



JULY 2021

THE BR STATE + LOCAL TAX SPOTLIGHT

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CONTENTS

1. Note from the Editors
2. New Jersey Announces CBT Voluntary Compliance Initiative for Companies Included in Combined Returns
3. Connecticut Enacts Budget Bill Extending Business Tax Surcharge, Delaying Capital Base Tax Phaseout, and Creating a Tax Amnesty Program
4. City of Philadelphia Ends Temporary COVID-19 Tax Policies
5. *Chambers USA* 2021 Honors Blank Rome's State + Local Tax Practice and Attorneys
6. Delaware's Arguments Fall Short: Supreme Court Special Master Finds that MoneyGram's Unclaimed "Official Checks" Should Escheat to States Where Purchased
7. Save the Date: Blank Rome's State + Local Tax Summit

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Note from the Editors

By Matthew F. Cammarata and Eugene J. Gibilaro

Welcome to the July 2021 edition of *The BR State + Local Tax Spotlight*. We understand the unique demands of staying on top of important State + Local Tax developments, which happen frequently and across numerous jurisdictions. Staying updated on significant legislative developments and judicial decisions helps tax departments function more efficiently and improves strategy and planning. That is where *The BR State + Local Tax Spotlight* can help. In each edition, we will highlight for you important State + Local Tax developments that could impact your business. In this issue, we will be covering:

- A recent voluntary compliance initiative launched by the New Jersey Department of Taxation for certain companies included in combined corporation business tax returns;
- A new Connecticut budget law that extends the corporation business tax surcharge, delays the capital base tax phaseout, and creates a tax amnesty program;
- A recent release of guidance from the City of Philadelphia that terminates temporary COVID-19-related policies under several local business taxes; and
- A recent report issued by a Special Master appointed by the U.S. Supreme Court concluding that Delaware was not entitled to escheat the unclaimed proceeds of certain “Official Checks” issued by MoneyGram.

We invite you to share *The BR State + Local Tax Spotlight* with your colleagues and visit Blank Rome’s State + Local Tax [webpage](#) for more information about our [team](#). Click [here](#) to add State + Local Tax to your subscription preferences.

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MITCHELL A. NEWMARK

PARTNER

New Jersey Announces CBT Voluntary Compliance Initiative for Companies Included in Combined Returns

By Mitchell A. Newmark

The New Jersey Division of Taxation (“Division”) recently extended an invitation for voluntary compliance with limited look-back and penalty waiver to companies that were included in mandatory unitary combined returns and indicated that they have nexus with New Jersey but did not file separate entity returns prior to 2019 (the year New Jersey started mandatory combined filing for most corporations) via its Combined Reporting Initiative for Corporation Business Tax (New Jersey’s corporate income tax).

The Combined Reporting Initiative program runs through October 15, 2021, and is open to companies that were not: incorporated in New Jersey; authorized

The guidance states that after the program closes, the limited look back and penalty waiver will not be granted.

to do business in New Jersey; or registered for Corporation Business Tax prior to being included as part of a 2019 or 2020 combined return. The look-back period is limited to the periods ending after June 30, 2016, or the date nexus was established with New Jersey, whichever is later. All returns filed under the program are subject to audit.

The application requires disclosure of: the purported taxpayer entity’s name; the managerial member for the combined group that included the entity; the

entity type; the accounting period end for the entity; whether the entity has been authorized to do business in New Jersey and, if so, the date of authorization; whether the entity received a nexus questionnaire or notice from New Jersey; and the type of taxes for which participation is requested. The Division will not commit to allowing all companies into the voluntary program, stating that it “will consider entering into a Closing Agreement” so prior contact does not expressly exclude entry into the program.

In the Division’s view, entities that are eligible for the program are not eligible for the standard Voluntary Disclosure Agreement (which has been traditionally open to non-filers). The guidance states that after the program closes, the limited look-back and penalty waiver will not be granted.

This initiative is a reminder that when a filing method or group is changed, it is important to have the answers to three questions:

1. Why are we changing now (am I fairly considering the impact of a change in fact or change in law)?
2. What was correct prior to now (am I opening a can of worms for a historical position if I change the filing)?
3. What is correct for the future (am I doing what should be done going forward)?

