

## Hot Tax Topics for 2017

This month, we are providing a brief summary of previous articles. We have chosen the subjects based on current events—some are found in legislation pending before the General Assembly; others are rumored to be under consideration.

The Taxpayers' Federation of Illinois has a long history of in-depth data and policy analysis, and of course these abbreviated articles only scratch the surface of our earlier work. Nevertheless, we thought it might be useful for our readers to have access to high-level summaries of some of today's trending tax topics all together in one place.

In each piece, we highlight the most interesting data points, relevant policy considerations, and our conclusions (if any). You can access the full original report (and in a few cases, an even longer research paper) on our website, and direct links are at the end of each synopsis.

As always, we encourage you to view these and other tax issues through the lens of the 5 key principles of sound tax policy: adequacy, stability/predictability, fairness, simplicity/collectability/transparency, and efficiency. For a more detailed discussion, see our Statement of Principles on our website (or in last month's issue of *Tax Facts*).

Carol Portman  
President

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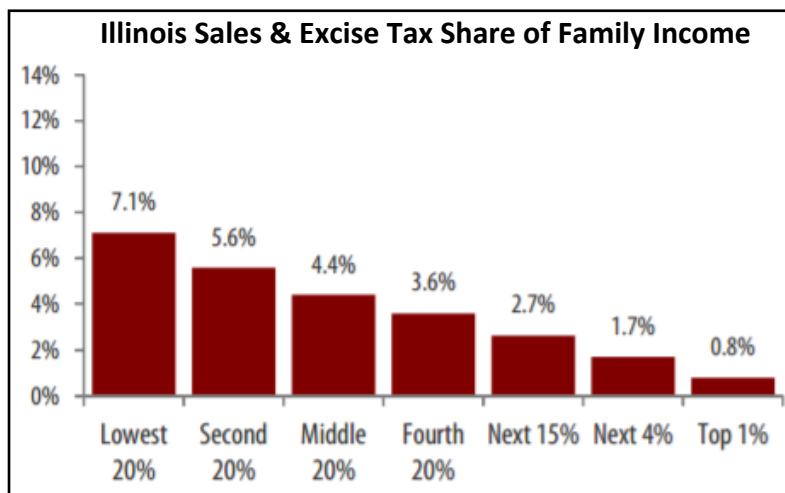
**TAXPAYERS'**  
**FEDERATION**  
— OF ILLINOIS —

# Taxing Groceries—Not Necessarily Regressive

By Carol Portman

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Generally, sales taxes<sup>1</sup> are a tax on consumption.<sup>2</sup> Because people at the lower end of the economic spectrum tend to spend a larger portion of their disposable income on consumption (rather than saving), the sales tax is widely considered to be regressive.<sup>3</sup> Illinois is not exempt from this phenomenon, as the chart below indicates:<sup>4</sup>



To offset the regressive nature of sales tax, Illinois (like most states) provides a sales tax preference—food, drugs, and medical appliances are subject to only 1% in tax, rather than the full tax rate. This cost the state **\$1.850 billion in tax revenue in 2015**.<sup>5</sup> The primary policy reason cited for the lower rate is that taxing groceries disproportionately hurts people with low incomes, who spend a larger portion of their available resources on food.

TFI challenged this assumption in a piece in October 2010, *Is Taxing Food All That Regressive?* by Ryan Aprill.<sup>6</sup> The theory highlighted in our article was borne out more recently in a much more rigorous academic study.<sup>7</sup> The basic premise: a general sales tax exemption on groceries does not really benefit the poor because most of their food is purchased under the Supplemental Nutritional Assistance Program (“SNAP”, formerly known as food stamps) and is therefore tax exempt as a matter of federal law. In other words, the general exemption does not target the intended recipients and is costly in terms of tax dollars, and in administration and compliance aggravations (such as the ever-changing lists of exempt and non-exempt products).

Using SNAP data from Alabama (a full taxing jurisdiction) and New Orleans (a reduced rate jurisdiction) in conjunction with data from the 2012 Consumer Expenditure Quarterly Interview Survey (a survey on consumer’s expenditures and incomes), the authors calculate the impact of taxing food on the poor with and without accounting for the federally-mandated SNAP exemption. They find that, while the poor spend 17 percent of their total expenditures on groceries, only about 0.5 percent of those expenditures can be taxed. They show that calculating the sales

tax burden without taking SNAP into account makes the sales tax look very regressive. However, once the non-taxability of SNAP purchases is taken into consideration the average tax burden based on total consumption becomes slightly progressive. Using a more traditional tax burden estimate based on income (rather than consumption), there is still a substantial decline in the tax burden on the poor once the non-taxability of SNAP purchases is accounted for, although under this analysis the burden remains regressive.

