

SB1810



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1810

Introduced 2/9/2023, by Sen. John F. Curran

SYNOPSIS AS INTRODUCED:

35 ILCS 5/207	from Ch. 120, par. 2-207
805 ILCS 5/15.35	from Ch. 32, par. 15.35
805 ILCS 5/15.65	from Ch. 32, par. 15.65

Amends the Illinois Income Tax Act. Makes changes concerning the federal depreciation deduction and net operating losses to restore provisions that were in effect prior to Public Act 102-16. Amends the Business Corporation Act of 1983. Provides that no franchise tax shall be imposed on foreign or domestic corporations on or after January 1, 2024, and repeals those provisions on January 1, 2025. Effective immediately.

LRB103 28540 HLH 54921 b

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 Income Tax Act is amended by
5 changing Section 207 as follows:

6 (35 ILCS 5/207) (from Ch. 120, par. 2-207)

7 Sec. 207. Net Losses.

8 (a) If after applying all of the (i) modifications
9 provided for in paragraph (2) of Section 203(b), paragraph (2)
10 of Section 203(c) and paragraph (2) of Section 203(d) and (ii)
11 the allocation and apportionment provisions of Article 3 of
12 this Act and subsection (c) of this Section, the taxpayer's
13 net income results in a loss;

14 (1) for any taxable year ending prior to December 31,
15 1999, such loss shall be allowed as a carryover or
16 carryback deduction in the manner allowed under Section
17 172 of the Internal Revenue Code;

18 (2) for any taxable year ending on or after December
19 31, 1999 and prior to December 31, 2003, such loss shall be
20 allowed as a carryback to each of the 2 taxable years
21 preceding the taxable year of such loss and shall be a net
22 operating loss carryover to each of the 20 taxable years
23 following the taxable year of such loss;

1 (3) for any taxable year ending on or after December
2 31, 2003 and prior to December 31, 2021, such loss shall be
3 allowed as a net operating loss carryover to each of the 12
4 taxable years following the taxable year of such loss,
5 except as provided in subsection (d); and

6 (4) for any taxable year ending on or after December
7 31, 2021, and for any net loss incurred in a taxable year
8 prior to a taxable year ending on or after December 31,
9 2021 for which the statute of limitation for utilization
10 of such net loss has not expired, such loss shall be
11 allowed as a net operating loss carryover to each of the 20
12 taxable years following the taxable year of such loss,
13 except as provided in subsection (d).

14 (a-5) Election to relinquish carryback and order of
15 application of losses.

16 (A) For losses incurred in tax years ending prior
17 to December 31, 2003, the taxpayer may elect to
18 relinquish the entire carryback period with respect to
19 such loss. Such election shall be made in the form and
20 manner prescribed by the Department and shall be made
21 by the due date (including extensions of time) for
22 filing the taxpayer's return for the taxable year in
23 which such loss is incurred, and such election, once
24 made, shall be irrevocable.

25 (B) The entire amount of such loss shall be
26 carried to the earliest taxable year to which such

1 loss may be carried. The amount of such loss which
2 shall be carried to each of the other taxable years
3 shall be the excess, if any, of the amount of such loss
4 over the sum of the deductions for carryback or
5 carryover of such loss allowable for each of the prior
6 taxable years to which such loss may be carried.

7 (b) Any loss determined under subsection (a) of this
8 Section must be carried back or carried forward in the same
9 manner for purposes of subsections (a) and (b) of Section 201
10 of this Act as for purposes of subsections (c) and (d) of
11 Section 201 of this Act.

