



SALT Alert!



SALT Alert! 2016-18: Pennsylvania: Various Tax and Unclaimed Property Changes Enacted

On July 13, 2016, Governor Tom Wolf of Pennsylvania signed [House Bill 1198](#), which makes changes to the Commonwealth's tax code necessary to implement the budget. The bill is expected to raise \$1.3 billion. Revenue raisers include a substantial cigarette and tobacco products tax increase, and extending the tax to smokeless tobacco and e-cigarettes. The revenue package also other non-recurring items, such as the establishment of a tax amnesty program. [House Bill 1605](#), which was also signed into law on the same day, makes a number of changes to the Commonwealth's unclaimed property laws. The tax changes affecting business taxpayers and the unclaimed property changes are discussed below.

Taxation of Digital Goods

Under current Pennsylvania law, sales of electronically delivered goods are not subject to Pennsylvania sales and use tax. Effective August 1, 2016, the definition of "tangible personal property" is amended to include the following (whether electronically or digitally delivered, streamed, or accessed): videos, photographs, books, any otherwise taxable printed matter, applications (apps), games, music, other audio (such as satellite radio services), canned software, and any other taxable tangible personal property that is electronically or digitally delivered. The treatment of these items as tangible personal property applies regardless of whether the items are purchased singly, by subscription, or in any other manner. Maintenance, updates, and support related to these items are also treated as tangible personal property.

Vendor's Discount

Effective for returns due on or after August 1, 2016, House Bill 1198 reduces the vendor discount allowed for timely filed returns to the lesser of one percent of the tax collected or \$25 per return for monthly filers, \$75 per return for quarterly filers, or \$150 per return for semiannual filers. Currently, the discount is one percent of the tax timely collected and remitted with no cap.

Miscellaneous Sales and Use Tax Changes

Timbering: Effective July 1, 2017, House Bill 1198 provides an exclusion from the definition of “sale at retail” and the term “use” for the transfer of tangible personal property or services used or consumed by the purchaser directly in “timbering” operations. “Timbering” is defined as the business of producing or harvesting trees for the purpose of commercially producing wood, paper or energy products by a company primarily engaged in harvesting trees.

Packing materials: Under Pennsylvania law, sales and use tax is not imposed on the sale at retail of certain packaging materials, included cartons. House Bill 1198 provides that, effective immediately, the term “cartons” includes corrugated boxes used by a person engaged in the manufacture of snack food products to deliver the manufactured product, whether or not the boxes are returnable for potential reuse.

Convention-Related Services: A new exclusion is created for the sale or use of services related to the set-up, tear down or maintenance of tangible personal property rented by an authority to exhibitors at the Philadelphia Convention Center or at a convention center or public auditorium established under the Second Class County Code, or the County Code. This new exclusion applies to sale or use of services occurring after June 30, 2016 or September 11, 2016 (two effective dates) and may not be used in any audit, appeal or proceeding before the Department of Revenue to determine the applicability of tax prior to the effective date of the amendment.

Changes to Corporate Net Income Tax Due Date and Provisions Regarding Amended Reports

Effective for tax years beginning after December 31, 2015, House Bill 1198 revises the due date for filing a Pennsylvania corporate net income tax return from April 15 to 30 days after the federal corporate income tax return is due (or would be due, if the return were required).

House Bill 1198 codifies the amended report regulations. It provides a statutory right to file amended reports in certain instances and requires the Department of Revenue to act upon them. Under House Bill 1198, a taxpayer may file an amended report within three years of the due date of the original report, including extensions. A taxpayer may not file an amended report in lieu of timely appealing an assessment, or if an administrative appeal board or court has previously addressed the issue raised in the amended report on its merits for the tax year. In addition, a taxpayer may not take a position on an amended report that is contrary to law or published Department of Revenue policy. The filing of an amended report extends the Department’s authority to adjust a taxpayer’s tax liability, including the assessment of additional tax for the tax year to the later of (1) one year from the date of the filing of the amended report, or (2) three years from the filing of the original report. The taxpayer may request or consent to an additional extension of the statute.

Under House Bill 1198, the Department is required to review an amended report and advise the taxpayer within one year of the filing of the amended report as to whether the Department accepts the amended report. The notice is to provide an explanation of the Department’s action. If the Department fails to timely provide notice, the amended report will be deemed accepted. However, the acceptance of an amended report does not limit the Department’s authority to issue an assessment of additional tax within the relevant statute of limitations. A taxpayer that disagrees with the Department’s position regarding an amended report has 90 days after the date of the notice to file a petition for review, unless (1) the amended report has been incorporated into an administrative or judicial proceeding; (2) an amended report was filed instead of a petition for reassessment; or (3) a timely filed amended report requesting a refund or credit was filed more than three years from the date the tax was paid. A taxpayer that is otherwise not permitted to file a petition for review because it should have filed a petition for reassessment may pay the tax (along with interest and penalties) and file a petition for refund in accordance with 72 P.S. § 10003.1.

