



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5243

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

35 ILCS 1010/1-45
35 ILCS 1010/1-50
35 ILCS 1010/1-51 new
35 ILCS 1010/1-55
35 ILCS 1010/1-63

Amends the Illinois Independent Tax Tribunal Act of 2012. Expands the jurisdiction of the Tribunal to include the County Motor Fuel Tax Law, the Live Adult Entertainment Facility Surcharge Act, the Vehicle Use Tax, the Metropolitan Pier and Exposition Authority Food and Beverage Tax, the Tire User Fee, the Chicago Soft Drink Tax, the Drycleaning Solvent Tax, the Energy Assistance Act of 1989, the Qualified Solid Waste Fee, the Illinois Hydraulic Fracturing Tax Act, or the Medical Cannabis Cultivation Privilege Tax Law. Provides for additional procedures, including automatic remand. Effective immediately.

LRB100 16533 HLH 31665 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 5. The Illinois Independent Tax Tribunal Act of
5 2012 is amended by changing Sections 1-45, 1-50, 1-55, and 1-63
6 and by adding Section 1-51 as follows:

7 (35 ILCS 1010/1-45)

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

9 (a) Except as provided by the Constitution of the United
10 States, the Constitution of the State of Illinois, or any
11 statutes of this State, including, but not limited to, the
12 State Officers and Employees Money Disposition Act, the Tax
13 Tribunal shall have original jurisdiction over all
14 determinations of the Department reflected on a Notice of
15 Deficiency, Notice of Tax Liability, Notice of Claim Denial, or
16 Notice of Penalty Liability issued under the Illinois Income
17 Tax Act, the Use Tax Act, the Service Use Tax Act, the Service
18 Occupation Tax Act, the Retailers' Occupation Tax Act, the
19 Cigarette Tax Act, the Cigarette Use Tax Act, the Tobacco
20 Products Tax Act of 1995, the Hotel Operators' Occupation Tax
21 Act, the Motor Fuel Tax Law, the Automobile Renting Occupation
22 and Use Tax Act, the Coin-Operated Amusement Device and
23 Redemption Machine Tax Act, the Gas Revenue Tax Act, the Water

1 Company Invested Capital Tax Act, the Telecommunications
2 Excise Tax Act, the Telecommunications Infrastructure
3 Maintenance Fee Act, the Public Utilities Revenue Act, the
4 Electricity Excise Tax Law, the Aircraft Use Tax Law, the
5 Watercraft Use Tax Law, the Gas Use Tax Law, or the Uniform
6 Penalty and Interest Act. In addition, with respect to notices
7 issued on or after January 1, 2019, the Tax Tribunal shall also
8 have original jurisdiction over all determinations of the
9 Department reflected on a Notice of Deficiency, Notice of Tax
10 Liability, Notice of Claim Denial, or Notice of Penalty
11 Liability issued under the County Motor Fuel Tax Law, the Live
12 Adult Entertainment Facility Surcharge Act, the Vehicle Use
13 Tax, the Metropolitan Pier and Exposition Authority Food and
14 Beverage Tax, the Tire User Fee, the Chicago Soft Drink Tax,
15 the Drycleaning Solvent Tax, the Energy Assistance Act of 1989,
16 the Qualified Solid Waste Fee, the Illinois Hydraulic
17 Fracturing Tax Act, or the Medical Cannabis Cultivation
18 Privilege Tax Law. Jurisdiction of the Tax Tribunal is limited
19 to Notices of Tax Liability, Notices of Deficiency, Notices of
20 Claim Denial, and Notices of Penalty Liability where, for
21 notices issued prior to January 1, 2019, the amount at issue in
22 a notice, or the aggregate amount at issue in multiple notices
23 issued for the same tax year or audit period, exceeds \$15,000,
24 exclusive of penalties and interest. In notices issued prior to
25 January 1, 2019 solely asserting either an interest or penalty
26 assessment, or both, the Tax Tribunal shall have jurisdiction

1 over cases where the combined total of all penalties or
2 interest assessed exceeds \$15,000. Beginning with notices and
3 decisions issued on and after January 1, 2019, the Tax Tribunal
4 shall have jurisdiction over all Notices of Tax Liability,
5 Notices of Deficiency, Notices of Claim Denial, and Notices of
6 Penalty Liability, all notices solely asserting either an
7 interest or penalty assessment, and any decisions relating to
8 the issuance or denial of an exemption ruling for any entity
9 claiming a non-homestead exemption from any tax imposed under
10 the Property Tax Code or any exemption from a State tax
11 administered by the Department.

