



Pennsylvania Budget Bill Includes Tax Amnesty And Extends The Capital Stock Tax

Pennsylvania's long overdue budget for the 2009-2010 fiscal year has finally been enacted (House Bill 1531, signed into law on October 9, 2009). The Budget Bill includes a tax amnesty program, to become effective in April of 2010. Among other tax changes, the legislation extends the Pennsylvania capital stock tax through the end of 2013, makes certain changes to the corporate net income tax, and implements cuts in various Pennsylvania tax credit programs.

The Amnesty Program

Any tax for tax years 2004 through 2008 administered by the Department of Revenue that is delinquent as of June 30, 2009 will be eligible for the tax amnesty program, which will go into effect on April 26, 2010 and conclude on June 18, 2010. Under the amnesty program, one-half of all interest and 100% of all penalties on eligible taxes that are delinquent as of June 30, 2009 will be waived for taxpayers who file returns and pay the delinquent taxes, plus 50% of the interest that is due, within the amnesty period. A taxpayer that participates in the program and complies with all of its requirements will not be liable for any taxes of the same type that were due prior to July 1, 2004.

A taxpayer under criminal investigation or that is the subject of a criminal complaint or a pending criminal action for an alleged violation of any law imposing an eligible tax may not participate. In addition, in order to be eligible, the liability seeking to be compromised must be "unknown." This means that either no return has been filed, no payment has been made, and the taxpayer has not

been contacted by the Revenue Department concerning the unfiled returns or unpaid tax, or if a return has been filed, the tax was underreported and the taxpayer has not been contacted by the Revenue Department concerning the underreported tax.

A taxpayer who participates in the program is not eligible to participate in any future amnesty program. The statute makes provision for financial hardship in the event a taxpayer that is otherwise eligible for amnesty would suffer a severe financial hardship if required to make full and immediate payment of the liability for which amnesty is sought. Additionally, if within two years after the end of the program a taxpayer that is granted amnesty becomes delinquent for certain periods in payment of any taxes that are due or in the filing of any required returns, the Department of Revenue may assess and collect all penalties and interest waived through the amnesty program.

The Department of Revenue is expected to publish guidance on participation in the amnesty program as we approach April of 2010. Until then, many of the details of the program will not be available.

Capital Stock Franchise Tax Extended

The budget legislation also increases the tax rate and extends the phase-out of Pennsylvania's capital stock franchise tax. This tax had been scheduled to expire at the end of 2010. The scheduled tax rate was 1.89 mills for 2009 and 0.89 mills for 2010.

Under the legislation, the tax rate is increased to 2.89 mills for 2009, 2010 and 2011 and the phase-out

presently in the law is scheduled to resume in 2012 through rate reductions to 1.89 mills for 2012 and 0.89 mills for 2013. The tax is now scheduled to expire at the end of 2013.

This tax is frequently a point of discussion in structuring transactions in Pennsylvania where limited liability companies, which are subject to this tax, are part of the planning. Under the right circumstances, a limited partnership may be used instead of an LLC and this tax can be minimized or, possibly, avoided.

Corporate Net Income Tax

For corporate net income tax purposes, the apportionment rules have been amended to increase the weighting of the sales factor, thereby providing an advantage to in-state corporations having substantial payroll and property in Pennsylvania. For years beginning in 2009, income is apportioned under the following weighting: property factor – 8.5%, payroll factor – 8.5%, and sales factor – 83%. After 2009, the weighting is property factor – 5%, payroll factor – 5%, and sales factor – 90%. Also, beginning in 2009, the net operating loss deduction is limited to the lesser of 15% of taxable income (20% beginning in 2010), \$3,000,000, or the amount of net losses that may be carried over under law.

Tax Credit Reductions

The legislation reduces by amounts ranging from 20% to 50% the amount of most tax credits that can be awarded over the next two fiscal years (2009-10 and 2010-11). The impacted credits include the Film Production Tax Credit, Educational Improvement Tax Credit, Research and Development Tax Credit, Job Creation Tax Credit, Neighborhood Assistance Program, and Resource and Enhancement Protection Tax Credit.

Other Taxes Impacted

Sales tax licensees whose reported tax for the third quarter of the preceding calendar year equals or exceeds \$25,000 must file returns and remit sales taxes on a semi-monthly basis beginning in 2011.

The budget legislation imposes a 5.9% gross receipts tax on managed care organizations that are parties to certain Medicaid-managed care contracts with the Department of Public Welfare. This tax is effective for tax years beginning in 2009 and with respect to gross receipts received after September 30, 2009.

The legislation also increases Pennsylvania's cigarette tax and extends the tax base to "little cigars." ■

Business Tax Group

Jennifer Lynn Bell	212.885.5402	JBell@BlankRome.com	Cory G. Jacobs	215.569.5481	Jacobs-C@BlankRome.com
Daniel R. Blickman	215.569.5373	Blickman@BlankRome.com	David M. Kuchinos*	215.569.5729	Kuchinos@BlankRome.com
Megan A. Christensen	202.772.5897	Christensen@BlankRome.com	Harold N. Pappas	212.885.5370	HPappas@BlankRome.com
Susan A. Cobb	202.772.5859	Cobb-S@BlankRome.com	Michael I. Sanders	202.772.5808	Sanders@BlankRome.com
R. Todd Faciana	215.569.5638	Faciana@BlankRome.com	Barry E. Sweet	215.569.5722	Sweet@BlankRome.com
Joseph T. Gulant, Practice Chair	212.885.5304	JGulant@BlankRome.com			

*Editor