

## Financial Transaction Tax

**Financial Transaction Tax:** The City does not impose a tax on financial transactions, such as stock or derivatives trades, swaps, or options contracts.

### Background

Chicago is home to 22% of the world's derivative trading volume,<sup>1</sup> with Chicago-based exchanges generating 4.7 billion in annual global derivatives trading volume in 2014. The Chicago Mercantile Exchange (CME) posted the largest annual volume of all global derivatives exchanges in 2014. The Chicago Board Options Exchange (CBOE) is the largest options exchange in the U.S., and the Chicago-based Options Clearing Corporation clears all U.S. options contracts – 4.6 billion in 2014. World Business Chicago counted 47,614 jobs in the financial trading industry in 2014, with every trading job contributing an estimated 2.2 additional jobs in other industries across the Chicago economy.

### Revenue Impact

The revenue generated by a financial transaction tax would vary significantly based on the type of transactions taxed, the basis for the tax (e.g. a per contract tax, a percentage of the underlying/notional value of the contract, etc.), and the tax rate. A number of estimates have been submitted by various groups and media outlets in recent years.

However, any estimate must account for the mobility of this industry. As of July 2015, when CME shut down almost all of their open outcry futures pits, the company stated that 88 percent of their trades occurred electronically; and 98 percent of CBOE's trades occurred electronically through servers located in New Jersey. This not only presents a legal issue, as further described below, but demonstrates how easy it would be for these companies to re-locate outside of Chicago or for their customers to use competitors outside of Chicago.

### Legal Authority

The City's home rule authority does not include the authority to impose a tax on financial transactions. Any attempt to impose such a tax would almost certainly be held to be an unauthorized occupation tax. Further, State statute specifically provides that “[n]o unit of local government shall levy any tax on stock, commodity or options transactions.” 35 ILCS 820/1.

In addition to State law restrictions, federal statute prohibits state and local governments from taxing certain securities trades unless there is a connection to the state or locality other than the mere fact that the trades are routed through an in-state clearing house or transfer agent. 15 U.S.C § 78bb(d). This statute applies to stocks but not to commodities. A tax on commodities trades would not be prohibited by the statute, but it would still require a sufficient “nexus” (or connection) to Chicago (note that derivatives may be either stock or commodity-based). In either case, a trade involving a Chicago buyer or seller or significant activity on the part of a Chicago broker might have sufficient nexus to be taxed; however, a trade involving only a Chicago clearing house or computer server might not.

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<sup>1</sup> Derivatives are financial products based on the expected performance of an underlying asset. For instance, a futures contract in corn is a derivative, since it is bought and sold based on the market's expectation of the future price of corn.

### **Other Cities**

No other U.S. city has a financial transaction tax. The federal government imposes a minor fee on financial transactions to fund the Securities and Exchange Commission.

In 1907, New York imposed a tax on all sales or transfers of shares or stock in the State. However, in 1966 the tax was amended to address the loss of business to stock markets in states without local transfer taxes – capping liability under the tax for any in-state sale or transfer. This amendment was held by the U.S. Supreme Court to violate the Commerce Clause of the U.S. Constitution by providing a direct commercial advantage to local businesses. Following that decision, the State began to phase out the tax by providing rebates to those subject to the tax. By 1981, the level of this rebate reached 100% of the tax amount, effectively repealing the tax.