Bank Shares Tax Changes

Rate Increase: Effective for the calendar year beginning January 1, 2017 and each calendar year thereafter, the bank shares tax rate is increased from 0.89 percent to 0.95 percent.

Nexus: House Bill 1198 eliminates the \$100,000 in gross receipts threshold in the statutory definition of “doing business in this Commonwealth” effective for tax years beginning after December 31, 2016.

Tax Base: The bank shares tax base is the value of shares as of January 1. The value of shares equals the total bank equity capital, with a proportional exemption for United States obligations. Total bank equity capital and deductions for United States obligations are determined by the year-end values as shown in the Reports of Condition at the end of the preceding calendar year. For banks that file Reports of Condition on a consolidated basis with subsidiaries formed pursuant to 12 U.S. § 611, House Bill 1198 provides that total bank equity capital excludes the book value of total equity capital of subsidiaries in accordance with the following schedule:

- For the calendar year beginning January 1, 2018, the exclusion for the book value of total equity capital of the subsidiaries is limited to 20 percent of the book value of total equity capital of the subsidiaries.
- For the calendar year beginning January 1, 2019, the exclusion is limited to 40 percent.
- For the calendar year beginning January 1, 2020, the exclusion is limited to 60 percent
- For the calendar year beginning January 1, 2021, the exclusion is limited to 80 percent.
- For the calendar year beginning January 1, 2022, and each calendar year thereafter, the exclusion for the book value of total equity capital of the subsidiaries will be 100 percent of the book value of total equity capital of the subsidiaries.

House Bill 1198 also adopts a deduction from the bank shares tax for goodwill, which will be an amount equal to the value of any goodwill recorded as a result of the use of purchase accounting for an acquisition or combination occurring after June 30, 2001.

Apportionment: In apportioning receipts from an institution’s investment and trading assets and activities, the statute permits a taxpayer to make an irrevocable election to use either Method 1 or Method 2. When the apportionment rules were amended in 2013, there was an error in drafting Method 1. In computing Pennsylvania receipts from investment and trading activities under Method 1, a taxpayer will now be required to multiply the total amount of receipts from investment and trading assets and activities times a fraction the numerator of which is the total amount of all other receipts attributable to this Commonwealth and the denominator of which is the total amount of all other receipts. Under prior law, only receipts from trading assets and activities were multiplied by the fraction. A taxpayer will need to make an irrevocable election to use amended Method 1 or Method 2 with the filing of the January 1, 2017 tax report. An institution that availed itself of Method 1, as previously enacted, may have an obligation to file an amended report, as this change is retroactive to January 1, 2014.

Effective for tax years beginning on or after December 31, 2016, the definition of “receipts” is amended to include the total of all items of income reported on the income statement of the institution’s Reports of Condition at the end of the preceding calendar year. If the institution does not file quarterly Reports of Condition, the term shall include all items of income included on an income statement determined in accordance with generally accepted accounting principles. Under current law, receipts was defined to include an item included in taxable income returned to and ascertained by the federal government, as computed on a separate company basis, but including the taxable income of a subsidiary of the institution that is classified as a disregarded entity for federal income tax purposes.

Tax Amnesty Program for Fiscal Year 2016-2017

House Bill 1198 establishes a tax amnesty program that will be held for a 60-day period. A taxpayer that participated in the last amnesty program for fiscal year 2009 – 2010 is not eligible to participate in the new program. The exact dates will be set by the Governor, but the amnesty period must end no later than June 30, 2017. “Eligible taxes” that can be satisfied during the amnesty include any tax administered by the Department on which a taxpayer is delinquent as of December 31, 2015. This includes liabilities that relate to returns that have not been filed, liabilities according to the Department’s records as of December 31, 2015, and liabilities not reported or underreported as of December 31, 2015.

“Eligible tax” includes taxes collected under the International Fuel Tax Agreement that are owed to Pennsylvania, as well as interest, penalties, and fees related to an eligible tax. For “unknown liabilities,” only five years of prior returns must be filed. Unknown liabilities are liabilities for an eligible tax where either (1) no return or report has been filed, no payment has been made, and the taxpayer has not been contacted by the Department of Revenue concerning the unfiled return or unpaid tax, or (2) a return or report was filed upon which the tax was underreported, and the taxpayer had not yet been contacted by the Department and is not under audit for the underreported tax.

The amnesty program will be available to all taxpayers, except those who are on notice that they are the subject of a criminal investigation or have been named a defendant in a criminal complaint alleging a violation of tax laws. Participating taxpayers are barred from participation in future tax amnesty programs.