In sum, the federally-mandated sales tax exemption of SNAP purchases reduces the regressivity of a sales tax on groceries, and a sales tax on groceries may even be slightly progressive when tax burden is measured as a percent of consumption, according to this study. As the authors put it:

**While there will always be some of the poor who would pay more if the food at home exemption is repealed, our work suggests that taxing food but compensating with a revenue-neutral reduction in the overall sales tax rate would provide considerable benefits to the poor and, at the same time, lead to a more rational sales tax system.**

#### ENDNOTES:

- <sup>1</sup> In Illinois, the “sales tax” is actually the Retailers’ Occupation Tax (35 ILCS 120/1 et seq), Use Tax (35 ILCS 105/1 et seq), Service Occupation Tax (35 ILCS 115/1 et seq), Service Use Tax (35 ILCS 115/1 et seq), and a myriad of local taxes authorized by separate tax acts but administered together.
- <sup>2</sup> Although sales taxes frequently fall short of this ideal, they are viewed by experts of all political stripes as a retail-level tax to be imposed only on final consumption and not on business-to-business transactions. See, for example, *How Sales and Excise Taxes Work*, Institute on Taxation and Economic Policy, 7/1/2011, and *Three Big Problems with Sales Taxes Today*, Tax Foundation, 2/10/2017.
- <sup>3</sup> A tax that falls more heavily on the poor than on the less poor is called a “regressive” tax. A tax that falls less heavily on the poor than on the less poor is called a “progressive” tax.
- <sup>4</sup> *Who Pays? A distributional Analysis of the Tax Systems in All 50 States*, Institute on Taxation and Economic Policy, January 2015, p. 55.
- <sup>5</sup> Illinois Comptroller’s 2015 Tax Expenditure Report
- <sup>6</sup> Available at [http://www.iltaxwatch.org/pages/show/tax\\_facts](http://www.iltaxwatch.org/pages/show/tax_facts) on page 2.
- <sup>7</sup> Johnson, Anna and Steven Sheffrin. “Rethinking the Sales Tax Food Exclusion with SNAP Benefits.” *State Tax Notes*, January 11, 2016.

# Taxing Retirement Income

By Dr. Natalie Davila

*Natalie Davila is an economist with an extensive background in public finance. She was Director of Research for the Illinois Department of Revenue for 10 years.*

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Illinois is virtually unique in its tax treatment of retirement income. This anomaly has been the topic of much discussion in Illinois tax policy over the last few years. Below, we provide highlights and updates from a research article published by TFI in our November/December 2014 issue of Tax Facts.<sup>1</sup>

## Background

Illinois, like most states, bases its individual income tax on the federal income tax, with a few modifications. To understand what Illinois does with what is commonly characterized as “retirement income” (social security, public and private pensions, IRAs, 401(k) plans, deferred compensation, payments to retired partners, etc.), we need to start at the federal level.

Many forms of retirement income (regular IRAs/401(k)s/deferred compensation) are not taxed when the contribution is made, but are taxed when funds are drawn out. The federal government even taxes two thirds of all Social Security payments.<sup>2</sup> Many states follow this lead or some variation of it, but in Illinois, all categories of retirement income escape tax completely. Only Pennsylvania and Mississippi join Illinois in exempting all retirement income from taxation.

## Key Points from the Data:

- **The lost revenue is significant.** If Illinois treated retirement income like the IRS and most other states, it would have generated \$1.8 billion in additional tax revenue in Tax Year 2014.
- **The numbers are growing.** The number of returns filed claiming the retirement subtraction is growing faster than the total number of returns filed, and retirement income is growing at a higher rate than net income.
- **A lot of people benefit from this tax break.** One in four Illinois individual income tax returns contains a retirement income subtraction. In 2014, 5,623,531 IL-1040 returns were filed, and 1,441,192 of them claimed the subtraction for retirement income.
- **The benefit is not limited to the elderly.** In 2014, 44 percent of the returns filed claiming a retirement income subtraction were from households that did not claim a 65 or older exemption.<sup>3</sup>
- **The benefit is not limited to the poor or middle class.** Approximately 50 percent of returns claiming a retirement income subtraction for 2014 had an AGI over

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<sup>1</sup> Available at [http://www.iltaxwatch.org/pages/show/tax\\_facts](http://www.iltaxwatch.org/pages/show/tax_facts)

<sup>2</sup> The amount of social security benefits subject to income tax varies, depending on the recipient's filing status and income level.