Contact a member of Blank Rome’s [State + Local Tax](#) group to help with these questions and answers. □



KARA M. KRAMAN

OF COUNSEL

Connecticut Enacts Budget Bill Extending Business Tax Surcharge, Delaying Capital Base Tax Phaseout, and Creating a Tax Amnesty Program

By Kara M. Kraman

On June 23, 2021, Connecticut Governor Ned Lamont signed into law two budget bills comprising the state budget for the fiscal year 2022-2023 (the “Budget Bill”). H.B. 6689, S.B. 1202. The Budget Bill contained several noteworthy tax provisions, including extending the corporation business tax surcharge for an additional two years, delaying the phase-out of the capital base tax on corporations, and creating a tax amnesty program. These provisions are discussed below.

Extension of Business Corporation Tax Surcharge

The Budget Bill extends the existing 10 percent corporate business tax surcharge, which was due to expire in 2020 through 2022. The business corporation tax surcharge imposes a tax surcharge of 10 percent on corporations that have more than \$250 in Connecticut corporate tax liability and are either taxable members of a combined group that files a combined unitary return or have at least \$100 million in annual gross income.

Delay of Phase-Out of Capital Base Tax on Corporations

The Budget Bill also delays the planned four-year phase-out of capital base tax on corporations. The tax rate, which was currently \$0.0031 per million dollars for 2020, was scheduled to be reduced to \$0.0026 in 2021, and then gradually reduced annually until it was totally phased out in 2024. The budget bill keeps the

\$0.0031 per million rate until 2023, and implements a new slower phase-out schedule under which the tax will not be entirely phased out until 2028. Interest on underpayments of estimated taxes due to the change in the rate for the 2021 year are waived.

Creation of Tax Amnesty Program

The Budget Bill also requires the Commissioner of the Department of Revenue Services to create a three-month tax amnesty program to be conducted during the period November 1, 2021 through January 31, 2022. The amnesty program applies to virtually all taxes administered by the Department of Revenue Services, including corporation business tax, personal income

tax, and sales and use tax. A person whose application is granted under the amnesty program shall generally be entitled to a waiver of penalties and a 75 percent reduction in interest on the amounts of tax due.

The amnesty program applies to virtually all taxes administered by the Department of Revenue Services, including corporation business tax, personal income tax and sales and use tax.

However, in no event will an amnesty application result in a refund or credit of any amount of tax, credit, or penalty previously paid. Persons who are parties to closing agreements with the Commissioner, who have made offers of compromise that have been accepted by the Commissioner, or who are parties to managed audit agreements are not eligible to apply for amnesty. Amnesty applications may be made for all taxable periods ending on or before December 30, 2020. □



IRWIN M. SLOMKA

SENIOR COUNSEL

City of Philadelphia Ends Temporary COVID-19 Tax Policies

By Irwin M. Slomka

Now that the COVID-19 pandemic has dissipated, states and localities have begun to end temporary tax policies that were meant to provide relief to some taxpayers from the restrictions imposed by government during the pandemic. The City of Philadelphia has released new guidance explaining the termination of temporary policies under several local business taxes, including the effect of employees working from home on nexus. “Business Income and Receipts Tax (BIRT), Net Profits Tax (NPT) Nexus and Apportionment Policies Due to COVID-19 Pandemic” (Phil. Dep’t of Rev., June 25, 2021); “Update to Philadelphia Use & Occupancy Tax Guidance during COVID-19,” (Phil. Dep’t of Rev., June 16, 2021).

Business Income and Receipts Tax (“BIRT”) and Net Profits Tax (“NPT”)

The BIRT is a net income and gross receipts tax imposed on individuals, partnerships, limited liability companies, and corporations engaged in business within the City of Philadelphia.

Nexus. An out-of-Philadelphia business has nexus for BIRT purposes if it has one or more employees who conduct business activities in the city. During the COVID-19 pandemic, the Philadelphia Department of Revenue (“Department”) announced that it would temporarily waive the BIRT nexus threshold in the case of employees working from their homes in Philadelphia for out-of-Philadelphia businesses solely because of the pandemic.

