

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SALT



► SUBJECT

PENNSYLVANIA ENACTS NEW TAX LAW CHANGES WITH THE PASSAGE OF BOTH H.B. 761 AND SENATE BILL 1263 ON JULY 2, 2012.

► SUMMARY

A description of selected legislative changes applicable to business taxpayers is provided below.

► DETAILS

CORPORATE NET INCOME TAX CHANGES

- **Single factor apportionment.** Effective for taxable years beginning on or after January 1, 2013, all business income must be apportioned to Pennsylvania by multiplying the income by a single sales factor for purposes of the corporate net income tax. The numerator reflects sales (receipts) derived from Pennsylvania and the denominator reflects sales (receipts) everywhere. Under current law, the apportionment percentage formula uses a weighted average of three factors: a 5% property factor, plus a 5% payroll factor, plus a 90% sales factor. However, for purposes of calculating the capital stock/foreign franchise tax, an equally weighted three-factor formula (property, payroll, sales) is still required. The capital stock/foreign franchise tax will be fully phased out in 2014.
- **Automatic filing extension time increased.** For taxable years beginning on or after January 1, 2013, taxpayers filing Pennsylvania corporate net income tax returns that have been granted an extension of time to file their federal return will be entitled to an automatic extension of time to file their Pennsylvania corporate tax return. The Pennsylvania RCT-101 return will be due 30 days after the expiration of the federal extension period.

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- **Report of federal change.** Effective for taxable years beginning on or after January 1, 2013, a final change or correction in federal corporate taxable income by the Internal Revenue Service must be reported to the Department of Revenue (the "Department") within six months after the taxpayer receives notice of such change from the Service or any other federal agency or court. This is a significant expansion of the reporting period from the current 30-day reporting requirement.

SALES TAX CHANGES

- Effective October 1, 2012, a sales and use tax licensee whose actual tax liability for the third calendar quarter of the preceding year is at least \$25,000, but less than \$100,000, must file a return on or before the 20th day of each month. The licensee will have the option of making a prepayment of tax in an amount that is either equal to or greater than:
 - 50% of the actual tax liability for the current month, or
 - 50% of the actual tax liability for the same month in the preceding calendar year;PLUS the amount of taxes due for the preceding month, less any amounts paid in the preceding month as required.

A licensee whose actual tax liability for the third calendar quarter of the preceding year is \$100,000 or more must file a single return on the 20th day of each month. Provisions allowing for semi-monthly payment of tax are repealed, Pa. Stat. Ann. § 202.2 (Time for Filing Returns for Certain Sales and Use Taxpayers) is repealed, and the provision requiring that the notice of assessment for assessments over \$300 be sent by certified mail is eliminated.

ADMINISTRATIVE TAX APPEALS REQUEST FOR COMPROMISE

- The Secretary of Revenue is vested with authority to compromise a tax assessment. If a petition has been filed with the Board of Appeals, a taxpayer may submit a Request for Compromise. An informal conference (either by phone or in person) may be conducted by the Board. If the Board reviews and approves the request, a Compromise Order will be issued as the full and final settlement of the appeal.
- The Request for Compromise is not available for tax petitions resulting from the denial of a property tax or rent rebate claim, a denial of a charitable tax exemption, the revocation of a sales tax license, appealing a jeopardy assessment, or arising under the Gaming Law.

RESEARCH AND DEVELOPMENT CREDITS

Effective July 2, 2012, the total amount of research and development credits against corporate and personal income tax, capital stock and franchise tax, bank and trust company shares tax, title insurance tax, mutual thrift tax, or insurance premium tax, approved by the Department in any fiscal year is increased to \$55 million from \$40 million. Of the \$55 million total, \$11 million (previously \$8 million) will be allocated to small businesses. In addition, the expiration date of December 31, 2015, for the credit is repealed.

1099-MISC REPORTING OBLIGATIONS AND PENALTIES

- **Reporting.** Effective July 2, 2012, any person who makes payments of income from sources within Pennsylvania; makes payments of nonemployee compensation or payments under an oil and gas lease to a resident or nonresident individual, an entity treated as a partnership for tax purposes, or a single member limited liability company; and is required to make a Form 1099-MISC return to the Secretary of the Treasury of the United States with respect to the payments, must file a copy of Form 1099-MISC with the Department and send a copy of Form 1099-MISC to the payee by the federal filing deadline each year. If the payor is required to file Pennsylvania employer withholding by electronic means, the Form 1099-MISC must also be filed electronically.
- **Penalties and fees.** Effective for taxable years beginning on or after January 1, 2013, new provisions are added providing that any person required to file a copy of Form 1099-MISC with the Department under Pa. Stat. Ann. § 7335(f), who willfully furnishes a false or fraudulent form, or who willfully fails to file the form in the manner, at the time and showing the information required under Pa. Stat. Ann. § 7335(f) will be subject to a penalty of \$50 for each failure. Any person required to furnish a copy of Form 1099-MISC to a payee under Pa. Stat. Ann. § 7335(f), who willfully furnishes a false or fraudulent form or

who willfully fails to furnish a form in the manner, at the time and showing the information required by Pa. Stat. Ann. § 7335(f) will be subject to a penalty of \$50 for each failure.

ELECTRONIC FUNDS TRANSFER (“EFT”) PAYMENTS

- The Department may require by regulation that any tax payment of \$10,000 or more be remitted electronically for all business taxes. Previously, it was only required for tax payments of \$20,000 or more. EFT is voluntary for amounts less than \$10,000. Personal income taxes are exempt from mandatory EFT requirements.
- EFT requirements are applicable to sales and use tax; employer withholding tax; liquid fuels tax; fuels use tax; mutual thrift institutions tax; oil company franchise tax; malt beverage tax; motor carrier road tax; corporate net income tax; capital stock/franchise tax; bank shares tax; title insurance companies shares tax; insurance premiums tax; public utility realty tax; and gross receipts taxes.

OTHER LEGISLATIVE CHANGES

The new tax laws also contain other significant changes, including changes to existing credits and new credits against the corporate net income tax, the personal income tax, the capital/stock franchise tax, the bank and financial company shares tax, and the insurance gross premiums tax. Please contact any member of the BDO SALT Team for additional information.

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