

## 2017 STATE TAX SUMMARY: ACT 43 OF 2017

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### Sales and Use Tax

- **Help Desk or Call Center Support:** Effective October 30, 2017. Help desk or call center support for canned software is exempted from sales and use tax when separately invoiced.
- **Beer Keg Exemption:** Effective October 30, 2017. Kegs used to contain malt or brewed beverages are exempt from sales and use tax as part of wrapping and packaging supplies.
- **Marketplace Sales:** Sellers of products on the internet not maintaining a place of business in the Commonwealth and not collecting Pennsylvania sales tax, making sales of at least \$10,000 into Pennsylvania in the previous calendar year, must file an election by March 1, 2018 opting either to begin to collect sales and use tax by April 1, or commit to sending use tax notices with each sale. Additionally, sellers sending notices must also send an annual summary of purchases both to the customer and to the Department.

Affected entities are: marketplace facilitators, persons who list or advertise property for sale in any forum and who either directly or indirectly collect the payment from the purchaser and transmit the payment to the person selling the property; remote sellers, persons that do not maintain a place of business in the Commonwealth and sell at retail into the Commonwealth; and referrers, persons who provide a forum for interaction between buyers and sellers but do not directly participate in the sale. Marketplace facilitators and referrers are required to file an election on behalf of all the sellers participating in their system. If the election is made to collect sales tax, then the marketplace facilitator or referrer is required to collect and remit sales tax on all of its taxable marketplace sales.

For those opting to collect sales tax, the new provisions require collection to begin by April 1, 2018 for tangible personal property. The effective date is delayed until April 1, 2019 for digital goods such as electronic copies of books, canned software, music and similar items.

### Personal Income Tax

- **ABLE Savings Accounts:** Effective October 30, 2017, Act 43 provides taxing provisions related to ABLE accounts. ABLE accounts themselves are exempt from all Commonwealth taxation. Further, undistributed account earnings are not subject to tax. Distributions from accounts are taxable unless used for qualified disability expenses of the designated beneficiary. A contributor to an account may deduct up to \$14,000 (the current dollar amount under Section 2503(b) of the Internal Revenue Code) for Pennsylvania personal income tax purposes, but such deduction cannot reduce the contributor's taxable income to less than zero.
  - **Note:** The Internal Revenue Code limits the total yearly contributions from all contributors to an account to \$14,000.

- **Checkoffs:** The expired Korea/Vietnam Memorial National Education Center checkoff is repealed. The Wild Resource Conservation Fund, Organ and Tissue Donation Awareness Trust Fund, Military Family Relief Assistance Program, Pennsylvania Children's Trust Fund and American Red Cross checkoffs are made permanent. These administrative changes are effective October 30, 2017.
- **Non-resident withholding:** Effective January 1, 2018, Act 43 requires payors of non-employee compensation and business income to non-resident individuals (or disregarded entities with a non-resident owner) to withhold income tax from such payments. The United States government, the commonwealth of Pennsylvania, their agencies, instrumentalities, and any political subdivisions of Pennsylvania are excluded from this withholding requirement.

Further, lessees of Pennsylvania real estate making "lease payments" to non-resident lessors are also required to withhold personal income tax on such payments. Residential rental payments are exempt from the withholding requirement. Withholding of tax is required for payments of \$5,000 or more annually. Withholding is optional on payments less than \$5,000.

## **Corporation Tax**

- **Net Operating Losses:** If any part of the net operating loss deduction is declared to be unconstitutional by the Pennsylvania Supreme Court, the Department is required to publish a notice of the decision in the Pennsylvania Bulletin. The following provision is effective upon publication of the notice.
- Removes the \$5 million cap on NOL deductions and increases the cap of 30% of taxable income as follows:
  - 35% of taxable income for tax year 2018, and;
  - 40% of taxable income for tax year 2019 and thereafter.
- **Qualified Manufacturing Innovation & Reinvestment Deduction:** A newly created deduction allowing a qualified business to deduct five percent of its capital investment from their corporate net income tax liability if it invests at least \$100 million in the creation of new or refurbished manufacturing capacity within 3 years of a designated start date. The deduction would be available to each qualifying business for five years and cannot exceed 50 percent of the corporation's tax liability. Interested businesses can contact the Department of Community and Economic Development after the effective date of December 29, 2017.

## **Other Taxes:**

- **Realty Transfer Tax: Veterans' Service Organizations:** Broadens the category of veterans' service organizations defined as tax-exempt for the purposes of transfers under the realty transfer tax, effective October 30, 2017.