12 (c) Notwithstanding any other provision of this Act, for
13 each taxable year ending on or after December 31, 2008, for
14 purposes of computing the loss for the taxable year under
15 subsection (a) of this Section and the deduction taken into
16 account for the taxable year for a net operating loss
17 carryover under paragraphs (1), (2), and (3) of subsection (a)
18 of this Section, the loss and net operating loss carryover
19 shall be reduced in an amount equal to the reduction to the net
20 operating loss and net operating loss carryover to the taxable
21 year, respectively, required under Section 108(b)(2)(A) of the
22 Internal Revenue Code, multiplied by a fraction, the numerator
23 of which is the amount of discharge of indebtedness income
24 that is excluded from gross income for the taxable year (but
25 only if the taxable year ends on or after December 31, 2008)
26 under Section 108(a) of the Internal Revenue Code and that

1 would have been allocated and apportioned to this State under
2 Article 3 of this Act but for that exclusion, and the
3 denominator of which is the total amount of discharge of
4 indebtedness income excluded from gross income under Section
5 108(a) of the Internal Revenue Code for the taxable year. The
6 reduction required under this subsection (c) shall be made
7 after the determination of Illinois net income for the taxable
8 year in which the indebtedness is discharged.

9 (d) In the case of a corporation (other than a Subchapter S
10 corporation), no carryover deduction shall be allowed under
11 this Section for any taxable year ending after December 31,
12 2010 and prior to December 31, 2012, and no carryover
13 deduction shall exceed \$100,000 for any taxable year ending on
14 or after December 31, 2012 and prior to December 31, 2014 and
15 for any taxable year ending on or after December 31, 2021 and
16 before December 31, 2023 ~~prior to December 31, 2024~~; provided
17 that, for purposes of determining the taxable years to which a
18 net loss may be carried under subsection (a) of this Section,
19 no taxable year for which a deduction is disallowed under this
20 subsection, or for which the deduction would exceed \$100,000
21 if not for this subsection, shall be counted.

22 (e) In the case of a residual interest holder in a real
23 estate mortgage investment conduit subject to Section 860E of
24 the Internal Revenue Code, the net loss in subsection (a)
25 shall be equal to:

26 (1) the amount computed under subsection (a), without

1 regard to this subsection (e), or if that amount is
2 positive, zero;

3 (2) minus an amount equal to the amount computed under
4 subsection (a), without regard to this subsection (e),
5 minus the amount that would be computed under subsection
6 (a) if the taxpayer's federal taxable income were computed
7 without regard to Section 860E of the Internal Revenue
8 Code and without regard to this subsection (e).

9 The modification in this subsection (e) is exempt from the
10 provisions of Section 250.

11 (Source: P.A. 102-16, eff. 6-17-21; 102-669, eff. 11-16-21.)

12 Section 10. The Business Corporation Act of 1983 is
13 amended by changing Sections 15.35 and 15.65 as follows:

14 (805 ILCS 5/15.35) (from Ch. 32, par. 15.35)

15 (Text of Section from P.A. 102-16)

16 Sec. 15.35. Franchise taxes payable by domestic
17 corporations. For the privilege of exercising its franchises
18 in this State, each domestic corporation shall pay to the
19 Secretary of State the following franchise taxes, computed on
20 the basis, at the rates and for the periods prescribed in this
21 Act:

22 (a) An initial franchise tax at the time of filing its
23 first report of issuance of shares.

24 (b) An additional franchise tax at the time of filing

1 (1) a report of the issuance of additional shares, or (2) a
2 report of an increase in paid-in capital without the
3 issuance of shares, or (3) an amendment to the articles of
4 incorporation or a report of cumulative changes in paid-in
5 capital, whenever any amendment or such report discloses
6 an increase in its paid-in capital over the amount thereof
7 last reported in any document, other than an annual
8 report, interim annual report or final transition annual
9 report required by this Act to be filed in the office of
10 the Secretary of State.