By its terms, that temporary nexus policy was scheduled to expire no later than June 30, 2021, and the Department has announced that the policy is no longer in effect as of July 1, 2021. Consequently, an out-of-Philadelphia business that continues to have employees working from their homes in Philadelphia

after June 30, 2021 will have nexus for BIRT (and NPT) purposes based solely on the employee’s activities.

Taxable Receipts from Performance of Services.

The Department had also previously announced that where a Philadelphia non-resident employee who had previously worked at a business location in Philadelphia was temporarily working from the employee’s home outside the city solely because of the COVID-19 pandemic, the Department, under principles of alternative apportionment, “deemed” the employee’s services to be performed within Philadelphia for purposes of sourcing receipts under the BIRT and NPT. For a Philadelphia resident employee who had worked at a business location outside the city before the pandemic, and who was temporarily working from home in Philadelphia solely due to the

[A]n out-of-Philadelphia business that continues to have employees working from their homes in Philadelphia after June 30, 2021 will have nexus for BIRT (and NPT) purposes based solely on the employee’s activities.

pandemic, receipts from the employee’s services would not be sourced to Philadelphia. The Department has announced that these temporary receipts sourcing rules ended with the expiration of the governor’s emergency stay-at-home order on June 10, 2021.

Use and Occupancy Tax

The City of Philadelphia use and occupancy tax is imposed on commercial tenants based on the assessed value of the real property located in the city, for the use

(continued on page 5)

City of Philadelphia Ends Temporary COVID-19 Tax Policies (continued from page 4)

or occupancy of the premises for business purposes. Owners or landlords are responsible for collecting the tax from tenants and remitting the tax to the city.

The Department previously issued pronouncements that businesses ordered to close by the governor and mayor generally would not be subject to the use and occupancy tax during that period. Restaurants had been given use and occupancy relief because of restaurant occupancy limitations. On June 2, 2021, with the termination of all Philadelphia capacity limits, that emergency relief expired.

Similarly, the Department previously announced that businesses that had been ordered by the mayor to operate remotely were not subject to the tax during that period. Effective April 4, 2021, mandatory remote work for non-essential workers ended in Philadelphia.

As a result, the Department announced that those businesses again became subject to the tax.

The long-term effects of the COVID-19 pandemic on employer and employee work practices remain unclear, but the likelihood of increased remote work arrangements will undoubtedly cause businesses to evaluate issues such as potential nexus exposure, how services conducted remotely should be sourced, and how businesses should withhold state and local income taxes for employees working remotely. This is likely to raise critical questions in New York State, where the longstanding “convenience of the employer” regulations—which have previously been upheld by the New York courts—have significantly limited the ability for New York nonresident employees to source income outside New York. □

Chambers USA 2021 Honors Blank Rome’s State + Local Tax Practice and Attorneys

Blank Rome’s **State + Local Tax** practice and attorneys have been highly ranked by *Chambers USA*. In addition, the 2021 edition of *Chambers USA* recognized Blank Rome in a number of categories, and also ranked 76 Blank Rome attorneys as “leaders in their fields.”



STATE + LOCAL TAX RANKINGS:

Brand One | Tax: State & Local (New York):

What the team is known for: “Respected team with notable expertise in SALT matters. Regularly advises clients on the tax aspects of M&A, joint venture arrangements, and reorganizations. Sector expertise covers retail, energy, and food and beverage.”

Notable Practitioners for Tax: State & Local:

Craig B. Fields: “Craig Fields is noted for his extensive experience representing clients in state and local tax disputes. He is a go-to practitioner for issues concerning income tax and sales and use tax, among other levies.”

Hollis L. Hyans: “Hollis Hyans is experienced in acting on state investigations among other state and local tax matters. In addition to appearing in court, she is highly experienced in representing clients before administrative tribunals.”

Irwin M. Slomka: “Irwin Slomka is adept at handling state and local tax controversies. His sector expertise covers banking, telecommunications, and healthcare.”