<sup>3</sup> Some of this is surely attributable to situations where the retirement subtraction reduced taxable income to zero, and there was no need to claim any additional benefits associated with being 65 or older. We do not know the actual age of the individuals filing the returns and so use the 65-and-older exemption as a proxy for age.

\$100,000. These returns accounted for 75 percent of the total annual subtraction amount.

- **High-income taxpayers claiming the retirement income subtraction tend to be younger.** For example, in the \$25,000 or less bracket 72.2 percent of individuals taking the retirement income subtraction claimed the 65 or older exemption, while at the AGI bracket of \$1,000,000 or greater, 55.2 percent of individuals claiming the retirement income subtraction also claimed the 65 or older exemption.

#### Additional Thoughts:

- Poor seniors who have to work pay income tax on their wages. Retirees who do not have to work because they have sufficient retirement income do not have to pay income tax.
- The population of seniors living at or below the poverty line has declined significantly since Illinois exempted retirement income from taxation; the poverty rate for those under 65 has increased during this same period.
- The total amount of retirement income subtracted on Illinois tax returns does not necessarily translate directly into a revenue estimate. Any change in behavior

arising from taxation of retirement income has to be factored into making a revenue estimate. Would taxation cause retirees to relocate from Illinois to states with more favorable tax treatment? Research on this topic suggests that there is not strong evidence to indicate that seniors' mobility is significantly influenced by state tax policies.<sup>4</sup> This finding suggests any adjustment to the tax expenditure figure due to relocation would be minimal, but it is an important concern.

**Table 1** illustrates that the total amount of the retirement income subtraction has been growing at a faster rate than total net income. In addition the total number of returns claiming the retirement subtraction has increased at a faster rate than the number of returns as a whole.

Table 1. Illinois Retirement Income Subtraction Trends, 2010-2014				
Year	Total IL-1040 Returns	Total Resident Net Income	Number of Returns with Retirement Subtraction	Net Income of Returns Claiming a Retirement Income Subtraction
2010	5,526,311	\$287,824,715,900	1,398,256	\$39,715,512,203
2011	5,541,592	\$293,994,983,934	1,416,002	\$42,205,264,870
2012	5,545,204	\$323,173,245,122	1,437,933	\$45,461,776,149
2013	5,584,116	\$315,328,801,804	1,433,136	\$45,748,909,013
2014	5,623,531	\$338,629,847,790	1,441,192	\$48,493,581,450
% Change	1.8%	17.7%	3.1%	22.1%

<sup>4</sup> For a review of the literature see Full Exclusion of Retirement Income from State Taxation: Evaluating the Impact in Wisconsin, Workshop in Public Affairs, University of Wisconsin- Madison, June 4, 2013.

# Illinois' Franchise Tax—Still an Archaic Outlier

By Dr. Natalie Davila

*Natalie Davila is an economist with an extensive background in public finance. She was Director of Research for the Illinois Department of Revenue for 10 years.*

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## What is the franchise tax?

Illinois' franchise tax is actually three separate taxes, all based on paid-in capital. When a corporation first registers with the Secretary of State it pays a tax on paid-in capital (0.10%). After that, corporations pay an annual tax on paid-in capital at the same rate (0.10%) and also pay a tax on any additional paid-in capital at a higher rate (0.15%). Only the annual tax has a minimum of \$25 and a maximum of \$2 million. The term "paid-in capital" refers to the money raised by a corporation by issuing stock plus any additional paid-in capital, usually additional cash paid in by shareholders. Paid-in capital is not revenue, nor is it net worth; instead, it is the money that corporations use to build their businesses.

For more information on the origin of the tax (first enacted in 1872) and details of how it is calculated, in Illinois and the few other states still imposing similar taxes, see the November/December 2013 issue of TFI's Tax Facts ([http://www.iltaxwatch.org/pages/show/tax\\_facts](http://www.iltaxwatch.org/pages/show/tax_facts)).

## How much does the franchise tax raise?

These three taxes on paid-in capital raised \$166.4 million in FY 2016, less than 1% of the State's general fund tax revenues.<sup>1</sup>

## What other states have a similar tax?

As of January 1, 2017, only 15 states have some form of a capital-based tax, and only three (Illinois, Alabama, and Mississippi) use paid-in capital as the tax base. Frequently, the tax is effectively an alternative minimum tax to the state's corporate income tax (New York is the best-known example of this). Several states have much lower caps on their taxes (Georgia's is \$5,000, Nebraska's \$11,995, and Alabama's \$15,000), making them very different taxes from Illinois'.

