2012 State Tax Summary

Act 87 of 2012
SB 1263, PN 2351

Tax Administration

Authorizes the Department of Revenue and the State Treasurer to impose an electronic payment mandate for payments of $10,000 or more, lowering the previous electronic funds transfer minimum threshold of $20,000.

Act 85 of 2012
HB 761, PN 3894

Cigarette Tax

Amends the definition of "wholesaler," so that any person owning three or more retail outlets now qualifies as a cigarette wholesaler. Effective Aug. 31, 2012.

Corporate Net Income Tax

- Adopts a 100 percent single sales factor for corporate net income tax apportionment purposes, eliminating consideration of property and payroll factors for tax years beginning on or after January 1, 2013. Under a single sales factor formula, the share of a corporation's total profit the commonwealth will now be based solely on the percentage of a corporation's total sales occurring in Pennsylvania. Effective for tax years beginning on or after Jan. 1, 2013.
- Provides that the Department of Revenue shall automatically grant an extension of time for filing the corporate net income tax annual report if the Internal Revenue Service (IRS) grants an extension of time for filing federal corporate income tax reports. Effective for tax years beginning on or after January 1, 2013.
- Provides that when a corporation's taxable income is changed or corrected by the IRS, the corporation has six months (previously 30 days) to report the change to the Department of Revenue. Effective for tax years beginning on or after Jan. 1, 2013.

Inheritance Tax

Provides an exemption from the Pennsylvania inheritance tax for real estate used in the business of agriculture, previously levied when property was transferred from one generation to the next or between family members. Applies to the estates of decedents dying after June 30, 2012.

- Provides that a transfer of real estate devoted to the business of agriculture between members of the same family will not be subject to the state inheritance tax, provided that after the transfer the real estate continues to be devoted to the business of agriculture for a period of seven years beyond the transferor's date of death and the real estate derives a yearly gross income of at least $2,000.

- Specifies that any tract of land no longer devoted to the business of agriculture within seven years shall be subject to the inheritance tax in the amount that would have been paid for nonexempt transfers of property, plus interest.
- Provides that a transfer of an agricultural commodity, agricultural conservation easement, agricultural reserve, agricultural use property or a forest reserve to lineal descendants or siblings is exempt from inheritance tax.

Personal Income Tax

- Provides that a surviving spouse may file a joint return for the year in which his or her spouse died, if the joint return could have been filed if both spouses were living for the entire taxable year. If both taxpayers die during the same tax year, a joint final return may be filed if a joint return could have been filed had both spouses lived for the entire taxable year and with the consent of the personal representatives, executors or administrators of both deceased spouses by the due date, including extensions, of the joint tax return. Effective for tax years beginning on or after Jan. 1, 2013.
- Eliminates a penalty for underpayment of estimated taxes for taxpayers who make estimated tax payments equal to the amount of the taxpayer's tax liability for the preceding tax year by taking into account a calculation for the special provisions for poverty. Effective for tax years beginning on or after January 1, 2013.

Realty Transfer Tax

- Extends exclusions from the realty transfer tax to general, limited or limited liability partnerships related to a family-owned business of agriculture. Applies retroactively to transfers occurring on or after July 1, 2010.
- Broadens the definition of “real estate company” and provides for instances in which a real estate company shall become an “acquired company”. This provision is effective Jan. 1, 2013, and shall not apply to a transaction or a series of transactions occurring in part or entirely before Jan. 1, 2013.

Sales and Use Tax

- Provides a sales and use tax exemption for the collection, washing, sorting, inspecting and packaging of eggs. Tangible personal property and services used directly and predominantly in the processing of eggs are exempt from sales and use tax. Effective July 2, 2012.
- Provides exclusion for wrapping or packaging supplies. Clarifies that any charge for wrapping or packaging is exempt from sales and use tax if the property wrapped or packaged will be resold by the purchaser of the wrapping or packaging services. Effective July 2, 2012.
- Provides for a permanent exempt status for volunteer firefighters’ organizations and volunteer firefighters’ relief associations. Excludes the sale at retail or use of tangible personal property or

services by a volunteer firefighters' organization and volunteer firefighters' relief association from tax. If a volunteer firefighter organization or a volunteer firefighters' relief association has been issued a sales tax exemption, the tax exempt status shall not expire unless the activities of the organization or association change in a manner which would disqualify them from exempt status. Effective July 2, 2012.

