

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

PENNSYLVANIA ADOPTS CORPORATE TAX AMENDED RETURN PROVISIONS, SUBJECTS DIGITAL GOODS TO SALES/USE TAX, ESTABLISHES A TAX AMNESTY PROGRAM, AND CREATES NEW TAX CREDITS AND INCENTIVES

SUMMARY

On July 13, 2016, Pennsylvania Governor Tom Wolf (D) signed into law H.B. 1198, 2015-2016 Reg. Sess. (Pa. 2016), which broadens the sales and use tax base to include digital goods (whether digitally or electronically delivered, streamed, or accessed), and includes provisions that require the Department of Revenue to revise the tax due upon review of an amended corporate tax return. In addition, H.B. 1198 makes various changes to the Bank and Trust Company Shares Tax, establishes a 60 day tax amnesty program, and amends and creates several tax credits and incentives.

DETAILS

Sales/Use Tax on Digital Goods

Effective as of August 1, 2016, H.B. 1198 broadens the sales and use tax base to include digital goods whether digitally or electronically delivered, streamed, or accessed. Specifically, H.B. 1198 defines tangible personal property to include video, photographs, books, music, games, canned software, applications (or “apps”), satellite radio service, and any other taxable tangible personal property digitally or electronically delivered, streamed, or accessed. These items, including updates, support, and maintenance, are subject to tax whether purchased by subscription, singly, or in any other manner. Previously, the Department had administratively taxed canned software accessed electronically.

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Amended Corporate Tax Returns

Pursuant to H.B. 1198, for amended Corporate Net Income Tax, Capital Stock/Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Gross Receipts Tax, and Mutual Thrift Institutions Tax returns filed after December 31, 2016, Pennsylvania requires the Department to act on the return and provide written notice explaining whether it accepts the return within one year of filing, unless the taxpayer consents to an extension. Currently, the Department is not obligated to revise the tax due upon review of an amended return.

If the Department does not provide timely notice, the return is deemed accepted as filed, and the Department must adjust its records accordingly. A taxpayer who disagrees with the Department's decision with respect to an amended return may, under most circumstances, file a petition for review with the Board of Appeals within 90 days of the Department's written notice. Where prohibited from filing a petition for review, the taxpayer may pay the tax, interest and penalties due, and request a refund within the statute of limitations. Currently, a failure of the Department to revise the tax due is not an appealable action.

However, H.B. 1198 prohibits a taxpayer from filing an amended return if: (i) the taxpayer may file a timely petition for reassessment, unless the taxpayer would be entitled to an adjustment of tax liability as defined by the Department's regulations; (ii) an administrative appeal board or court has already addressed an issue raised in an amended return for the taxable year; or (iii) the taxpayer takes a position on the return contrary to law or published Department policy. In addition, the filing of an amended return extends the statute of limitations on the Department's authority to assess tax to the later of 1 year after the amended return was filed or 3 years after the original return was filed.

Corporate Net Income Tax Return Due Date

Effective for taxable periods beginning after December 31, 2015, H.B. 1198 amends the return due date of a calendar year taxpayer to 30 days after the federal income tax return due date. For other taxable periods, a calendar year taxpayer is required to report and pay by April 15th following the close of the taxable year.

Bank and Trust Company Shares Tax Changes

H.B. 1198 makes various changes to the Bank and Trust Company Shares Tax. For example, H.B. 1198: (i) increases the Bank and Trust Company Shares Tax rate to 0.95 percent; (ii) extends the option to use Method I to source investment income receipts to taxpayers without trading receipts; (iii) includes receipts of non-bank subsidiaries in the apportionment factor; (iv) eliminates the \$100,000 minimum receipts nexus threshold; (v) makes a clarifying adjustment to the U.S. obligations subtraction; and (vi) provides an exclusion from bank equity for the equity in a foreign bank. See [BDO Knows Financial Institutions & Specialty Finance Alert - July 2016](#) for a more detailed discussion of these changes.

Tax Amnesty Program

H.B. 1198 requires the governor to establish a 60 day tax amnesty program for a period ending no later than June 30, 2017. In addition, H.B. 1198 requires the Department to develop and publish guidelines for the program within 60 days of July 13, 2016.

The amnesty program applies to any tax administered by the Department and to liabilities delinquent as of December 31, 2015, including a liability related to an unfiled return. H.B. 1198 imposes a 5-percent non-participation penalty.

The amnesty program entitles a participating taxpayer to waiver of all penalties and 50 percent of interest and a limited look back period for any unknown liabilities due prior to January 1, 2011. However, the amnesty program requires the taxpayer to file all original and amended returns for all required years, and bars a participating taxpayer from participating in a future amnesty program.

New and Amended Tax Credits and Incentives

Under H.B. 1198, Pennsylvania creates and amends many credits and incentives that apply to various taxpayers and tax types. Most of the new tax credits and incentives are available beginning July 1, 2017. The charts on the following pages provide a brief summary of the credits and incentives addressed in H.B. 1198.

