



# TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

## A note from the co-editors

By Mary Ann Connelly and Stanley R. Kaminski

This edition of *Tax Trends* features an interesting article by Matthew Flamm about Fastcase. Matt described to me what a useful tool he has discovered Fastcase to be. He agreed to write an article about Fastcase for those of us who are not technologically savvy.

The second article is by David Kupiec, and

Natalie Martin, about the new Tax Tribunal that is scheduled to begin January 1, 2014. They review what issues practitioners and their clients should consider in order to determine whether the new tax tribunal is the appropriate venue for their client. ■

## Chair's column: Welcome! 2013-2014 to be another period of state tax change

By David J. Kupiec

As Council Chair, I welcome you to the State and Local Taxation Section for the 2013-2014 year. First, a special thank you to my predecessor, Tara Ori, for her leadership and guidance of the Council this past year as well as each member and associate editor of the Council for their continued time and efforts.

If you take a moment to review the Council members and associate editors listed in each edition of *Tax Trends*, you will see that the Council consists of individuals with extensive state and local tax backgrounds and experiences. It is the experience level of these individuals that allows the Council to: perform a detailed review of each tax bill introduced; review proposed tax regulations before promulgation; offer quality and timely CLE programs; and issue monthly editions of *Tax Trends* for the benefit of our fellow ISBA members.

This year we will continue our role of reviewing proposed state and local tax law and policy changes and continue this Council's tradition of providing timely and relevant tax information to its members. Our June 13<sup>th</sup> CLE program on the new Illinois Tax Tribunal not only addressed

issues concerning the last minute legislation which revised the start date of the Tribunal from July 1, 2013 to January 1, 2014, but also included presentations by State Representative Zalewski (the sponsor of the tax tribunal legislation) and representatives from the Illinois Department of Revenue, Taxpayers' Federation of Illinois, Illinois Chamber of Commerce and the Council On State Taxation (a national taxpayer organization). Also, we will continue to monitor the Marketplace Fairness Act of 2013, which recently passed the United States Senate and addresses which remote sellers are required to collect sales and use tax.

Another issue that we may be asked to address is the scheduled roll back of the Illinois income tax rate effective January 1, 2015. Although most, if not all, take no pleasure in paying state taxes, there is a common understanding of the importance of funding State services and operations. Notwithstanding, "the courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for

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*(Notice to librarians: The following issues were published in Volume 56 of this newsletter during the fiscal year ending June 30, 2013: July, No. 1; August, No. 2; September, No. 3; October, No. 4; November, No. 5; December, No. 6; January, No. 7; February, No. 8; March, No. 9; April, No. 10; May, No. 11; June, No. 4).*



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## Chair's column: Welcome! 2013-2014 to be another period of state tax change

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nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant." *Commissioner v. Newman*, 159 F2d 848 (1947). In balancing the requirement to pay our fair share and the need to fund State operations, I will continue my predecessors'

goal of continuing to improve the overall quality and integrity of our practices and the image of attorneys overall.

In closing, I am humbled to serve as Chair of this Section and look forward to working with all of you in making this a productive year. ■

## FastCase—Free legal research for ISBA members

By Matthew A. Flamm, Flamm, Teibloom & Stanko, Ltd.

**A**re you paying too much for Lexis or Westlaw? Would you like a powerful, easy-to-use legal research service that's free? Then try Fastcase.

Fastcase offers nationwide legal research, including state and federal statutes and case law. Fastcase offers paid subscriptions, but you don't need to pay for one. Fastcase has partnered with the Illinois State Bar Association to offer its service free to ISBA members.

If you're an ISBA member, go to [www.isba.org/fastcase](http://www.isba.org/fastcase). Click on the button marked "ISBA Members log in to Fastcase." Enter your username; if you haven't created one, it will be your ISBA member number. Enter your password, which is your last name by default. Click "Log in."

The first screen you will see includes a "Quick Caselaw Search" window. You have a choice of researching law of a single state (probably Illinois) or all jurisdictions. This window is especially helpful if you already know a case name, statute number, or other distinctive fragment that will limit your search.

Various other options are available. "Advanced Caselaw Search" lets you define more complex queries. You can search Federal or state statutes, regulations, constitutions, court rules, Attorney General opinions, executive orders, ethics opinions, administrative opinions and orders, newspapers, federal filings (through [Justia.com](http://Justia.com)), or legal forms (through US Legal Forms).

The right side of the welcome screen offers various options for obtaining help. There

are answers to frequently asked questions (FAQs), an online user guide, and tutorials. You can also communicate with Fastcase via live chat or e-mail.