It is also worth noting that there has been a recent movement among states to repeal their franchise tax. Since 2010, Kansas, Ohio, Rhode Island, West Virginia, Missouri, and Pennsylvania have all repealed or phased out their franchise (or capital or net-worth) taxes.

## Issues with Illinois' Franchise Tax

As discussed in more detail in our earlier article and in numerous other publications<sup>2</sup>, the Illinois Franchise Tax is a flawed tax. We highlight some of the problems below.

- **Paid-In Capital Calculation:** The franchise tax base, paid-in-capital, is a specialized calculation not performed for any other purpose, and the oddities in Illinois' law can result in unexpected tax liabilities.



For example, companies that cancel shares of stock (typically from a shareholder buy-out) reduce their paid-in capital for Illinois franchise tax purposes; companies that redeem stock (also a shareholder buy-out with the same economic result) but do not cancel the shares (they become treasury stock) do not reduce their paid-in capital for Illinois franchise tax base-calculating purposes.

- **Pyramiding:** Businesses often operate using multiple legal entities under a parent corporation. Pyramiding—multiple levels of tax on the same investment—can arise under Illinois’ franchise tax, or any tax on capital or net worth, as follows. Company A is formed with \$10,000 of investment funding. The company does well, and after a time the original \$10,000, no longer needed by Company A - is invested in Company B. The following year, Company B purchases \$10,000 of stock in Company C. After all these transactions are complete, the original \$10,000 investment is taxed 3 times annually under the franchise tax because it is part of the paid-in capital of all three companies.
- **Apportionment:** The franchise tax uses both gross receipts and property as factors in determining what portion of a taxpayer’s total paid-in-capital is subject to tax. This apportionment method is significantly different from the single sales factor formula used in calculating the corporate income tax, and even from the

property factor formerly used in apportioning corporate income tax.

### **Has the franchise tax outlived its usefulness?**

At the time the franchise tax was enacted, Illinois corporations did not pay a corporate income tax at either the state or federal level. The franchise tax was conceived as a way for corporations to pay for the relatively new legal protections granted them by the state, and paid-in capital was likely chosen as a tax base because it was one of the only visible bases for the tax. Without a federal income tax system, corporations could easily misreport their incomes and sales to the state to avoid any sales or income-based taxes. Today, the situation is different. Corporations are subject to a wide variety of taxes, including the much more substantial corporate income tax. Corporate incomes are both visible and measured accurately by the federal and state governments.

**TFI’s Bottom Line:** The administrative and policy flaws associated with the franchise tax are significant. It is time for it to go.

### **ENDNOTES:**

- <sup>1</sup> <https://ledger.illinoiscomptroller.gov/index.cfm/find-a-revenue/statewide/?GroupBy=Rev&FY=16&submitted=>. We calculate the total Franchise Tax for FY2016 by extrapolating using the 2 percent of the Franchise Tax that is deposited into the Corporate Franchise Tax Refund Fund. Note that sometimes other fees also collected by the Secretary of State’s Business Services Division are incorrectly included in the franchise tax total. These filing and similar fees are not at issue here.
- <sup>2</sup> See, for example, the article published by TFI member Reed Smith LLP, <https://www.reedsmith.com/Illinois-Corporate-Franchise-Tax--Same-As-It-Never-Was-04-27-2011/>, and *Why Illinois’ Corporate Franchise Tax Should Be Repealed Immediately*, <https://www.illinoispolicy.org/why-illinois-corporate-franchise-tax-should-be-repealed-immediately/>

# Is It Time For A Service Tax?

By Mike Klemens

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For decades, it has been a canon of tax policy geeks that the Illinois sales tax base is too narrow. The issue was closely examined in “Expanding the Base of Illinois’ Sales Tax to Consumer Services Will Both Modernize State Tax Policy and Help Stabilize Revenue,” issued by the Center for Tax and Budget Accountability and TFI, *Tax Facts* 68.3, May/June 2015 ([http://www.iltaxwatch.org/pages/show/tax\\_facts](http://www.iltaxwatch.org/pages/show/tax_facts)).