11 (c) An additional franchise tax at the time of filing
12 a report of paid-in capital following a statutory merger
13 or consolidation, which discloses that the paid-in capital
14 of the surviving or new corporation immediately after the
15 merger or consolidation is greater than the sum of the
16 paid-in capital of all of the merged or consolidated
17 corporations as last reported by them in any documents,
18 other than annual reports, required by this Act to be
19 filed in the office of the Secretary of State; and in
20 addition, the surviving or new corporation shall be liable
21 for a further additional franchise tax on the paid-in
22 capital of each of the merged or consolidated corporations
23 as last reported by them in any document, other than an
24 annual report, required by this Act to be filed with the
25 Secretary of State from their taxable year end to the next
26 succeeding anniversary month or, in the case of a

1 corporation which has established an extended filing
2 month, the extended filing month of the surviving or new
3 corporation; however if the taxable year ends within the
4 2-month period immediately preceding the anniversary month
5 or, in the case of a corporation which has established an
6 extended filing month, the extended filing month of the
7 surviving or new corporation the tax will be computed to
8 the anniversary month or, in the case of a corporation
9 which has established an extended filing month, the
10 extended filing month of the surviving or new corporation
11 in the next succeeding calendar year.

12 (d) An annual franchise tax payable each year with the
13 annual report which the corporation is required by this
14 Act to file.

15 On or after January 1, 2020 and prior to January 1, 2021,
16 the first \$30 in liability is exempt from the tax imposed under
17 this Section. On or after January 1, 2021 and prior to January
18 1, 2024, the first \$1,000 in liability is exempt from the tax
19 imposed under this Section. The provisions of this Section
20 shall not require the payment of any franchise tax that would
21 otherwise have been due and payable on or after January 1,
22 2024. There shall be no refunds or proration of franchise tax
23 for any taxes due and payable on or after January 1, 2024 on
24 the basis that a portion of the corporation's taxable year
25 extends beyond January 1, 2024. Public Act 101-9 shall not
26 affect any right accrued or established, or any liability or

1 penalty incurred, prior to January 1, 2024.

2 This Section is repealed on January 1, 2025.

3 (Source: P.A. 101-9, eff. 6-5-19; 102-16, eff. 6-17-21.)

4 (Text of Section from P.A. 102-282)

5 Sec. 15.35. Franchise taxes payable by domestic
6 corporations. For the privilege of exercising its franchises
7 in this State, each domestic corporation shall pay to the
8 Secretary of State the following franchise taxes, computed on
9 the basis, at the rates and for the periods prescribed in this
10 Act:

11 (a) An initial franchise tax at the time of filing its
12 first report of issuance of shares.

13 (b) An additional franchise tax at the time of filing
14 (1) a report of the issuance of additional shares, or (2) a
15 report of an increase in paid-in capital without the
16 issuance of shares, or (3) an amendment to the articles of
17 incorporation or a report of cumulative changes in paid-in
18 capital, whenever any amendment or such report discloses
19 an increase in its paid-in capital over the amount thereof
20 last reported in any document, other than an annual
21 report, interim annual report or final transition annual
22 report required by this Act to be filed in the office of
23 the Secretary of State.

24 (c) An additional franchise tax at the time of filing
25 a report of paid-in capital following a statutory merger

1 or consolidation, which discloses that the paid-in capital
2 of the surviving or new corporation immediately after the
3 merger or consolidation is greater than the sum of the
4 paid-in capital of all of the merged or consolidated
5 corporations as last reported by them in any documents,
6 other than annual reports, required by this Act to be
7 filed in the office of the Secretary of State; and in
8 addition, the surviving or new corporation shall be liable
9 for a further additional franchise tax on the paid-in
10 capital of each of the merged or consolidated corporations
11 as last reported by them in any document, other than an
12 annual report, required by this Act to be filed with the
13 Secretary of State from their taxable year end to the next
14 succeeding anniversary month or, in the case of a
15 corporation which has established an extended filing
16 month, the extended filing month of the surviving or new
17 corporation; however if the taxable year ends within the
18 2-month period immediately preceding the anniversary month
19 or, in the case of a corporation which has established an
20 extended filing month, the extended filing month of the
21 surviving or new corporation the tax will be computed to
22 the anniversary month or, in the case of a corporation
23 which has established an extended filing month, the
24 extended filing month of the surviving or new corporation
25 in the next succeeding calendar year.

26 (d) An annual franchise tax payable each year with the

1 annual report which the corporation is required by this
2 Act to file.

