

Pennsylvania Passes Single Sales Factor, Changes to the Appeals Process, and Changes to Sales and Use Tax

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On July 2, Gov. Tom Corbett signed into law Act 85 that, because of last minute amendments in the Senate, makes a number of changes to the Tax Code, many of which had been included in various other bills and were the subject of much debate.

Corporate Net Income Tax — Single Sales Factor: Starting January 1, 2013, business income must be apportioned using a single sales factor to compute the corporate net income tax.

Procedural Changes:

Extension to File Automatically Granted if Federal Extension. Where the federal government has granted a taxpayer an extension to file, the Department of Revenue now must automatically grant an extension equal to the federal extension plus 30 days.

Report of Change as the Result of a Federal RAR Due Date Extended. The time in which a taxpayer must report changes to taxable income made by the federal government is extended from 30 days to six months after receipt of the notice of final change.

Certified Mail No Longer Required for Assessments. The Department no longer has to mail assessment and estimated assessment notices for assessments of more than \$300 by certified mail.

Adjustments Not Resulting in Tax Increase. Taxpayers may now contest any adjustments that do not result in a tax increase in either the year that the adjustment occurs or the year in which the adjustment has a tax effect. For example, taxpayers have the option of appealing the Department's recalculation of a net loss when adjusted or when the NOL could be used in a subsequent tax year. This provision applies to all pending appeals and open tax periods.

Statute of Limitations for Refund Claims. Act 85 amends the statute of limitations for refund claims to make it clear that a taxpayer can file a petition for refund within the later of six months from the mailing date of the notice of assessment, or *three years from actual payment of the tax*. For refund claims filed after July 1, 2012, the Department's current position that refund claims must be filed within the earlier of three years of payment or six months of the notice of assessment is inapplicable.

In the case of amounts paid as the result of an assessment, determination, or settlement, a petition for refund must be filed *within six months of the actual payment of tax*. This is a big change from the current statute requiring the refund claim be filed within six months of the mailing date of the notice. Thus, any taxpayer with unpaid assessments that were time-barred under the old statute, may now pay the assessment and open the appeal period.

Attachment and Seizure of Funds When Amounts are Owed to Commonwealth. The Department may now order the attachment and seizure of funds in an account that the Department reasonably believes holds property subject to a recorded tax lien.

Compromise Authority. Act 85 codifies the Department's compromise authority policy by using the language from Misc. Tax Bulletin 2011-02. Therefore, the Board of Appeals now has statutory authority to settle cases when the following two conditions apply: doubt as to liability, and the promotion of effective tax administration.

Sales and Use Tax:

Semi-Monthly Filing Obligation Removed. The semi-monthly sales tax filing requirement is removed and replaced with monthly filing requirements. Now, all licensees whose actual tax liability for the third calendar quarter of the preceding year equals or exceeds \$600, must file monthly returns.

Wrapping Supplies Exemption Expanded to Services. Charges for wrapping or packaging services are now exempt from sales and use tax if the "property wrapped or packaged will be resold by the purchaser of the wrapping or packaging services."



Tax Credits:

Act 85 modified a number of existing tax credits, such as expanding the Educational Improvement Tax Credit. Additionally, Act 85 created new tax credits, such as the Resource Manufacturing Tax Credit, which provides an incentive for the creation of *ethane cracker plants* in Pennsylvania.

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