pennsylvania
DEPARTMENT OF REVENUE

2013 State Tax Summary

Act 71 of 2013
SB 591, PN 1328 (Omnibus Fiscal Code)

Tax Administration

- Authorizes the Department of Revenue and the State Treasurer to mandate that payments of $1,000 or more for corporation taxes, employer withholding and sales tax must be made electronically. Personal income tax is not required to be paid electronically. Effective Jan. 1, 2014.
- Requires electronic filing by third-party preparers who annually submit 11 or more state tax reports or returns. Effective immediately.
- Prohibits the Department from contracting with third parties to conduct field audits based on a contingent fee. Effective immediately.

Corporate Loans Tax

- Repeals the corporate loans tax effective for tax years beginning after Dec. 31, 2013.

Act 52 of 2013
HB 465, PN 2211 (Omnibus Tax Reform Code)

Sales and Use Tax

- Effective 90 days following enactment, provides a sales and use tax exemption for aircraft parts, services to aircraft and aircraft components.
- Immediately reduces the appeal period for a sales tax license revocation from 90 days to 30 days.
- The additional 1 percent local Philadelphia sales and use tax authorized under Act 44 of 2009 is made permanent. The total Philadelphia sales and use tax is 2 percent.

Personal Income Tax

- Effective Jan. 1, 2014, aligns Pennsylvania with federal rules to allow for a $5,000 start-up business deduction in the year a new business is established.
- Effective beginning with tax year 2014, permits a taxpayer to recover intangible drilling costs as defined by federal rules by using either a 10-year amortization period or an election to currently expense up to one-third of the allowable costs and amortize the remaining costs over 10 years for personal income tax.
- Effective Jan. 1, 2014, authorizes actions by the department to improve tax compliance and administrative efficiency for pass-through entities such as partnerships, limited liability companies and S corporations. Provisions include:
    - Authorizes assessment at the entity level for understatements of income in excess of $1 million by partnerships with eleven or more partners, or having at least one partner that is a corporation, limited liability company, partnership, S corporation or trust, or that elects to be subject to this

provision. A similar provision applies to S corporations. These provisions do not apply to publicly traded partnerships.
    - Requires partnerships to maintain accurate lists of partners and addresses.
    - Requires estates and trusts to withhold Pennsylvania tax on PA-source income from nonresidents.
    - Requires nonresident estates and trusts to file Pennsylvania returns if they have Pennsylvania beneficiaries or PA-source income.
    - Clarifies that filing of PA-20S/PA-65 returns (pass-through information returns) and RK-1s and NRK-1s is mandatory.
- Effective Jan. 1, 2014, eliminates the resident credit for personal income tax paid to foreign countries.
- Extends and adds PA-40 refund donation options
    - Extends the Wild Resources Conservation, Organ and Tissue Donation Awareness and Military Family Relief donation options to Jan. 1, 2018.
    - Adds the Children's Trust Fund donation option effective Jan. 1, 2014.
    - Adds the American Red Cross donation option effective Jan. 1, 2014.
- In order to encourage tax compliance, authorizes the department to file citations with magisterial district judges against taxpayers collecting and not remitting employer withholding tax.

Corporate Net Income Tax

- Requires the add-back of intangible expenses to income for interest, royalties, patents, trademarks, etc., between affiliated companies in certain instances. Effective for taxable years beginning in 2015.
- Clarifies the rules for the sales apportionment factor with regard to sale of services. Effective Jan. 1, 2014, the following sourcing rules apply:
    - The sale, lease, rental or other use of real property occurs at the location of the real property.
    - The rental, lease or licensing of tangible personal property occurs at the location of first possession of the property.
    - Sales of services occur at the point of delivery of the services.
- Effective Jan. 1, 2014, establishes a satellite television apportionment formula, based upon the value of equipment used in generating, processing or transmitting satellite television services.
- Increases the net operating loss deduction cap to $4 million or 25 percent of Pennsylvania taxable income for tax year 2014 and $5 million or 30 percent for tax year 2015 and beyond.
- Creates a minimum $500 penalty for failure to file or knowingly making a false corporation tax report for tax years beginning after Jan. 1, 2014, in order to encourage greater compliance with the tax law.

Capital Stock/Foreign Franchise Tax

The capital stock/foreign franchise tax phase out is extended to January 2016, reducing the rate according to the following schedule:

- Tax Year 2013 – 0.89 mills

- Tax Year 2014 – 0.67 mills
- Tax Year 2015 – 0.45 mills
- Tax Year 2016 and thereafter – 0.00 mills

Bank and Trust Company Shares Tax

Reduces the bank shares tax rate from 1.25 percent to 0.89 percent as of Jan. 1, 2014, and thereafter. In addition:

- Eliminates the use of a six-year average to calculate the value of total equity capital, and instead bases the tax on the most recent year-end value of total bank equity capital.
- Requires apportionment solely based on receipts, similar to the manner in which the corporate net income tax is apportioned based on sales.
- Expands the extent to which out-of-state banks doing business in Pennsylvania are subject to the tax. A new definition of "doing business in this Commonwealth" is added, extending the tax to banking institutions that generate at least $100,000 of gross receipts apportioned to Pennsylvania and solicit business in Pennsylvania, or hold a security interest, mortgage or lien in real or personal property located in the commonwealth.
- The prohibition on petitions for reassessment of bank shares tax is repealed.
- Requires the Department of Revenue and the Department of Banking and Securities to analyze whether the statutory tax rate sufficiently addresses the significant changes in the structure and regulatory environment within the banking industry. Requires a report within 18 months of enactment.