3 On or after January 1, 2020 and prior to January 1, 2021,
4 the first \$30 in liability is exempt from the tax imposed under
5 this Section. On or after January 1, 2021 and prior to January
6 1, 2022, the first \$1,000 in liability is exempt from the tax
7 imposed under this Section. On or after January 1, 2022 and
8 prior to January 1, 2023, the first \$10,000 in liability is
9 exempt from the tax imposed under this Section. On or after
10 January 1, 2023 and prior to January 1, 2024, the first
11 \$100,000 in liability is exempt from the tax imposed under
12 this Section. The provisions of this Section shall not require
13 the payment of any franchise tax that would otherwise have
14 been due and payable on or after January 1, 2024. There shall
15 be no refunds or proration of franchise tax for any taxes due
16 and payable on or after January 1, 2024 on the basis that a
17 portion of the corporation's taxable year extends beyond
18 January 1, 2024. Public Act 101-9 shall not affect any right
19 accrued or established, or any liability or penalty incurred
20 prior to January 1, 2024.

21 This Section is repealed on January 1, 2025 ~~December 31,~~
22 ~~2024~~.

23 (Source: P.A. 101-9, eff. 6-5-19; 102-282, eff. 1-1-22.)

24 (Text of Section from P.A. 102-558)

25 Sec. 15.35. Franchise taxes payable by domestic

1 corporations. For the privilege of exercising its franchises
2 in this State, each domestic corporation shall pay to the
3 Secretary of State the following franchise taxes, computed on
4 the basis, at the rates and for the periods prescribed in this
5 Act:

6 (a) An initial franchise tax at the time of filing its
7 first report of issuance of shares.

8 (b) An additional franchise tax at the time of filing
9 (1) a report of the issuance of additional shares, or (2) a
10 report of an increase in paid-in capital without the
11 issuance of shares, or (3) an amendment to the articles of
12 incorporation or a report of cumulative changes in paid-in
13 capital, whenever any amendment or such report discloses
14 an increase in its paid-in capital over the amount thereof
15 last reported in any document, other than an annual
16 report, interim annual report or final transition annual
17 report required by this Act to be filed in the office of
18 the Secretary of State.

19 (c) An additional franchise tax at the time of filing
20 a report of paid-in capital following a statutory merger
21 or consolidation, which discloses that the paid-in capital
22 of the surviving or new corporation immediately after the
23 merger or consolidation is greater than the sum of the
24 paid-in capital of all of the merged or consolidated
25 corporations as last reported by them in any documents,
26 other than annual reports, required by this Act to be

1 filed in the office of the Secretary of State; and in
2 addition, the surviving or new corporation shall be liable
3 for a further additional franchise tax on the paid-in
4 capital of each of the merged or consolidated corporations
5 as last reported by them in any document, other than an
6 annual report, required by this Act to be filed with the
7 Secretary of State from their taxable year end to the next
8 succeeding anniversary month or, in the case of a
9 corporation which has established an extended filing
10 month, the extended filing month of the surviving or new
11 corporation; however if the taxable year ends within the
12 2-month period immediately preceding the anniversary month
13 or, in the case of a corporation which has established an
14 extended filing month, the extended filing month of the
15 surviving or new corporation the tax will be computed to
16 the anniversary month or, in the case of a corporation
17 which has established an extended filing month, the
18 extended filing month of the surviving or new corporation
19 in the next succeeding calendar year.

20 (d) An annual franchise tax payable each year with the
21 annual report which the corporation is required by this
22 Act to file.

23 On or after January 1, 2020 and prior to January 1, 2021,
24 the first \$30 in liability is exempt from the tax imposed under
25 this Section. On or after January 1, 2021 and prior to January
26 1, 2022, the first \$1,000 in liability is exempt from the tax

1 imposed under this Section. On or after January 1, 2022 and
2 prior to January 1, 2023, the first \$10,000 in liability is
3 exempt from the tax imposed under this Section. On or after
4 January 1, 2023 and prior to January 1, 2024, the first
5 \$100,000 in liability is exempt from the tax imposed under
6 this Section. The provisions of this Section shall not require
7 the payment of any franchise tax that would otherwise have
8 been due and payable on or after January 1, 2024. There shall
9 be no refunds or proration of franchise tax for any taxes due
10 and payable on or after January 1, 2024 on the basis that a
11 portion of the corporation's taxable year extends beyond
12 January 1, 2024. Public Act 101-9 shall not affect any right
13 accrued or established, or any liability or penalty incurred
14 prior to January 1, 2024.

