



Legislative Update

by Rob Karr, IFRA Legislative Consultant, Vice President, IRMA

Out with the Old...

The 96th General Assembly adjourned at approximately 2:00 a.m. on Wednesday, January 12, 2011. The final eight days of the session were very active.

Tax Increase

Retroactive to January 1, employees and employers alike will be paying more income taxes – at least through 2015. However, there will also be some effort to restrain spending, which will be as successful as leaders make it.

S.B. 2505 (Sen. John Cullerton, D-Chicago/Rep. Barbara Flynn Currie, D-Chicago) increases the Illinois income tax rate on individuals from 3 percent to 5 percent and on employers from 4.8 percent to 7 percent. That represents a 66 percent increase. Given the fact that employers also pay a 2.5 percent Personal Property Replacement Tax (PPRT) on the same income, S.B. 2505 gives Illinois an effective income tax rate on employers of 9.5 percent.

This gives Illinois the fourth highest employer income tax rate in the nation behind Iowa (12 percent), Pennsylvania (9.99 percent), and Minnesota (9.8 percent). When compared to our border states, the states Illinois is most likely to compete with for economic development, Illinois has given away one of its few competitive advantages. The income tax rate on employers in Missouri is 6.25 percent, Kentucky 6 percent, Indiana 8.5 percent, and Wisconsin 7.9 percent. This week Indiana Governor Mitch Daniels

commented on Governor Patrick Quinn's proposal by stating: "We already had an edge on Illinois in terms of the cost of doing business, and this is going to make it significantly wider."

In addition to the income tax increase, employers who have lost money during what President Barack Obama described as the worst economic downturn since the Great Depression will no longer be able to claim the Net Operating Loss (NOL) exemption against their taxes. This will have an additional and significant financial impact on the many Illinois employers already struggling to stay viable.

In total, the tax package is estimated to increase tax revenue by just over \$7 billion annually. The tax increase package is supposed to be temporary with the rates scheduled to decrease to 4 percent for individuals and 5.6 percent (8.1 percent with PPRT) for employers after 2015. Those rates will be in effect through 2024. After 2024, the rates decrease again to 3.5 percent for individuals and 4.9 percent (7.4 percent with PPRT) for employers. The only other time a temporary income tax was enacted in Illinois, it was made permanent when it was set to expire, so we will have to see what transpires by the time 2015 arrives.

In addition to the tax increase, the Assembly considered S.B. 336 (Sen. William Haine, D-Alton/Rep. Frank Mautino, D-Peru), which would increase the State's bonding authorization by \$8.750 billion. These bonds would have been used to pay the State's significant backlog of bills and other projects. As S.B. 336 needed 71 votes for passage and only received 65, payment to providers on the monies they are owed will be significantly slower.

Cigarette Tax Increase

Last spring, the Senate passed S.B. 44 (Sen. Jeffrey Schoenberg, D-Evanston/Rep. Karen Yarbrough, D-Maywood) seeking to increase the Illinois cigarette tax by \$1 per pack. The bill stalled in the House, however, for lack of support. S.B. 44 was resurrected with a new amendment. As amended by House Amendments #7 and #8, S.B. 44 sought to increase the tax by \$1.01 per pack, but the increase would have been staggered over two years – 76 cents the first year and 25 cents the second year. The existing floor stocks of retailers would not have been re-stamped. Also, snuff would have been taxed at 20 cents per ounce. The monies from S.B. 44, nearly \$400 million, would have largely gone to education with a very small portion for long-term care providers. S.B. 44 only received 51 votes in the House – nine votes short of the 60 needed for passage. This issue will once again be considered in the 97th General Assembly.

Workers' Compensation Reform Stalls

Illinois missed a golden opportunity to remove a significant impediment to economic development and implement significant and meaningful Workers' Compensation Reform. In the face of overwhelming opposition from those entities who profit from the treatment of injured workers (e.g. medical providers, hospitals and attorneys) and representatives of organized labor who are sincerely interested in protecting injured workers, the effort initiated by the Senate and House Democrats to reform Illinois' Workers' Compensation system was not called for a vote. Significantly, House and Senate



Republicans withheld support from the proposal hoping to obtain greater reform in the future. In its final form, the reform proposal would have:

