, 2.5%
Pass Through Entities	No	Yes	Yes, 3%	Yes, 1.5%
Trusts	No	Yes	Yes, 3%	Yes, 1.5%

Estates	No	Yes	Yes, 3%	No
Sole Proprietors	No	Yes	Yes	No

Will out-of-state companies be subject to the GRT?

Any out-of-state company exercising the "privilege of doing business" in Illinois is theoretically subject to the tax. However, the bill intentionally does not define what is considered the "privilege of doing business" in Illinois. According to the Department of Revenue, the nexus standard for the proposed GRT is not the same nexus standard used for franchise tax, income tax or sales tax. It is intended to be as broad a standard as is allowed under the Constitution. In short, we won't have an answer unless and until there is litigation to define the term "privilege of doing business."

Are there any deductions allowed?

Yes. The proposed statute would allow taxpayers to deduct:

- Cash discounts allowed and taken;
- Returns and allowances;
- Bad Debts.
- Any amount realized from the sale of an account receivable by the taxpayer originating the account receivable but only to the extent that the receipts from the underlying transaction giving rise to the account receivable were included in the gross receipts of the taxpayer.

Are there any exemptions from the GRT?

Yes. The proposed statute allows the following exemptions:

1. gross receipts from the retail sale of food for human consumption that is to be consumed off the premises where it is sold, nonprescription medicines, drugs, and certain medical appliances;
2. gross receipts from the retail transfer of certain items under a prescription, including medicines, drugs, and certain medical appliances;
3. For individuals only: amounts received by an individual as dividends or other distributions from earnings or profits of other business entities;
4. For individuals only: capital gains.
5. proceeds from the recovery of principal from the repayment, maturity, transfer, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument, or amounts in excess of the net income realized on a otional principal contract;
6. the principal amount received under a repurchase agreement or an account of any transaction properly characterized as a loan to the taxpayer;
7. contributions received by certain not-for-profit entities;
8. amounts received as compensation or benefits by an individual employee;
9. proceeds received from the issuance of the taxpayer's own stock or other evidence of ownership, from the issuance of options, warrants, puts, or calls on the taxpayer's own stock or other evidence of ownership, or from the sale of the taxpayer's treasury stock;
10. proceeds from payments from life insurance policies;
11. damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts;
12. in the case of an agent, property, money, and other amounts received or acquired by the agent on behalf of another in excess of the agent's commission, fee, or other remuneration;
13. tax refunds, other tax benefit recoveries, and reimbursements for the tax imposed under this chapter made by entities that are part of the same unitary business group;
14. pension reversions;
15. contributions to capital;
16. sales, occupation, use excise, or other taxes or fees collected by the taxpayer from a purchaser and which the taxpayer is required by law to collect directly from a purchaser and remit to a local, state, or national tax authority;
17. property, money, and other amounts received by a professional employer organization from a client employer, in excess of the administrative fee charged by the professional employer organization to the client employer;
18. amounts received from pari-mutuel wagering subject to the Illinois Horse Racing Act of 1975;
19. amounts received from conduct of gambling games subject to tax under the Riverboat Gambling Act;
20. gross receipts from the conduct of a lottery under the Illinois Lottery Law;
21. Medicaid payments received by a hospital or outpatient medical care facility;
22. receipts received from a sale, exchange, or other disposition of "qualifying investment securities," within the meaning of IITA Sec. 1501(a)(11.5), or of an asset other than the stock in trade or inventory of the taxpayer;
23. insurance premiums, to the extent subject to tax under Sec. 409 of the Illinois Insurance Code;
24. amounts which are exempt from gross receipts taxation by reason of Illinois statute, Illinois Constitution, or by reason of the Constitution or statutes of the United States.

Will I have to make estimated payments of GRT?

Yes. Payments will be due April 15, June 15, September 15, and for most business entities December 15.

Can I pass the GRT on to my customers as a tax, like the sales tax?

No. The proposed statute states that the GRT is a tax on the business taxpayer and may not be separately billed or invoiced to another person.

Will the Department of Revenue administer the GRT if it is enacted?

Yes, and the proposed language adopts almost all of the administrative procedures currently found in the Illinois Income Tax Act and the Uniform Penalty & Interest Act.