- Provides sales and use tax licensees whose actual tax liability for the third calendar quarter of the preceding year is at least $25,000 but less than $100,000 with an alternative payment option to the requirement of paying 50 percent of the tax liability for the same month of the preceding calendar year. The licensee may remit an amount that is equal to or greater than 50 percent of the actual tax liability required to be reported for the same month in the current year. Effective Oct. 1, 2012.

Tax Administration and Enforcement

- Requires companies making payments of Pennsylvania source income representing nonemployee compensation or payments under an oil or gas lease to send a copy of the 1099-MISC form to the Department of Revenue. A penalty is established for willfully furnishing a false or fraudulent form or for willfully failing to file the form. The penalty is $50 for each such failure. Effective July 2, 2012, and will apply to 1099-MISC forms issued for the 2012 tax year.
- If the payor is required to perform electronic filing for Pennsylvania employer withholding purposes, the form 1099-MISC shall be filed electronically with the department.
- Allows the Department of Revenue to levy bank accounts of delinquent taxpayers where the delinquency is greater than $1,000. Effective Jan. 1, 2013.
- Repeals the certified mail requirement so that the Department of Revenue is no longer required to send assessments over $300 via certified mail. Effective July 2, 2012.

Tax Appeals

- Allows the Secretary of Revenue compromise authority:
  - A taxpayer who has filed a petition to the Board of Appeals may propose a compromise of the amount due to the department. Once the Request for Compromise is submitted, an informal conference (either by phone or in person) may be conducted by the board.
  - Any compromise offer will be reviewed by the board and if approved, the board will issue a Compromise Order. The Compromise Order will represent the full and final settlement of the appeal.
  - 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 are not eligible for compromise.

- Allows for the acceptance of refund petitions after an audit assessment up to the latter of six months after the mailing date of the notice of assessment or three years from the date of actual payment of the tax. Effective for petitions filed after July 1, 2012.
- Allows for the acceptance of refund petitions for amounts paid as a result of any other assessment within six months of the actual payment of the tax. Effective for petitions filed after July 1, 2012.
- Extends the time period for filing a federal report of change with the department from 30 to 180 days, so that companies audited by the IRS have sufficient time to accurately update state filings. Effective for tax years beginning on or after Jan. 1, 2013.
- Allows petitioners to contest changes that do not affect tax in the current year but may affect tax liabilities in future years, so that taxpayers have the opportunity to address issues through appeals up front, rather than waiting years until the tax impact is realized. Applies to petitions filed on or after July 2, 2012, and to appeals pending as of that date.

Tax Credits

Community-Based Services Tax Credit

- Establishes a $3 million per year tax credit program for contributions made by business firms to providers of community-based services to individuals with intellectual disabilities or mental illness.
- Requires a provider to be a nonprofit entity that provides community-based services to individuals exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code. Effective July 1, 2013.

Educational Improvement Tax Credit (EITC)

Provides for numerous changes to the EITC program as administered by the Department of Community and Economic Development. Major changes to the administration of the credit are as follows.

- The maximum credit for contributions to scholarship or educational improvement organizations is increased from $300,000 to $400,000. Beginning in fiscal year 2013-14, the maximum credit will be $750,000.
- The maximum credit for contributions to pre-kindergarten scholarship organizations is increased from $150,000 to $200,000.
- The total aggregate amount of all tax credits shall not exceed $100 million in a fiscal year.
- The credit may now be used against the surplus lines tax.

Educational Opportunity Scholarship Tax Credit.

In addition to expanding the EITC, a new credit was established for businesses contributing to organizations awarding scholarships to students residing in some of the commonwealth's most poorly performing public schools, to allow the student to attend participating public or non-public schools. The limitations on business contribution and business application procedures are similar to those under the EITC. A total of $50 million in credits may be granted annually.