BDO INSIGHTS

- ▶ Taxpayers should consider updating their sales and use tax systems to collect the appropriate tax on sales of digital goods beginning August 1, 2016. In addition, taxpayers should assess whether use tax is due on a purchase of a digital good where no sales tax has been paid.
- ▶ The amended return provisions enacted under H.B. 1198 are a welcome change. As noted, the Department is currently not obligated to revise the tax due upon review of a corporate tax amended return. This typically requires a taxpayer to file a more costly petition for refund with the Board of Appeals or risk the Department not acting on the amended return before the statute of limitations to file a petition for refund expires. Taxpayers contemplating filing an amended return (or a petition for refund), should consider whether to wait until December 31, 2016, to file, provided waiting would not impact any refund rights under the statute of limitations.
- ▶ The amnesty program provides an opportunity for a taxpayer with a delinquent liability to qualify for 100-percent penalty waiver and 50-percent interest waiver. However, Pennsylvania, like most states, has a Voluntary Disclosure Agreement (or "VDA") program for taxpayers with liabilities unknown to the state that voluntarily come forward and report and pay tax. Under the VDA program, a taxpayer typically only receives penalty waiver, and the state applies look back periods as follows: (i) corporate taxpayers - 5 years, plus the current year; and (ii) non-corporate taxpayers - 3 years, plus the current year. Taxpayers considering voluntarily reporting unknown liabilities should assess whether amnesty or a VDA is more advantageous.
- ▶ Pennsylvania taxpayers should consider whether they may benefit from any of the tax credits and incentives addressed in H.B. 1198, including, where applicable, through sale or assignment.

**PENNSYLVANIA BUDGET BILL
H.B. 1198, 2015-2016 REG. SESS. (PA. 2016)
NEW TAX CREDITS AND INCENTIVES**

Coal Refuse Energy and Reclamation Tax Credit

- ▶ Allows a tax credit equal to the product of \$4 and the tons of qualified coal refuse used to generate electricity at an eligible facility
- ▶ Applies to Personal Income Tax, Corporate Net Income Tax, Capital Stock/Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Gross Receipts Tax, or Mutual Thrift Institutions Tax
- ▶ Allows carryover and sale/assignment, but no carryback/refund

Computer Data Center Equipment Incentive Program

- ▶ Allows an owner/operator/qualified tenant to apply for a refund of sales tax paid on the sale or use of computer data center equipment for installation in a computer data center

Concert Rehearsal and Tour Tax Credit

- ▶ Allows a tax credit for qualified rehearsal and tour expenses if minimum requirements are met
- ▶ Applies to Personal Income Tax, Corporate Net Income Tax, or Capital Stock/Franchise Tax
- ▶ Allows carryover, but no carryback/refund or sale/assignment

Manufacturing and Investment Tax Credit

- ▶ Allows a tax credit equal to 5 percent of a qualifying taxpayer's increase in annual taxable payroll if the annual taxable payroll increases in year one by at least \$1 million
- ▶ Applies to Personal Income Tax, Corporate Net Income Tax, Capital Stock/Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Gross Receipts Tax, or Mutual Thrift Institutions Tax
- ▶ Allows carryover and sale/assignment, but no carryback/refund

Mixed-Use Development Tax Credit

- ▶ Authorizes the Department to allocate an amount not to exceed \$2 million in each fiscal year for the sale of credits to qualified taxpayers
- ▶ Applies to Personal Income Tax, Corporate Net Income Tax, Capital Stock/Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Gross Receipts tax, or Mutual Thrift Institutions Tax
- ▶ Allows carryover and sale/assignment, but no carryback/refund

Rural Jobs and Investment Tax Credit

- ▶ Allows a tax credit for credit-eligible capital contributions made by a business firm to a rural growth fund that are used by the fund for rural growth investments in a qualifying rural business
- ▶ Applies to Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, or Mutual Thrift Institutions Tax
- ▶ Allows carryover, but no carryback/refund or sale/assignment

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Video Game Production Tax Credit	<ul style="list-style-type: none"> ▶ Allows a tax credit for qualified video game production expenses ▶ Applies to Personal Income Tax, Corporate Net Income Tax, Capital Stock/Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, or Mutual Thrift Institutions Tax ▶ Allows carryover and sale/assignment, but no carryback/refund
Waterfront Development Tax Credit	<ul style="list-style-type: none"> ▶ Allows a tax credit for contributions made to a waterfront development organization that are used by the organization for an approved waterfront development project ▶ Applies to Personal Income Tax, Corporate Net Income Tax, Capital Stock/Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, or Mutual Thrift Institutions Tax ▶ Allows carryover and sale/assignment, but no carryback/refund
Entertainment Production Tax Credit (f/k/a as Film Production Tax Credit)	<ul style="list-style-type: none"> ▶ Adds qualified postproduction expenses as costs that qualify for the credit, and extends the tax credit to the Title Insurance Companies Shares Tax and Mutual Thrift Institutions Tax, effective for taxable years beginning after December 31, 2016
Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, and Keystone Opportunity Improvement Zones	<ul style="list-style-type: none"> ▶ Allows for the designation of up to 12 additional Keystone Opportunity Expansion Zones that will create new jobs ▶ Authorizes the Department of Community and Economic Development to grant a 10 year extension for a parcel within a Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, and Keystone Opportunity Improvement Zones for an applicant that meets certain employee, capital investment, and/or job creation requirements
Keystone Special Development Zone Tax Credit	<ul style="list-style-type: none"> ▶ Extends the period an employer may earn the tax credit to June 30, 2035, effective immediately
Neighborhood Assistance Tax Credit	<ul style="list-style-type: none"> ▶ Expands the credit to a business firm that engages or contributes to a neighborhood organization that engages in the activities of providing affordable housing, domestic violence, or veteran's housing assistance, effective immediately

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NEW TAX CREDITS AND INCENTIVES

Neighborhood Improvement Zone	▶ Creates a new requirement that a contracting authority hire an independent audit firm to perform an annual audit verifying eligible local taxes and proper spending
Research and Development Tax Credit	▶ Makes the credit permanent
Small Brewers Tax Credit	▶ Reestablishes the credit beginning July 1, 2017
Tax Credit for New Jobs	▶ Expands the credit to include a newly created job filled by a veteran, effective immediately

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