Realty Transfer Tax (RTT)

- Expands circumstances in which the sale of a real estate company is subject to tax. The following changes are effective Jan. 1, 2014:
    - An option or commitment to transfer interests in a real estate company in the future is now treated as a transfer of those interests.
    - A closely held company, 90 percent of whose assets are interests in one or more real estate companies, is now considered a real estate company itself.
    - Whether or not a company is a real estate company is determined by consideration of real estate everywhere, not just in Pennsylvania.
- Exempts from realty transfer tax the following transfers, effective immediately, applicable to transactions that occurred on or after Nov 1, 2011:
    - The transfer of real estate for no or nominal consideration from the commonwealth or any of its instrumentalities to a a volunteer emergency medical services agency, volunteer fire company or volunteer rescue company
    - A transfer of real estate between two or more volunteer emergency medical services agencies, volunteer fire companies or volunteer rescue companies

Pari-mutuel Wagering Tax

- Establishes a 10 percent tax on advance deposit account wagering through a non-licensed corporation on a horse race made over the phone or online from locations within this commonwealth. Effective immediately.

Film Production Tax Credit

- Effective July 1, 2013, requires that Pennsylvania personal income tax shall be withheld by a production company and paid on that portion of Pennsylvania income paid to individual talent through a pass-through entity.
- Provides that a film production tax credit purchased or assigned in calendar year 2013 may be used in 2014.
- Provides that a film production tax credit purchased or assigned in calendar year 2014 may be used in 2015.

Innovate in PA Tax Credit Program

- Effective Oct. 1, 2013, this tax credit is created to distribute funding for innovation and economic growth biotechnology based projects. The Department of Community and Economic Development (DCED) is authorized to sell up to $100 million in tax credits against insurance premiums tax liabilities to qualified taxpayers.
- A qualified taxpayer is an insurance company authorized to do business in the commonwealth, or a holding company that has at least one insurance company subsidiary authorized to do business in the commonwealth.
- The credits may only be claimed beginning in 2017 and the total credit applied for all claimants in any one tax year may not exceed $20,000,000. Credits claimed may not exceed the insurance premiums tax liabilities of the claimant. Any unused credits may be carried over to any year prior to the 2026 tax year.

City Revitalization and Improvement Zones (CRIZ)

- Effective immediately, establishes the CRIZ program for the purpose of improvement and development within a third class city with a population of at least 30,000 based on the most recent federal census.
- Designation requires approval of an application by the Department and Community Development (DCED), Department of Revenue and the Office of the Budget, and zones may not overlap locations with other economic development incentive zones or areas.
- Eligible state and local tax revenues from businesses in the CRIZ will be transferred from the General Fund or local government fund to the CRIZ Fund. Eligible state tax revenues above the baseline will be transferred to CRIZ Authority on an annual basis. Baseline tax revenues, which are eligible state tax revenue calculated in the first year of the CRIZ, will remain with the General Fund on an annual basis in most instances.
- Limited to the creation of two zones until 2016, when two additional zones may be approved each year afterwards.

- DCED may approve one "pilot zone," which is a zone within a township or borough having a population of at least 7,000 people.

Mobile Telecommunications Broadband Investment Tax Credit

- Effective beginning with tax year 2014, establishes a new tax credit against corporate net income tax based upon 5 percent of the cost of investment in qualified broadband equipment located in the commonwealth.
- The tax credit may not be sold or assigned to third parties.
- The credit is capped at $5 million per year and will be prorated if necessary.

Inheritance Tax

- Effective July 1, 2013, provides a small business exemption from inheritance tax for a transfer of a family-owned business interest to one or more family members, provided that after the transfer, the family-owned business interest continues to be owned by a family member for a minimum of seven years after the decedent's date of death.
- The exemption is limited to qualified family-owned business interests, defined as having fewer than 50 full-time equivalent employees, a net book value of assets less than $5 million, and being in existence for at least five years, as of the decedent's date of death. In addition, the principal purpose of the entity must not be the management of investments or income-producing assets owned by the entity.
- Specifies that any family-owned business interest no longer owned by a member of the decedent's family 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.
- Requires annual certification to the department that the family-owned business interest qualifies for the exemption and notification to the department within 30 days if it fails to qualify.
- Does not apply to property transferred to the business within one year of the date of death unless the transfer is for a legitimate business purpose.

Tax Appeals Reform

- Reorganizes the existing Board of Finance and Revenue by April 2014 by replacing the existing six members of the Board with three full-time members, who must be attorneys or certified public accountants having substantial knowledge of Pennsylvania tax law. Two members will be nominated by the Governor and confirmed by the Senate, and the third member is the Pennsylvania Treasurer or Treasurer's designee.

  Additionally:
    - The petitioner and the department are entitled to present oral and documentary evidence before the Board with regard to tax appeals.
    - The board may order a compromise settlement with agreement of both parties.

Repealers

- The following obsolete Tax Reform Code provisions have been repealed, effective immediately.
  - Authorizing county treasurers to receive use tax from any person other than a licensee (section 226).
  - Providing a poverty exemption for spouses in inheritance tax, now superseded by an exemption for transfers to spouses (section 2112).
- The following obsolete Fiscal Code provisions have been repealed.
  - Reporting provisions including local treasurer reports of municipal loans and payment of tax (sections 709 and 724).
  - Administrative provisions including collection and reporting of motor license and vehicle operator's license fees and collection of amounts payable to state institutions (sections 1206 and 1209).
- The following under-utilized tax credit is repealed.
  - Call center tax credit (section 206).