

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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► SUBJECT

PENNSYLVANIA ENACTS LEGISLATION WHICH LIMITS THE AUTHORITY OF LOCALITIES TO IMPOSE BUSINESS PRIVILEGE TAXES AND PREVENTS DOUBLE TAXATION OF RECEIPTS

► SUMMARY

On May 6, 2014, Pennsylvania Governor Tom Corbett signed into law H.B. 1513, Regular Session 2013-2014 (“H.B. 1513”), which limits the authority of Pennsylvania localities to impose privilege taxes and reduces the potential for double taxation of receipts. The provisions of H.B. 1513 are effective for taxable years beginning on or after January 1, 2014.

► DETAILS

Background

Under its Local Tax Enabling Act (the “LTEA”), Pennsylvania has historically authorized each city (other than Philadelphia), borough, town, township, and school district to levy a tax on transactions and privileges within its territorial limits.¹ The LTEA does not, however, define what qualifies as a taxable transaction or privilege. Instead, each locality has defined by ordinance and/or regulation what qualifies as a taxable transaction or privilege.

Generally, Pennsylvania localities have historically exercised the statutory authority given to them by the LTEA by imposing a tax on one or both of the following: (1) receipts arising from business transacted within the territorial limits of the locality; and (2) receipts attributed to a base of operations or place of business located within the territorial limits of the locality. However, confusion among localities and taxpayers often arises as to when a taxpayer may

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¹ See 53 Pa. Stat. § 6924.301.1(a) (formerly 53 P.S. 6902). Pennsylvania granted Philadelphia its authority to tax under the Sterling Act. See 53 Pa. Stat. § 15971.

be subject to tax because the LTEA merely grants each locality the authority to impose a tax on transactions and privileges without providing a definition of base of operations or place of business (or what receipts may be attributed thereto) and frequently ordinances and regulations of localities are not clear. In addition, because of the broad taxing authority granted each locality and the lack of consistency/coordination among taxing jurisdictions relative to the subjects of tax, the same receipt may, for example, be attributed to a base of operations or place of business in a city and arise from business transacted in another city and, thus, taxed more than once.

H.B. 1513

On a prospective basis, at least, H.B. 1513 provides some clarity as to when a locality may impose a privilege tax on receipts by: (1) limiting a locality's jurisdiction to impose a privilege tax to a taxpayer conducting transactions for more than 15 days within its territorial limits or with a "base of operations" within its territorial limits; and (2) defining "base of operations" to mean "an actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities." Further, H.B. 1513 reduces the potential for double taxation by prohibiting a locality from imposing a privilege tax on receipts that were subject to tax because the taxpayer conducted transactions in another locality for 15 or more days.

► BDO INSIGHTS

- H.B. 1513 reduces the potential for double taxation and provides a minimum threshold for localities to impose a privilege tax - especially in light of the fact that Pennsylvania has over 500 local taxing jurisdictions and the high likelihood in a pre-H.B. 1513 (*i.e.*, before January 1, 2014) environment that taxpayers conducting business in Pennsylvania could unknowingly be subject to a privilege tax in multiple jurisdictions by reason of the slightest transaction or activity.
- As beneficial as setting a minimum threshold and reducing the potential for double taxation may be, H.B. 1513 does not clarify when a transaction may be attributed to a base of operations or when a taxpayer is considered to be conducting a transaction within a jurisdiction. Taxpayers and taxing jurisdictions alike will have to continue to rely on the language in the local ordinances and regulations as well as interpretative case law to make such a determination.
- H.B. 1513 leaves open the question as to when receipts are "subject to" a tax. For example, are receipts "subject to" a tax only if actually taxed or is it enough that a particular jurisdiction has the authority to tax such receipts even if not exercised?
- It will likely take some time before each locality updates its ordinances and regulations to reflect the provisions contained in H.B. 1513, if at all. Therefore, taxpayers will have to continue to be mindful of the reporting/payment threshold and double tax provisions in H.B. 1513.

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