Multistate Tax
EXTERNAL ALERT

Enacted Legislation in Pennsylvania Includes Multiple Tax Law Changes

July 12, 2013

Overview

On July 9, 2013, in conjunction with the 2013-2014 Budget process, Pennsylvania Governor Tom Corbett signed House Bill 465 into law as Act 52.[1] In this Alert, we highlight some of the more significant changes to the Pennsylvania Tax Reform Code resulting from the Act.[2]

Capital Stock / Foreign Franchise Tax

- Extension of Phase-Out Period: The Capital Stock / Foreign Franchise Tax was scheduled to expire for taxable years beginning after December 31, 2013. The expiration is delayed for two years, until tax years beginning after December 31, 2015. The tax rate will gradually phase down from the current level of 0.89 mills to 0.67 mills in 2014 and 0.45 mills in 2015.

Corporate Net Income Tax

- Related Party Expense Addback: Effective for taxable years beginning after December 31, 2014, taxpayers generally may not deduct intangible or interest expenses and costs paid or accrued to an affiliated entity. A tax credit is available if the affiliated entity is subject to tax on the corresponding intangible or interest item in any U.S. state or possession. Various exceptions are provided to the addback requirement if certain conditions are met, such as business purpose and arm's length criteria; transactions with affiliates located in a foreign nation that has a comprehensive tax treaty with the United States; and some instances where the affiliate incurs a similar payment to an unrelated party.

- Market Sourcing for Service Revenue: For tax years beginning after on or after January 1, 2014, the receipt from the sale of a service will to be sourced to Pennsylvania for apportionment purposes if the service is delivered to a location in the State, or based on the relative value of the services delivered to Pennsylvania. Special rules are applicable for apportioning the business income of satellite television service providers.

- Increased Net Operating Loss Deductions: The current net loss deduction limitation (the greater of $3,000,000 or 20% of Pennsylvania taxable income) is increased to the greater of $4,000,000 or 25% of Pennsylvania taxable income for tax years beginning after December 31, 2013, and to the greater of $5,000,000 or 30% of Pennsylvania taxable income for tax years beginning after December 31, 2014.

Bank Shares Tax

Act 52 provides numerous changes and updates to the Bank Shares Tax, imposed on certain financial institutions, effective January 1, 2014, including:

- Replacement of the six-year moving average valuation calculation with a valuation based on the end of the preceding tax year;
- Reduction of the tax rate on taxable share value from 1.25% to 0.89%, and modification of the tax base from total equity capital to total bank equity capital;

[1] Act 52 of July 9, 2013, House Bill 465, Printer's No. 2211, Session of 2013. House Bill 465 amalgamates legislative proposals from several prior bills, including House Bill 440. It should be noted that House Bill 440 also included a proposed reduction of the Corporate Net Income Tax rate; however, the reduction was not included in Act 52.
[2] A separate bill is also pending that, if approved and enacted, would amend the Pennsylvania Fiscal Code including a provision to repeal the Corporate Loans Tax. See Senate Bill 591, Printer's No. 1328, Session of 2013.

- Conversion from a three-factor apportionment formula to a single receipts factor;
- Revised definitions regarding the sourcing of receipts, generally reflecting a market-based approach; and
- New broader definitions of the standard for "doing business," including solicitation of business in Pennsylvania by or for the benefit of the bank through person-to-person contact, mail, telephone or other electronic means, or the use of advertising published, produced or distributed in Pennsylvania, and other activities provided such activities generate gross receipts apportioned to Pennsylvania in excess of $100,000.

Sales and Use Tax

- Provides a new exemption for the sale at retail or use of aircraft parts, services to aircraft, and aircraft components commencing 90 days after enactment.
- Repeals the call center tax credit effective July 1, 2013.
- Permanently extends the additional 1% Philadelphia local sales and use tax rate (making a total add-on of 2%), which was scheduled to expire after June 30, 2014.

Personal Income Tax

Act 52 provides various changes to Personal Income Tax provisions including the following, which are effective for tax years beginning in 2014 and thereafter:

- The Pennsylvania resident tax credit for taxes paid to foreign countries has been eliminated; however, tax credits will continue to be allowed for taxes paid to other states.
- A taxpayer who elects to deduct any Start-up Expenditure in accordance with Internal Revenue Code §195 will be permitted a corresponding Pennsylvania deduction in the same tax year.
- A taxpayer who elects to currently deduct Intangible Drilling and Development Costs in accordance with Internal Revenue Code §263(c) may elect to currently deduct up to one-third of such costs and amortize the remainder over a ten-year period for Pennsylvania purposes.

Other Changes

- Realty Transfer Tax: Effective January 1, 2014, the definition of a "real estate company" is expanded to give effect to property held outside Pennsylvania and to include certain entities in a tiered structure. In determining whether a real estate company becomes "acquired," a legally binding commitment or option to acquire additional ownership interests may be taken into account. Additionally, a new exemption is provided, retroactive to November 1, 2011, for certain transfers to a volunteer emergency medical service, fire or rescue company.
- Credits and Incentives: Act 52 adopts several new programs including the Innovate in PA Tax Credit, the Mobile Telecommunications Broadband Investment Tax Credit and the City Revitalization and Improvement Zones program. Additionally, Act 52 readopts and/or modifies certain existing programs, such as the Film Tax Credit, Educational Opportunity Scholarship Tax Credit, Job Creation Tax Credit, Neighborhood Improvement Zones and the Keystone Special Development Zone Program.

Tax Procedure

- Enhanced Enforcement Provisions: Act 52 increases the reporting and withholding requirements for estates, trusts, and pass-through entities and authorizes entity-level tax assessments and the imposition of penalties upon entities that fail to comply. Non-filing corporations are subject to a revised non-filing penalty of $500, plus 1% for every dollar of tax due in excess of $25,000. The Act also shortens the appeal period from 90 days to 30 days for businesses operating without a sales tax license.

- Board of Finance and Revenue Reform: Act 52 reduces the existing six member panel to three members, comprised of the State Treasurer or designee and two full-time members appointed by the Governor, who each must be either an attorney or a CPA having substantial knowledge of Pennsylvania tax laws. Additionally, the Board may accept compromise settlements and will publish redacted decisions and dissenting opinions.

Contacts

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