- **Inheritance Tax:** Clarifies existing requirements regarding the filing of returns for the inheritance tax exemption on transfers of certain family owned farms and family owned businesses. Any inheritance tax return filed after July 1, 2012 under Section 2136 (returns) that reports transfers of property which are exempt from inheritance tax under Section 2111 (transfers not subject to tax) will be considered timely if filed within one year of the tax return due date, including an extended due date.
- **Public Transportation Assistance Fund:** Effective October 30, 2017, provides for a prorated fee for partial day car sharing services as a clarification to the current vehicle rental fee.

Fee Schedule:

Rental Interval	Fee
Less than 2 hours	\$0.25
2 to 3 hours	\$0.50
More than 3, but less than 4 hours	\$1.25
4 hours or more	\$2.00

- **Fireworks Tax:** Incorporates the existing Fireworks Law into the Tax Reform Code and modernizes and expands the definition of legal consumer fireworks. Further imposes a tax at the rate of 12% on the sale price of consumer fireworks suitable for use by the public. The 12% tax will be in addition to the sales and use tax already imposed on such sales. The Department of Agriculture will continue to administer the Fireworks Law. The fireworks tax is effective October 30, 2017.

### **Tax Credit and Economic Development Programs**

- **Tax Credit Eligibility:** Provides that before a tax credit can be awarded, the Department may make a finding that the taxpayer has filed all required state tax reports and returns and paid any balance due, unless the tax due is currently under appeal.
- **Film Tax Credit Districts:** Amends the existing Film Production Tax Credit to authorize the creation of not more than two film production tax credit districts. Film production tax credit districts must be located on deteriorated property which is at least 55 acres and contains at least one qualified production facility and six soundstages. The deteriorated property must be occupied by two or more qualified businesses that make a total capital investment of at least \$400 million on the property within five years after the designation of the district. The district designation will expire after 15 years. Tax credits, which are in addition to existing film production tax credits, may be approved for fiscal years 2019-2020 and thereafter. These provisions are effective within 60 days.
- **Entertainment Production Tax Credit:** Effective October 30, 2017, Act 43 moves the authorizing language for this credit from Title 12, Chapter 33 to the Tax Reform Code as Subarticle E of the Entertainment Production Tax Credits. The credit remains available to up to five tours per year at a maximum of \$800,000 per tour.

- **City Revitalization and Improvement Zone (CRIZ) Program:** Effective October 30, 2017, the CRIZ program is amended to include a provision, which allows an inactive parcel to be transferred out of the zone and replaced with a parcel of equal or lesser acreage. Such transfer of parcels in and out of the zone does not need to occur simultaneously. Provides that excess money transferred to a CRIZ fund for utilization in a pilot zone is not required to be returned to the commonwealth by the pilot zone's contracting authority and must be used in accordance with the current utilization provisions in the article.

As amended, pilot zones are exempt from returning excess funds to the commonwealth annually as long as the excess funds are used in accordance with the current utilization provisions in this article.

- **Neighborhood Improvement Zone (NIZ) Program:** The NIZ program has been amended to include a provision to allow the contracting authority to transfer parcels out of the zone and replace with parcels not to exceed the acreage transferred out. The Department and municipality must certify that there is no activity in the zone being transferred that generates tax receipts or other revenue. The program changes are effective in one year.
- **Keystone Opportunity Zone Program:** The application date for additional Keystone Opportunity Zones is extended from October 2016 to October 2018 and extends the date for DCED action on applications for additional KOZs from December 2016 to December 2018.

#### **Petition for Reassessment:**

- The period of time a taxpayer has to file a petition for reassessment, review or adjustment with the Board of Appeals (BOA) is reduced from 90 days to 60 days after the mailing date of the notice of assessment. In addition, the time period for appeal to the Board of Finance and Revenue by a taxpayer is reduced from 90 days to 60 days. This change applies to petitions for refunds, petitions for reassessments, and petitions for redeterminations filed with the Department on or after December 29, 2017.

#### **Tobacco Master Settlement**

- Authorizes the Commonwealth Financing Authority (CFA) to enter into a sales agreement or issue bonds utilizing a portion of the annual payments from the Tobacco Master Settlement Agreement. Any agreement or issuance of bonds shall raise net proceeds of \$1,500,000,000 to be deposited into the General Fund. The term of the sales agreement shall not exceed 10 years and the term of the bonds shall not exceed 30 years.