Taxpayers wishing to take advantage of amnesty must file all required returns and make payment of all taxes and one-half of the interest due during the amnesty period. Penalties, other fees, and the remaining one-half of the interest due will be waived, contingent on the taxpayer remaining in compliance with Pennsylvania’s tax laws for the two years following the end of the amnesty program. The Department may assess penalties and the remaining interest if the taxpayer becomes delinquent for three consecutive periods in paying taxes due or filing returns required on a semi-monthly, monthly, quarterly, or other basis, or if the taxpayer is eight or more months late in paying taxes or filing returns that are required to be filed on an annual basis.

Taxpayers participating in the program relinquish their right to protest or pursue an administrative or judicial proceeding with regard to returns filed under amnesty or to claim a refund of tax paid under amnesty. Taxpayers that fail to take advantage of the amnesty opportunity will be subject to a penalty of five percent of the eligible tax that the taxpayer failed to remit during the amnesty program or that remained unreported or underreported on or after the first day following the end of the amnesty period. This five percent penalty is in addition to regular penalties and interest. The penalty will not apply if the taxpayer filed a valid administrative or judicial appeal contesting the liability on or before the last day of the amnesty period.

Incentives / Data Centers

Many of the changes in House Bill 1198 relate to newly-established and existing Pennsylvania tax credits, including eliminating the December 31, 2015 expiration date of the state credit for research and development expenses. House Bill 1198 also establishes a data center investment incentive program. Beginning July 1, 2017, an owner, operator, or qualified tenant of a certified data center may apply for a sales or use tax refund related to certain equipment purchased for use in the data center. The owner or operator of the computer data center must meet certain specified investment or employee compensation requirements to obtain a refund. The total refunds of sales and use taxes paid on qualifying purchases may not exceed \$5 million in any fiscal year.

Unclaimed Property (all changes effective September 11, 2016)

House Bill 1605 allows the State Treasurer to obtain possession of unredeemed and unclaimed U.S. Savings Bonds on behalf of Commonwealth residents if the bonds are more than three (3) years beyond the date of final maturity and the owner has not indicated an interest in such bond. There are extensive procedures with which the Commonwealth must comply in order for the property to escheat to the Commonwealth.

House Bill 1605 clarifies when property held by an agent-in-fact or a fiduciary becomes abandoned and unclaimed. All property held by an agent-in-fact or in a fiduciary capacity for the benefit of another person is presumed abandoned and unclaimed three years after the holder has lost contact with the owner, unless the owner has, within that three-year period: (1) increased or decreased the principal; (2) accepted payment of principal or income; or (3) otherwise indicated an interest in the property or in other property of the owner in the possession, custody or control of the holder.

An IRA, retirement plan for self-employed individuals or similar account or a retirement plan created pursuant to federal law or the laws of Pennsylvania is presumed abandoned and unclaimed three years after the holder has lost contact with the owner, unless the owner has, within that three-year period: (1) commenced receiving distributions of principal or income; (2) increased or decreased the principal; (3) received payment of principal or income; or (4) otherwise indicated an interest in the account or plan or in other property of the owner in possession, custody or control of the holder.

The date on which the holder has lost contact with the owner is:

- The date a second consecutive communication sent by the holder by first class U.S. Mail to the owner is returned to the holder undelivered by the United States Postal Service; or
- If the second communication is made later than thirty days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States Postal Service.

However, if the owner does not receive communications from the holder by U.S. mail, the holder shall attempt to confirm the owner's interest in the property by sending the owner an electronic mail communication not later than two years after the owner's last indication of interest in the property. If the holder receives notification that the electronic mail communication was not received or if the owner does not respond to the electronic mail communication within thirty days after the communication was sent, the holder shall promptly attempt to contact the owner by first class U.S. Mail. If the mail is returned to the holder undelivered by the United States Postal Service, the holder shall be deemed to have lost contact with the owner on the date of the owner's last indication of interest in the property.

The holder of property presumed abandoned shall send notice to the owner, not more than 120 days, nor less than 60 days prior to the date in which the corresponding report in which the property is being reported as abandoned is to be submitted to the State Treasurer, stating the holder is in possession of property subject to the Disposition of Abandoned and Unclaimed Property statute (Art. XIII.I), if: (1) the holder of the property has in its records an address for the owner which the holder's records do not disclose to be inaccurate; and (2) the value of the property is \$50 or more. Written notice must be sent by first class mail, unless the owner has previously agreed to a method of electronic notice that remains valid to contact the owner, and include: (1) a description of the property; (2) a description of the property ownership, and (3) the value of the property, if known. The holder may provide additional notice at any time between the date of last activity by, or communication with, the owner of the property and the date the holder transfers the property to the State Treasurer. The holder of property must include an affirmation of compliance with the notice requirements in addition to the verification required under Section 1301.11 (the section requiring an annual report to the Commonwealth of Unclaimed Property). No cost or fee

shall be imposed on an owner associated with any notice provided in accordance with these provisions.

Contacts

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