- Reduced the Medical Fee Schedule by a very modest 15 percent. According to the Illinois Department of Insurance, Illinois would have to cut its fee schedule by 50 percent to move from second to third in the ranking of State fee schedules. Nevertheless, 15 percent would have helped to reduce costs for employers – the only entities in the Workers’ Compensation system who actually pay as opposed to getting paid.
- The wage differential would have been capped at the age of 67, or five years after the injury, whichever is later.
- Utilization review would have been strengthened, meaning that medical treatments received by injured workers would have been subject to peer review using nationally recognized standards and evidence-based medicine.
- The employer would have the right to choose the first doctor for the injured employee to see for treatment. The employee would have the right to select a different doctor if they were dissatisfied with the physician chosen by the employer. Under the current system, employees can keep switching physicians until they find one who will render the diagnosis the employee is looking for.
- The amount of money that could be charged for medical implants would have been capped at 25 percent above the net manufacturer’s invoice. Under the current system, employers have witnessed charges from health-care providers that are inflated up to 1000 percent.
- Alcohol and illegal drugs would have been presumed to be the cause of the injury if the worker is injured while under the influence.

State Representative John Bradley (D-Marion), as well as State Representative David Reis (R- Mt. Vernon), spent countless hours prodding the various parties and driving the reform effort. Additionally, thanks are owed to Senate President John Cullerton who clearly recognizes what a significant roadblock the current Illinois Workers’ Compensation system is to economic development, as well as to Speaker of the House Michael J. Madigan (D-Chicago). While the current effort failed for lack of Republican support, Senate President Cullerton announced that the reform effort would continue in the 97th Assembly.

IFRA would also like to thank IRMA President Dave Vite for his representation on the Workers Compensation Reform Committee.

Mainstreet Fairness

Illinois retailers compete against on-line, catalogue, and 1-800 (i.e. remote sellers) on price. This type of competition is fair – it is one business model vs. another.

Unfortunately, Illinois retailers must also compete against many remote sellers on an unfair playing field. Many remote sellers do not collect and remit Illinois’ sales tax. That means Illinois Main Street retailers are facing an automatic competitive disadvantage of between 6.25 percent and 9.75 percent – depending on where the retailer is located. This is unfair because it isn’t business model vs business model; it’s compliance with the law vs. non-compliance. Illinois retailers may soon get relief under legislation passed by the Illinois General Assembly and awaiting the governor’s signature.

H.B. 3659 (Rep. Patrick Verschoore, D-Milan/Senator John Cullerton, D-Chicago) uses the business relationships these remote sellers have with entities (affiliates) in Illinois to establish “nexus” (i.e. physical presence) under the Illinois

Revenue Code. Because remote sellers have these affiliates, and therefore nexus, they must collect and remit the Illinois sales tax, thereby leveling the playing field with Illinois retailers.

In addition to the 49 Senators and 88 Representatives who voted in favor of H.B. 3659, we would like to thank Senate President Cullerton and Representative Verschoore for their sponsorship. Additional thanks are owed to Representative Harry Osterman (D-Chicago) and Senator Jeffrey Schoenberg (D-Evanston) who have also championed this approach. Finally, we would be remiss if we did not recognize Senator Pam Althoff (R-Crystal Lake) who has worked for many years on the Streamlined Sales Tax Program and has done as much as anyone to raise awareness of this issue. While H.B. 3659 is different in its approach, its goal is the same.

Organized Retail Crime

ORC has become a plague to the retail industry. In short, highly sophisticated rings of thieves simultaneously operating in multiple jurisdictions are stealing hundreds of millions of dollars in goods nationwide. A warehouse used by one of these rings was seized this past summer on the northwest side of Chicago. It was found to contain a large amount of stolen goods and \$4.5 million in cash.

In response to the ORC problem, a task force was created to discuss issues related to Organized Retail Crime (ORC) and develop potential enforcement mechanisms. We participated as a member of the task force, together with Cook County, the Cook County State’s Attorney’s office, the Chicago Police Department, local police departments in Cook County, the Cook County Sheriff’s office, some Cook County-based retailers and Sen. Iris Martinez (D-Chicago). After much discussion, the task force was able to agree on weaknesses in the current law that

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needed to be addressed to give law enforcement the tools they need to more adequately and aggressively pursue ORC. The task force's recommendations were formed into legislative language and inserted as Senate Amendment #1 to H.B. 6460 (Rep. Connie Howard, D-Chicago).

As amended, H.B. 6460 seeks to accomplish the following: a) in the case of an undercover operation or "sting," the buyer of the goods will only need to have a reasonable belief that the goods have been stolen; b) if a person commits felony retail theft at least three times within an 18-month period, they will have committed a Continuing Financial Crimes Enterprise (CFCE), making them subject to additional penalties; c) if a person agrees with another person to commit ORC offenses, they will be considered an organizer of a CFCE (or an OCFCE); and d) asset forfeiture provisions will attach to anyone convicted of felony retail theft-related CFCE or OCFCE.

