

PENNSYLVANIA TAX CHANGES – 2009/2010 BUDGET BILL

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More than 100 days after the due date mandated by law, the Pennsylvania budget for fiscal year 2009/2010 budget was finally passed and signed into law by Governor Rendell. This article contains a summary of the most important tax aspects of that legislation.

TAX AMNESTY

Pennsylvania has passed a tax amnesty program that will run from April 26, 2010 to June 18, 2010. Under the program, a taxpayer would be required to file a tax amnesty return and make payment of all delinquent taxes and 50% of all interest due to the Commonwealth – 100% of penalties and the remaining 50% of interest would be abated. Taxpayers who participated in the tax amnesty program established in 1995 are not eligible to participate. Guidelines on the program were published in the December 5, 2009 Pennsylvania Bulletin and can be accessed at the following website: www.pabulletin.com/secure/data/vol39/39-49/2237.html. A separate tax alert discussing the amnesty program in more detail will be distributed shortly.

CAPITAL STOCK-FRANCHISE TAX

As was expected by many tax practitioners, the phase-out of the Capital Stock-Franchise Tax has been temporarily frozen. The Capital Stock-Franchise Tax was scheduled to be eliminated after 2010. Under the newly passed legislation, the Capital Stock-Franchise Tax will not be phased out until 2014.

The Capital Stock-Franchise Tax will be imposed at the rate of 2.89 mills for tax years beginning January 1, 2008 through December 31, 2011. For tax years beginning January 1, 2012 through December 31, 2012, the tax rate will be 1.89 mills. For tax years beginning January 1, 2013 through December 31, 2013, the tax rate will be 0.89 mills. The tax is now scheduled to be eliminated for tax years beginning on or after January 1, 2014.

In addition, for tax years beginning on or after January 1, 2010, the standard valuation deduction to be used in the calculation of an entity's "capital stock value" is increased from \$150,000 to \$160,000.

Because of this development, the tax advantage of using limited partnerships in Pennsylvania, rather than limited liability companies (which are subject to Capital Stock-Franchise Tax), will continue for several more years.

CORPORATE NET INCOME TAX

For tax years beginning January 1, 2009 through December 31, 2009, a corporation's apportionment fraction is calculated using an 8.5% property factor, an 8.5% payroll factor and an 83% sales factor. For tax years beginning after December 31, 2009, a corporation's apportionment fraction is calculated using a 5% property factor, a 5% payroll factor and a 90% sales factor. These changes are favorable to companies that have manufacturing facilities in Pennsylvania.

For tax years beginning after December 31, 2008, a corporation's allowable net operating loss will be the greater of 15% of its post-apportionment taxable income or \$3 million. For tax years beginning after December 31, 2009, a corporation's allowable net operating loss will be the greater of 20% of its post-apportionment taxable income or \$3 million.

SALES AND USE TAX

Effective immediately, the sale of helicopters and similar roto-craft is exempt from Sales and Use Tax, as is the sale and installation of repair or replacement parts therefor.

After May 31, 2011, any licensee who reported or should have reported at least \$25,000 of tax for the 3rd calendar quarter in the preceding tax year must file sales tax returns on a semi-monthly basis.

EMPLOYER WITHHOLDING

After May 31, 2010, any employer whose total amount of tax to be deducted and withheld during a calendar year can reasonably be expected to exceed \$1,200 but be less than \$4,000 must remit withholding tax on a monthly basis. Any employer whose total amount of tax to be deducted and withheld during a calendar year can reasonably be expected to exceed \$4,000 but be less than \$20,000 must remit withholding tax on a semi-monthly basis. Any employer whose total amount of tax to be deducted and withheld during a calendar year can reasonably be expected to exceed \$20,000 must remit withholding tax on the Wednesday after payday if the payday falls on a Wednesday, Thursday or Friday and on the Friday after payday if the payday falls on a Saturday, Sunday, Monday or Tuesday.

GROSS RECEIPTS TAX ON MANAGED CARE ORGANIZATIONS

Effective immediately, a tax equal to 59 mills (5.9%) is imposed on gross receipts from payments received by a managed care

organization pursuant to its Medicaid managed care contracts with the Department of Public Welfare.

TAX CREDITS

The Alternative Energy Production Tax Credit is suspended for fiscal years 2009/2010 and 2010/2011. In addition, the amount of tax credits available under various programs for these two fiscal years is reduced. The affected tax credit programs include: Research and Development, Employment Incentive, Educational Improvement, Film Production, Resource Enhancement & Protection, Job Creation, Neighborhood Assistance, Call Center and the First Class Cities Economic Development District.

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