There are some widely accepted premises associated with taxing services:

1. Illinois taxes relatively fewer services than other states. A survey done by the Federation of Tax Administrators found that Illinois taxes fewer services (17 out of 168) than do most other states (the average was 57). Most of what Illinois does tax are utility services through specific excise taxes.
2. Economic activity is increasingly based more on the sale of services and less on the sale of durable goods. In 1965, services made up 51 percent of the State’s GDP. In 2012, it was 72 percent.<sup>1</sup>
3. Illinois’ sales tax (to be precise, four separate taxes – Retailers’ Occupation Tax, Use Tax, Service Occupation Tax, and Service Use Tax make up what we call sales tax) is

complex, and the inclusion of state-administered local sales taxes (for municipalities, counties, transit districts, and most recently school districts) makes it even more complicated.

4. Illinois’ combined state and local sales tax rates are high – The Tax Foundation placed them at 8.64 percent in its weighted calculation, seventh highest in the country. (The Tax Foundation considers the combined sales tax rate to be 6.25 percent state/2.39 percent local; others would say 5 percent state/3.64 percent local.)
5. Sales tax should be imposed only on the final retail sale to avoid pyramiding, where a tax at an intermediate level gets built into the price of a service or goods and taxed again at the final sale.<sup>2</sup>

Other aspects of bringing services into the Illinois sales tax base are less settled, with disagreement about:

- a. Which services Illinois should tax? Few states tax services broadly, and most tax a

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<sup>1</sup> Bureau of Economic Analysis, Gross Domestic Product by State comparing Private goods-producing industries and Private services-providing industries.

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<sup>2</sup> Illinois doesn’t make the distinction between intermediate transactions and final sales very well. A manufacturer who makes widgets can claim an exemption and avoid sales tax on his widget press and not have that cost reflected in the widgets’ price and be taxed again when they are sold. In past years, the rags and lubricants used to keep the widget press running were eligible for the absurdly complicated and now-expired Manufacturer’s Purchase Credit. Both exemption and the credit get labeled as “loopholes” from time to time, but both exist to accommodate a tax code that doesn’t otherwise properly handle intermediate sales. See “Illinois Tax Expenditures: Lots More than Tax Incentives,” *Tax Facts* 67.2. February 2014.



list of specific services instead. This could present a problem for Illinois, depending on how modern courts apply the holding of the 1968 *Fiorito v. Jones* case and the Illinois Constitution's uniformity clause.<sup>3</sup>

- b. How much revenue would a service tax generate? That of course depends on which services are taxed. An estimate in the 2015 *Illinois State Budget Book* put the number at \$8 billion. In "Expanding the Base of Illinois' Sales Tax to Consumer Services" we used a \$2.1 billion number.<sup>4</sup> The Commission on Government Forecasting and Accountability (COGFA) has redone estimates with a new methodology that reduces the number further (see below).
- c. If we broaden the tax base and generate new revenues, shouldn't we also reduce tax rates that are already among the highest in the country?
- d. How quickly can the expanded tax be implemented? Rules, procedures and most importantly an educational campaign to get new taxpayers registered will all be necessary.
- e. How do we handle business-to-business transactions, to avoid pyramiding? Excluding professional services solves a piece of the issue. One option would be to exclude all business-to-business transactions. Another alternative would be to exclude from the base service categories that are pri-

marily business oriented such as advertising agency or security services.

### **The newest estimates**

As indicated above, in January 2017 COGFA released new estimates, based upon more refined census data that included product line information instead of just broad industry classifications. They limited their work to surrounding states, attempted to exclude non-final transactions, and assumed full compliance would take several years to achieve. The result is an estimate of what Illinois would generate if it taxed the same services as each of our surrounding states:

State	Additional Services Taxed	Additional Illinois Revenue When Fully Implemented (millions)
Iowa	81	\$1,203.7
Indiana	8	\$281.4
Kentucky	6	\$178.6
Missouri	11	\$255.8
Wisconsin	14	\$588.0

### **Conclusion**

Including services in Illinois' sales tax base would have many advantages. It would be in keeping with TFI's championing of broad-base, low-rate taxation, particularly if some of the proceeds were used to reduce the high state and local sales tax rates. The base expansion will not be simple, however, and it is absolutely critical that tax pyramiding be minimized by exempting business to business transactions.

<sup>3</sup> TFI believes a properly constructed tax on enumerated services, even through our existing sales tax structure, if supported by clear legislative intent, could survive a constitutional challenge, but the question is not free from doubt.

<sup>4</sup> Using the best data available at the time, but believing that it was likely over-inclusive.

# Who Gets the Education Credit?

By Mike Klemens

Mike Klemens, President of KDM Consulting Inc., does tax policy research for the Taxpayers' Federation of Illinois.