The bill passed the Senate 58-0 and is awaiting concurrence in the Illinois House. On behalf of the Illinois retail community, we would like to thank Sen. Martinez, Rep. Howard and the Cook County State's Attorney's office for their help in making H.B. 6460 reality.

Medicaid Reform

After months of hearings relating to pharmacy, the Assembly passed reform of Illinois' Medicaid system. As contained in H.B. 5420 (Rep. Barbara Flynn Currie, D-Chicago/Sen. Heather Steans, D-Chicago), the many reforms covering the width and breadth of the Medicaid program are estimated to save the State \$744 million over five years. For Medicaid pharmacy, H.B. 5420 included provisions: (1) a requirement that the Illinois Department of Human Services (IDHS) seek a waiver from the Federal Government to require recipients to pay their co-payment or

the pharmacist can refuse to dispense; (2) allowing 90-day prescriptions for generic maintenance medicines; (3) incentivizing additional generic utilization; and (4) reducing the interest payable to pharmacies under the Prompt Payment Act from 2 percent to 1 percent. While the reduction of the interest payment is unfortunate, it pales in comparison to the draconian reductions in dispensing fees that were originally being discussed.

IFRA would like to thank IRMA President Dave Vite for his representation on the Reform Committee.

In with the New...

Tuesday afternoon, January 11, 2011, Governor Pat Quinn (D) was sworn in to his first elected term as Governor, having succeeded to the Governor's Office upon the impeachment of former Governor Rod Blagojevich in early February 2009. His running mate, Sheila Simon, was sworn in as Lt. Governor, filling an office that has been vacant since Quinn became Governor. Attorney General Lisa Madigan (D) and Secretary of State Jesse White (D) were sworn in to their third and fourth terms respectively. Judy Baar Topinka, former State Senator, State Treasurer and a Republican gubernatorial candidate, one of two Republicans to capture a Constitutional Office last November, was sworn in as State Comptroller. The other Republican, former State Senator Dan Rutherford, began his term as State Treasurer.

Illinois Senate

State Senator Suzi Schmidt (R-Lake Villa Township) and State Senator Sam McCann (R-Carlinville), the two Republican candidates who captured seats last November, were sworn in as new Senators in the 97th General Assembly. Three Senators were appointed to fill unexpired terms in the 96th General Assembly, but won their

own terms for the 97th. They are: State Senators John Mulroe (D-Chicago), Toi Hutchinson (D-Chicago Heights) and Kyle McCarter (R-Decatur). Finally, four State Senators resigned for various reasons and replacements were appointed to fill the unexpired term in both the 96th and 97th Assembly. Those new Senators are: Ronald Sandack (R-Lombard), Sue Rezin (R-Morris), Thomas Johnson (R-Wheaton), and Shane Cultra (R-Onarga). Senator Cultra moved from the House where he had recently won another term.

Illinois House

In the Illinois House, six State Representatives were appointed to fill unexpired terms in the 96th Assembly and won their own terms in the 97th. They are State Representatives: Robyn Gabel (D-Evanston), Carol Sente (D-Vernon Hills), Rita Mayfield, (D-Waukegan), Camille Lilly (D-Chicago), Anthony DeLuca (D-Crete), Eddie Lee Jackson, Sr. (D-East St. Louis), Noreen Hammond (R-Macomb), Chad Hays (R-Danville), and Arthur Turner (D-Chicago).

Additionally, there are 17 new members to the 97th Assembly. They include State Representatives: Ann Williams (D-Chicago), Daniel Biss (D-Evanston), Thaddeus Jones (D-Calumet City), Bill Cunningham (D-Chicago), Kelly Burke (D-Evergreen Park), Chris Nybo (R-Elmhurst), Thomas "Tom" Morrison (R-Palatine), Michelle Mussman (D-Schaumburg), David Harris (R-Arlington Heights), Joe Sosnowski (R-Rockford), Richard Morthland (R-Port Byron), Pam Roth (R-Streamwood), Michael Unes (R-East Peoria), Wayne Rosenthal (R-Morrisonville), Adam Brown (R-Decatur), Dwight Kay (R-Glen Carbon), and Jason Barickman (R-Champaign). As with the Senators, IRMA looks forward to working with all the State Representatives of the 97th Assembly. ■