To see a full list of Blank Rome’s *Chambers USA 2021* rankings, please visit [Chambers USA 2021 Recognizes Blank Rome Attorneys and Practices](#). □



HOLLIS L. HYANS

PARTNER

Delaware's Arguments Fall Short: Supreme Court Special Master Finds That MoneyGram's Unclaimed "Official Checks" Should Escheat to States Where Purchased

By Hollis L. Hyans

In an action brought under the original jurisdiction of the U.S. Supreme Court, 30 states disputed Delaware's entitlement to escheat the unclaimed proceeds of certain "Official Checks" issued by MoneyGram. A Special Master appointed by the Supreme Court has now issued a lengthy report, concluding that the instruments in question are either "money orders" or "similar instruments," and therefore, under a federal statute, escheat not to Delaware—the state of incorporation of MoneyGram—but rather to the states where the instruments were purchased. *Delaware v. Pennsylvania and Washington, Nos. 145 & 146, [DRAFT] First Interim Report of the Special Master, May 20, 2021*. If adopted by the Supreme Court, this will be the first Supreme Court

established by the Supreme Court in a series of cases decided between 1961 and 1993.

The Decision: The Special Master conducted a detailed review of the legislative history of the FDA, and the meaning of the terms used in it when it was enacted in 1974. He found that the FDA was passed in direct response to the Supreme Court's decision in *Pennsylvania v. New York*, 407 U.S.206 (1972), which held that traveler's checks and money orders should escheat to the commercial domicile of the vendor. According to that legislative history, Congress acted because the decision had made "more severe" the problem of escheat acting "as a windfall" to the state of incorporation, and depriving of revenue the

49 other states where purchasers of traveler's checks and money orders actually reside. *Report* at 20. Against that background, the Special Master carefully reviewed the arguments made by Delaware, which relied on technical differences between actual "money orders" and the Official Checks in issue, and in every

If adopted by the Supreme Court, this will be the first Supreme Court decision on unclaimed property in over 25 years and represents a significant restraint on Delaware's ability to escheat unclaimed property.

decision on unclaimed property in over 25 years and represents a significant restraint on Delaware's ability to escheat unclaimed property. It may also mean that financial institutions that issue similar instruments should carefully analyze those instruments and consider whether their current practices are consistent with this new rule.

Facts: The federal Disposition of Abandoned Money Orders and Traveler's Checks Act (the "FDA"), explicitly provides that money orders and traveler's checks escheat to the state where the instruments were purchased, to the extent that state escheats such items. This dispute arose over the proper treatment of instruments called "Official Checks," and whether they too should be treated as "money orders" or other "similar instruments." If not, they would escheat to Delaware, where MoneyGram was incorporated, under the common-law rules

case rejected Delaware's position as less persuasive than that of the states arguing for the similarity of the two instruments. The Special Master described the differences between the two types of instruments as "marketing decisions" and "inconsequential," finding they had no material effect on the rights and obligations of users, and found "more persuasive" the competing arguments that the Official Checks are closely akin to the Money Orders that are explicitly covered by the FDA. *Report* at 42, 44, 50. He also found that, even if the Official Checks were not actual "money orders," they were "similar instruments" and are still governed by the FDA.

The Special Master recommended that the Supreme Court deny Delaware's motion for summary judgment and award summary judgment to the rest of the states. □

Save the Date: August 13, 2021



State + Local Tax Summit

Friday, August 13, 2021

Registration: 8:30 a.m.–9:00 a.m. ET • Program: 9:00 a.m.–2:00 p.m. ET

Location: Blank Rome LLP

1271 Avenue of the Americas • New York, NY 10020

[REGISTER HERE](#) ➔

Please join us as we return in person for our annual State + Local Tax Summit.

The Summit will include discussion of the state and local issues affecting your company, including:

- An overview of the top judicial and legislative updates across the country;
- An update on changes to the sales factor sourcing; and
- A discussion of the tax benefits and consequences of a work from home environment.

Breakfast and lunch will be served.

New York CPE and CLE certification will be requested. There is no fee to attend.

Blank Rome is aware of the continued concerns regarding COVID-19. The health and safety of our clients and employees are our highest priorities. We continue to monitor the situation closely and have implemented precautionary measures across our business.

As we move ahead, Blank Rome will continue to place high importance on facilitating measures that will ensure optimal health and sanitary conditions for everyone. If the prohibitions against large gatherings are reinstated, we will postpone the event.

Please contact Nicole Johnson at 212.885.5286 or njohnson@blankrome.com for more information about this event.