Film Production Tax Credit

- Provides that a taxpayer is eligible for an additional tax credit of 5 percent of “qualified film production expenses” if a taxpayer films a feature film, television film or television series that is intended as programming for a national audience and is filmed in a “qualified production facility” that meets all “minimum stage filming requirements” .
- Defines "qualified production facility" as a film production facility located in Pennsylvania containing at least one sound stage with column-free, unobstructed floor space and meets specific criteria.
- Adds the bank shares tax and insurance premiums tax to the list of taxes that may be offset by the Film Production Tax Credit.
- Applications will be reviewed by the Department of Community and Economic Development in 90-day periods on a competitive basis and will be evaluated on the following criteria: number of production days in Pennsylvania; number of Pennsylvania employees; number of preproduction through postproduction days in Pennsylvania; number of days spent in Pennsylvania hotels; Pennsylvania production expenses in comparison to the production budget; and the use of studio resources.
- A portion of tax credits may be accelerated into the current fiscal year, for the three succeeding fiscal years.
- Permits carry forward of a tax credit purchased or assigned in 2010 to tax years 2011 and 2012.
- Allows the Department of Community and Economic Development to waive the requirement that 60 percent of the film's total expenses be incurred in the commonwealth. Effective July 2, 2012.

Historic Preservation Tax Credit

Establishes a new, $3 million per year tax credit program to encourage the restoration of qualified historic structures.

- Defines a "qualified historic structure" as a commercial building located in the commonwealth that qualifies as a certified historic structure under the federal Internal Revenue Code.
- Defines "qualified expenditures" as the costs and expenses (1) incurred by a qualified taxpayer in the restoration of a qualified historic structure pursuant to a "qualified rehabilitation plan," and (2) defined as qualified rehabilitation expenditures under the IRC. Effective July 2, 2013.

Job Creation Tax Credit (JCTC)

- Adds definitions of "small business" for companies with fewer than 100 employees and "unemployed individual" as someone who has been unemployed for at least 60 days.
- Provides that a small business must agree to increase employment by at least 10 percent.
- Allows tax credits to be authorized as single-year or multiple-year credits.
- Increases the per-job tax credit from $1,000 to $2,500 if the new job created is filled by an unemployed individual. Effective July 2, 2012.

Neighborhood Assistance Tax Credit (NATC)

Provides direction for the Department of Community and Economic Development to credit applications involving charitable food programs and establishes a NATC credit cap of $18 million. Effective July 2, 2012.

Pennsylvania Resource Manufacturing (PRM) Tax Credit
Any manufacturer purchasing ethane for use in manufacturing ethylene is eligible for a PRM tax credit.

- The following criteria must be met:
  - Requires a company to make a capital investment in order to construct a facility within the commonwealth of at least $1 billion.
  - Requires that a company must create at least 2,500 full-time jobs during the construction phase of the facility.
- The PRM tax credit is generated based on 5 cents for every gallon of ethane purchased and used in manufacturing ethylene ($2.10/barrel).
- The tax credits can be used to offset 20 percent of the taxpayer's qualified Pennsylvania tax liabilities.
- After the end of the calendar year in which the PRM credit is approved, a taxpayer can apply to the Department of Community and Economic Development for approval to assign or sell eligible credits to another taxpayer.
- The eligible buyer of the credit would be able to use the purchased credits to offset up to 50 percent of its qualified Pennsylvania tax liabilities.
- Requires an annual report by the Department of Revenue starting in 2018 to include names of all qualified taxpayers utilizing the tax credit and the amount of tax credits approved, utilized, or sold or assigned by each qualified taxpayer.
- Requires that a reconciliation report be filed by the Department of Community and Economic Development beginning in 2028 to include the total number of jobs created, the amount of tax revenue generated from qualified taxpayers and upstream or downstream companies, and any other information pertaining to the economic impact of the tax credit program. Effective for ethane purchased between Jan. 1, 2017 and Dec. 31, 2042.

Research and Development Tax Credit (R&D)

- The cap on the credit is reestablished at $55 million a year.
- $11 million of the credit is to be used by qualifying small businesses.
- Removes the sunset date of the tax credit. Effective July 2, 2012.