The Illinois Education Expense Credit was first available in 2000. It was designed to provide an income tax break to parents sending their children to private schools while also paying school property taxes. A family can claim for their child or children 25 percent of the tuition, book fees and lab fees over \$250 paid to public or private elementary or secondary schools, with a maximum credit of \$500 per family. We looked at the data for the first 11 years of the program in “Illinois Education Expense Credit,” *Tax Facts* 66.4, September/October 2013, ([file:///C:/Users/kellie.ILTAXWATCH/Downloads/42\\_September%20October%202013%20Tax%20FactsFINAL%20\(1\).PDF](file:///C:/Users/kellie.ILTAXWATCH/Downloads/42_September%20October%202013%20Tax%20FactsFINAL%20(1).PDF)) and subsequent data support our original conclusions<sup>1</sup>:

- Both the total amount of the credit claimed and the number of returns upon which the credit was claimed increased from the beginning of the program until 2011, leveling off at around 295,000 returns claiming the credit and total credits of roughly \$80 million.
- During that time, the number of private school pupils state-wide fell, while the number of returns claiming the credit and the total credit amount increased. In 2000 there were 323,000 students in nonpublic

(private) schools and the education expense credit was claimed on 166,000 returns. In 2014 the 286,000 households claiming the credit outnumbered the 220,000 private school students.

- The credit continues to skew towards higher income residents. For example, as shown in the table below, in 2014 households with net income over \$250,000 represented 3 percent of all tax returns filed, but claimed 11 percent of the credit.

Stratification of All Households and Those Claiming Education Expense Credit, 2014			
Net Income	Percent Of All Returns	Education Expense Credit Total	Percent of Education Expense Credit
\$0 to \$50,000	69%	\$25,731,271	32%
\$50,000-\$100,000	18%	\$20,839,191	26%
\$100,000-\$250,000	11%	\$24,850,006	31%
>\$250,000	3%	\$8,745,731	11%

**Conclusion:** The Education Expense Credit has evolved from its stated goal of offering a break to parents who pay for private school tuition to providing a tax break for parents who pay public school student fees. The credit tends to be taken by higher income parents.

<sup>1</sup> The program is difficult to assess fully because we lack data on both the number of children claimed per return and on whether the children are in public or private school, but some conclusions are possible.

# Who Really Pays a Tax?

By Mike Klemens

Mike Klemens, President of KDM Consulting Inc., does tax policy research for the Taxpayers' Federation of Illinois.

No one wants to pay more taxes, and at all levels of government there is an emphasis on assuring average voters that **they** won't be asked to pay new or higher taxes. With some taxes, it is relatively clear who pays the tax. Smokers pay the cigarette tax, and individuals pay the personal income tax. However, for business taxes the answer is much less clear. TFI addressed the question in "Looking More Closely: Who Really Pays Illinois Taxes?" *Tax Facts* 69.2, March/April 2016.

The relevant distinction is between the *legal incidence* of a tax (who remits it to the government) and the *economic incidence* of a tax (who is affected by the tax). The legal incidence of Illinois' corporate income tax is on corporations but the economic incidence can stretch to customers paying higher prices, employees receiving lower wages, suppliers receiving less, or shareholders seeing lower returns on their investments (or some combination thereof).

Tracing out the economic incidence of taxes is complicated. The Minnesota Department of Revenue conducts a biennial study of tax incidence in Minnesota using federal and state sources, including a sample of more than 100,000 Minnesota households.

We can apply the findings from the latest Minnesota study to Illinois. (Of course, Illinois is not Minnesota, but the conclusions are still interesting and probably not too far off.) For fiscal year 2016, Illinois' \$2,394,586,460 in corporate income tax receipts would have been borne as follows:

<b>\$1,017,220,328 - shifted to Illinois consumers through higher prices</b>
<b>\$282,561,202 - shifted to Illinois workers through lower wages</b>
<b>\$113,024,481 - borne by Illinois business owners</b>
<b>\$981,780,449 - exported to consumers and business owners outside Illinois</b>

In other words, the seemingly simple question of who pays a tax is not simple at all.

Illinois Tax Facts

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### Wednesday, April 5

Inn at 835, Springfield

- 5:30 - 6:30 p.m. Legislative Reception
- 6:45 p.m. Dinner for TFI members and guests

### Thursday, April 6

State House Inn, Springfield

- 8:15 a.m. Registration
- 8:30 - 11:00 a.m. Legislative Seminar

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