15 This Section is repealed on January 1, 2025 ~~December 31,~~
16 ~~2025~~.

17 (Source: P.A. 101-9, eff. 6-5-19; 102-558, eff. 8-20-21.)

18 (805 ILCS 5/15.65) (from Ch. 32, par. 15.65)

19 Sec. 15.65. Franchise taxes payable by foreign
20 corporations. For the privilege of exercising its authority to
21 transact such business in this State as set out in its
22 application therefor or any amendment thereto, each foreign
23 corporation shall pay to the Secretary of State the following
24 franchise taxes, computed on the basis, at the rates and for
25 the periods prescribed in this Act:

1 (a) An initial franchise tax at the time of filing its
2 application for authority to transact business in this
3 State.

4 (b) An additional franchise tax at the time of filing
5 (1) a report of the issuance of additional shares, or (2) a
6 report of an increase in paid-in capital without the
7 issuance of shares, or (3) a report of cumulative changes
8 in paid-in capital or a report of an exchange or
9 reclassification of shares, whenever any such report
10 discloses an increase in its paid-in capital over the
11 amount thereof last reported in any document, other than
12 an annual report, interim annual report or final
13 transition annual report, required by this Act to be filed
14 in the office of the Secretary of State.

15 (c) Whenever the corporation shall be a party to a
16 statutory merger and shall be the surviving corporation,
17 an additional franchise tax at the time of filing its
18 report following merger, if such report discloses that the
19 amount represented in this State of its paid-in capital
20 immediately after the merger is greater than the aggregate
21 of the amounts represented in this State of the paid-in
22 capital of such of the merged corporations as were
23 authorized to transact business in this State at the time
24 of the merger, as last reported by them in any documents,
25 other than annual reports, required by this Act to be
26 filed in the office of the Secretary of State; and in

1 addition, the surviving corporation shall be liable for a
2 further additional franchise tax on the paid-in capital of
3 each of the merged corporations as last reported by them
4 in any document, other than an annual report, required by
5 this Act to be filed with the Secretary of State, from
6 their taxable year end to the next succeeding anniversary
7 month or, in the case of a corporation which has
8 established an extended filing month, the extended filing
9 month of the surviving corporation; however if the taxable
10 year ends within the 2-month period immediately preceding
11 the anniversary month or the extended filing month of the
12 surviving corporation, the tax will be computed to the
13 anniversary or, extended filing month of the surviving
14 corporation in the next succeeding calendar year.

15 (d) An annual franchise tax payable each year with any
16 annual report which the corporation is required by this
17 Act to file.

18 On or after January 1, 2020 and prior to January 1, 2021,
19 the first \$30 in liability is exempt from the tax imposed under
20 this Section. On or after January 1, 2021 and prior to January
21 1, 2024, the first \$1,000 in liability is exempt from the tax
22 imposed under this Section. The provisions of this Section
23 shall not require the payment of any franchise tax that would
24 otherwise have been due and payable on or after January 1,
25 2024. There shall be no refunds or proration of franchise tax
26 for any taxes due and payable on or after January 1, 2024 on

1 the basis that a portion of the corporation's taxable year
2 extends beyond January 1, 2024. Public Act 101-9 shall not
3 affect any right accrued or established, or any liability or
4 penalty incurred, prior to January 1, 2024.

5 This Section is repealed on January 1, 2025.

6 (Source: P.A. 101-9, eff. 6-5-19; 102-16, eff. 6-17-21;
7 102-558, eff. 8-20-21; 102-813, eff. 5-13-22.)

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