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

23 (c) The Tax Tribunal may require the taxpayer to post a
24 bond equal to 25% of the liability at issue (1) upon motion of
25 the Department and a showing that (A) the taxpayer's action is
26 frivolous or legally insufficient or (B) the taxpayer is acting

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

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

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

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

24 (2) any decisions issued prior to January 1, 2019
25 relating to the issuance or denial of an exemption ruling
26 for any entity claiming exemption from any tax imposed

1 under the Property Tax Code or any State tax administered
2 by the Department;

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

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

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

14 (6) any challenge to an administrative subpoena issued
15 by the Department.

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

1 issues at the appellate court level.

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

3 (35 ILCS 1010/1-50)

4 Sec. 1-50. Pleadings.

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

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

21 (c) Either party may amend a pleading once without leave at
22 any time before the period for responding to it expires. After
23 such time, a pleading may be amended only with the written
24 consent of the adverse party or with the permission of the Tax
25 Tribunal. The Tax Tribunal shall freely grant consent to amend

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

14 (d) For all notices issued prior to January 1, 2019, this
15 Section applies to all cases in which the amount at issue in a
16 notice, or the aggregate amount at issue in multiple notices
17 issued for the same tax year or audit period, exceeds \$15,000
18 exclusive of penalties and interest, and in all cases involving
19 notices solely asserting an interest or penalty assessment, or
20 both, where the combined total of all penalties and interest
21 assessed exceeds \$15,000.

22 (e) For all notices issued on or after January 1, 2019,
23 this Section applies to all cases in which the amount at issue
24 in a notice, or the aggregate amount at issue in multiple
25 notices issued for the same tax year or audit period, exceeds
26 \$50,000, exclusive of penalties and interest, and in all cases

1 involving notices solely asserting an interest or penalty
2 assessment, or both, where the combined total of all penalties
3 and interest assessed exceeds \$50,000.

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

5 (35 ILCS 1010/1-51 new)

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

7 (a) For all notices issued on or after January 1, 2019,
8 this Section applies to all cases in which the amount at issue
9 in a notice, or the aggregate amount at issue in multiple
10 notices issued for the same tax year or audit period, does not
11 exceed \$50,000 exclusive of penalties and interest, in all
12 cases involving notices solely asserting an interest or penalty
13 assessment or both the combined total of all penalties and
14 interest assessed does not exceed \$50,000, and any decisions
15 relating to the issuance or denial of an exemption ruling for
16 any entity claiming a non-homestead exemption from any tax
17 imposed under the Property Tax Code or any exemption from a
18 State tax administered by the Department.

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

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

25 (2) the date of issuance of the notice which is being

1 contested;

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

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

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

9 (35 ILCS 1010/1-55)

10 Sec. 1-55. Fees.

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

12 (1) \$500 for the filing of petitions under Section
13 1-50; or-

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

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

23 (c) Fees collected under this Section shall be deposited
24 into the Illinois Independent Tax Tribunal Fund, a special fund
25 created in the State treasury. Moneys deposited into the Fund

1 shall be appropriated to the Tax Tribunal to reimburse the Tax
2 Tribunal for costs associated with administering and enforcing
3 the provisions of this Act.

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

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

13 (35 ILCS 1010/1-63)

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

15 (a) Every case governed by this Act shall be remanded
16 automatically to the Department of Revenue for a period ending
17 90 days following the filing of the petition (the "remand
18 period"). During the remand period, the parties shall meet and
19 confer in good faith, making particular efforts to resolve the
20 case by settlement, if possible. All parties may by agreement
21 extend the remand period for an additional period approved by
22 the administrative law judge assigned to the case, waive the
23 remand period, or have a case returned to the Tax Tribunal at
24 any time.

25 (b) At any point in the proceedings before the Tax Tribunal

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

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

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.