

PHILADELPHIA AMENDS BUSINESS PRIVILEGE TAX BASES, RATES & CREDITS & PROVIDES RELIEF TO NEW BUSINESSES

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Philadelphia City Council unanimously passed bills number 110554 and 110548-A, both signed by the mayor on November 14. Bill number 110554 amends the city's Business Privilege Tax (BPT) to allow for an exclusion for all taxpayers for a flat amount of receipts from the gross receipts portion of the tax, a pro-rata exclusion from the net income portion of the tax to account for the excluded receipts, a credit against tax to allow for use of single-factor apportionment, and a restructuring of the tax rate reductions currently in place for both portions of the tax. Bill number 110548-A provides certain BPT and license fee relief to new businesses in Philadelphia.

Under the amended BPT law, the one-time Business Privilege license fee payable by all taxpayers doing business in the city (currently \$300) will be eliminated effective January 1, 2014. In addition, all taxpayers will receive an exclusion for a set amount of receipts from the gross receipts portion of the tax, to be phased-in over three years beginning in 2014. The exclusion is set at \$50,000 for tax year 2014, \$75,000 for tax year 2015, and \$100,000 for tax years 2016 and thereafter. Further, a taxpayer may exclude from net income a pro-rata portion of the net income attributable to the excluded receipts, although the ordinance does not provide a specific method of calculating the proration. The effect will be to eliminate tax liability for a number of small businesses.

The amended law also changes the currently scheduled BPT rate reductions. A May 2008 ordinance phased-in lower tax rates for both the net income and gross receipts portion of the BPT, with a final result in 2017 of a complete phase-out of the gross receipts portion of the tax and a 6 percent rate on net income. A December 2008 ordinance slowed the phase-in to tax year 2022. The amended BPT ordinance

freezes the tax on gross receipts at the current rate of 1.415 million indefinitely and will slow the reduction in the rate for the net income portion, with rates for tax years 2014 through 2022 between .03 percent and .10 percent higher than per the December 2008 ordinance and the 6 percent rate delayed until tax year 2023.

The amendment provides a new credit against the net income portion of the BPT, meant to ensure the use of single sales factor apportionment by tax year 2015. Beginning in tax year 2013, a taxpayer will be allowed a credit equal to a certain percentage of the difference between its liability for the net income portion of the tax calculated using the apportionment formula than in effect (currently three-factor with double-weighted sales) and what its liability would be using a single sales factor apportionment formula (the credit base). The credit will be non-refundable and cannot be carried forward. For tax years 2013 and 2014, the percentage of the credit base available as a credit will be set to what the Revenue Department determines to be fiscally prudent. Given the current economic client, it is expected that no credit will be allowed during tax years 2013 and 2014. For tax years 2015 and thereafter, the credit will be equal to 100 percent of the credit base. However, no credit will be available in any year where the Revenue Department has enacted regulations providing for a standard apportionment formula using a single sales factor. It is expected that such regulations will be in place by 2015; thus, the single sales factor apportionment credit will likely never be used.

Finally, the amended BPT law provides that the new tax rates and the single sales factor apportionment credit may not affect a taxpayer's liability for estimated BPT payments. Under current law, at the time of the filing of its current year

BPT return, a taxpayer must make an estimated payment of the following year's BPT tax equal to its current year BPT liability. For example, if a taxpayer shows a \$10,000 BPT liability on its 2011 BPT Return due April 15, 2012, it must at the same time make a 2012 BPT estimated payment of \$10,000. The amended law provides that a taxpayer's estimated BPT payment may not take into account any reduction in tax rate for the subsequent tax year, as well as that the current year BPT liability on which the estimated BPT payment is based is the amount due for the current year without regard to any single sales factor apportionment credit.

Pursuing business development, the city has put in place additional incentives for new businesses. Effective tax year 2012, all city license fees and the first two years of BPT liability are waived for any taxpayer that is a "New Business"

as defined by ordinance. The following requirements must be met: (1) the taxpayer cannot have been subject to BPT at any time during the five tax years prior to tax year 2012; (2) the taxpayer must hire within its first 12 months of operation at least three full-time employees who are not family members, which employees must continue to be employed through the taxpayer's first 18 months of operation, and an additional three full-time employees who are not family members within the subsequent six months, which employees must continue to be employed through the taxpayer's first 24 months of operation; and (3) the taxpayer must file an application with the Revenue Department. A new business does not include businesses affiliated with other businesses already subject to BPT or an entity created through an ownership change of a business already subject to BPT.