Having used other legal research services, I appreciate the ease with which Fastcase lets you save or print a case or other document. From the Print menu, specify what format and how many columns you want (I typically select Microsoft Word format and two columns). Then click "Print/Save." The case will appear on your screen. You can save it to your computer and/or print it.

Fastcase offers a free app for iPhone, iPad, and Android. The app is available even if you don't belong to the ISBA or have a paid subscription. The interface is uncomplicated, which makes it easy to read a document or conduct a search on a small screen. While discussing legal issues with other lawyers, I often open the Fastcase app, find the relevant case or statute, and settle the dispute quickly. You can link the app to your Fastcase account so that recent searches will appear on all of your devices.

Fastcase may not offer all the bells and whistles that Lexis and Westlaw do, but it's more than sufficient for most legal research needs. The interface is simpler, which means that it appears on your screen quickly without confusing, overlapping windows.

As an ISBA member, your dues include access to Fastcase. Try it the next time you need to look up a case or statute. It's a valuable resource, especially for small firm lawyers. ■

## TAX TRENDS

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# Who should consider using the new Illinois Tax Tribunal

By David J. Kupiec and Natalie M. Martin

*(originally presented at the ISBA State & Local Tax Seminar on June 13, 2013)*

## Illinois Tax Tribunal

The Tax Tribunal initially was initially scheduled to begin July 1, 2013. The statute was amended to begin January 1, 2014, but matters in Administrative Hearings after July 1, 2013, may be transferred to the Tax Tribunal. The Tax Tribunal venue applies to tax matters over \$15,000. The taxpayer does not need to pay the tax assessment to file a petition before the Tribunal, but there is a \$500 filing fee.

Originally the taxpayer's option to consider when an audit assessment was issued or refund claim was denied was to pay, or settle or forego contesting the claim. Administrative hearings or Circuit Court were generally the only options to consider.

## Pay/Settle/Forgo Options and Questions

Is the issue recurring or isolated? What is the amount at issue? Is it a factual issue or legal issue? What are the legislative or regulatory changes? Is there a change in the business or circumstances? Restructure to avoid issue. What are the Administrative time and costs to support a refund?

## Administrative Hearings Option before January 1, 2014

All administrative cases must be filed in Administrative hearing prior to January 1, 2014 and after January 1, 2014 those administrative cases under \$15,000. The taxpayer is not required to pay the tax assessment. The tax proceeding is confidential. All decisions reviewed by the Illinois Department of Revenue Director. No statutory deadline to issue a decision. Decisions in favor of the taxpayer cannot be appealed by the Illinois Department of Revenue. Director's decision generally has a presumption of correctness that must be overcome by the Taxpayer. Taxpayer can appeal to the Circuit Court but no de novo review. There is no limitation on the tax amount. There are possible settlement opportunities.

## Circuit Court Option

The taxpayer is required to pay the en-

tire assessment under Protest Monies Act in order to file a case. De Novo review by the Circuit Court. There are procedural issues that must be considered. The matters are not confidential. Both parties may appeal to the Appellate Court. Money is refunded to the taxpayer from the Protest Monies fund.

## What's different?

The new Tax Tribunal only applies to cases over \$15,000. Jurisdiction is limited. Judges to be appointed will only preside over tax cases. The forum is independent of the Illinois Department of Revenue Director's oversight. There are statutory time requirements. No prepayment is required. The taxpayer is identified, so case is not totally confidential. \$500 filing fee required unless a hardship. Mediation is also an option that is available to the taxpayer.


The Tax Tribunal is allowed a Chief Administrative Law Judge and up to 3 additional judges. There are some limited bond requirements. The taxpayers may represent themselves or may be represented by an attorney. The Illinois Department of Revenue is represented by the Illinois Department of Revenue and the Attorney General's attorneys. There is a mediation component. Other issues pertaining to electronic filing, infrastructure and location are yet to be determined.

## Modeled after American Bar Association Act

The Tax Tribunal Legislation was modeled after the American Bar Association Act. Proposed regulations were also based on some portions of the American bar Association Act.

## Issues to Consider

- Does my client's matter qualify for the tax tribunal? Consider the amount of tax and the timing of the notice/protest.
- What are the financial concerns? Payment of tax
- What are the privacy concerns? Is there information that the taxpayer does not want to be public?
- What is the cost of litigation?
- What are the constitutional challenges?
- What are the procedural or evidentiary issues to consider?
- What is the impact on the probability of success?
- Who will be the Tax Tribunal Judges?
- When is the initial start time? What transition issues will arise?
- What will be required for establishment of a record?
- Promulgation of Tribunal regulations
- Tax Tribunal caseload?
- Lack of tribunal precedent.
- Mediation option. ■




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