

Business Tax Update

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Business Tax Update

- Repair/Capitalization/Depreciation Update
- Research & Development Tax Credit
- Partnership Audit Procedures
- Tax Return Due Dates Changes

Repair / Capitalization / Depreciation Update

- De Minimis Safe Harbor
- Other Provisions / Elections
- Bonus Depreciation
- Qualified Improvement Property
- 15-Year Real Property
- Section 179 Expensing

De Minimis Safe Harbor

- With applicable financial statements – certified audited financial statement
 - \$5,000 per item unchanged
- Without applicable financial statement
 - Maximum per-item safe harbor limit increased from \$500 to \$2,500 effective 1/1/2016
 - Not required to have a written accounting policy implementing the safe harbor although recommended
- Elected annually with filing of tax return

Other Provisions / Elections

- Remodel-Refresh Safe Harbor
 - Accounting method
 - Taxpayer operating a retail establishment or restaurant
 - 25% of qualified remodel-refresh costs capitalized
 - 75% currently deductible as repairs and maintenance
 - Applicable financial statement required
 - Excludes auto dealers, other motor vehicle dealers, gas stations
 - Limitations on types of costs as well

Other Provisions / Elections (cont.)

- Election to capitalize in accordance with books
 - Annual election
 - Capitalize and depreciate any expenditure for repairs and maintenance if capitalized for book purposes
 - Applies to all amounts capitalized
- Safe harbor for small taxpayers with buildings
 - Annual election
 - \$10,000,000 or less in annual gross receipts
 - Expense improvements if total amount of repairs, maintenance and improvements does not exceed lesser of \$10,000 or 2% of unadjusted basis of building

Bonus Depreciation

- 50% bonus depreciation extended for property placed in service in 2015, 2016 and 2017
- 40% bonus depreciation for property placed in service in 2018
- 30% bonus depreciation for property placed in service in 2019
- Without additional legislation, bonus depreciation expires after 2019

Qualified Improvement Property

- Effective for property placed in service on or after January 1, 2016
- Qualifies for bonus depreciation
- 39-year life unless the definition of qualified leasehold improvement, qualified retail improvement, or qualified restaurant property is met

Qualified Improvement Property (cont.)

- Improvement to interior portion of nonresidential real property
- Placed in service after the date the building was first placed in service
- Excludes expenditures attributable to:
 - Enlargement of building
 - Elevator or escalator
 - Internal structural framework of building

15-Year Property

- PATH Act permanently extended the 15-year life for:
 - Qualified leasehold improvement property
 - Qualified retail improvement property
 - Qualified restaurant property
- Scheduled to expire after 2014 – would have reverted back to 39-year property
- Eligible for bonus depreciation and straight-line depreciation

15-Year Property (cont.)

- Qualified leasehold improvement property
 - Improvement to interior portion of building by lessor or lessee pursuant to the terms of a lease
 - More than 3 years after building placed in service by any person
- Qualified retail improvement property
 - Used in retail trade or business of selling tangible personal property to the general public
 - No lease required
- Qualified restaurant property
 - Age of building does not matter and no lease required
 - Improvements to interior or exterior qualify (only interior qualifies for bonus depreciation)

Section 179 Expensing

- PATH Act permanently extended \$500,000 annual cap on the §179 deduction and the \$2,000,000 investment limitation
- Beginning in 2016 both amounts are indexed for inflation
 - \$500,000 - §179
 - \$2,010,000 – investment limitation

Section 179 Expensing (cont.)

- Qualified real property
 - Qualified leasehold improvement property
 - Qualified retail improvement property
 - Qualified restaurant property
 - Watch ordinary income recapture versus capital gain on sale
- Portable heating and air conditioning units now qualify
- Results in ordinary income recapture when disposed

Research & Development Tax Credit

- Four Part Test
 - Expenditures relate to activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product or process
 - Research undertaken to discover information that is technological in nature
 - Application of research intended to be useful in developing new or improved products or processes
 - Substantially all the research must contain elements of a process of experimentation relating to new or improved function, performance, reliability or quality

Research & Development Tax Credit (cont.)

- PATH Act permanently extended the credit
- Alternative minimum tax (AMT) offset
 - Many small business owners subject to AMT so benefit deferred indefinitely
 - Tax years beginning after 2015
 - Eligible small business (ESB) may offset AMT liability
 - <\$50,000,000 in average annual gross receipts for three preceding tax year

Research & Development Tax Credit (cont.)

- Payroll tax credit
 - Tax years beginning after 2015
 - Qualified small business (QSB) can elect to apply the R&D credit against its share of the OASDI portion of the FICA tax
 - Up to \$250,000 but limited to lesser of:
 - Total allowable R&D credit for the year, or
 - Amount of business credit carryforward from the tax year in the case of a QSB that is not a partnership or S Corporation
 - QSB is business with gross receipts of less than \$5,000,000 and no gross receipts before five year period ending with the current year
 - Election made on Form 6765 for maximum of 5 years and credit claimed on Form 941



Partnership Audit Changes

- Old partnership audit rules have been in existence since 1982 (TEFRA)
 - Tax matters partner
- New rules are effective for partnership tax years beginning after 12/31/2017
- Partnership may elect to apply new rules for tax years beginning after 11/2/2015 and before 1/1/2018

Partnership Audit Changes (cont.)

- Reviewed year – tax return year under audit
- Adjustment year – tax return year when the changes are finalized

Partnership Audit Changes (cont.)

- Audit will continue to be conducted at the partnership level
- Tax liability from a federal income tax audit will be imposed directly on the partnership and not the partners
- Adjustments from the review year are taken into account by the partnership in the adjustment year

Partnership Audit Changes (cont.)

- Partnerships generally must pay tax equal to the imputed underpayment
 - Net of all adjustments for the reviewed year multiplied by
 - Highest individual or corporate tax rate in effect in the review year
- Amount may be modified if partnership shows that lower amount is appropriate
 - Partner files an amended return in review year
 - Partner is a tax-exempt entity
 - Income would be eligible for preferential tax rate – capital gain

Partnership Audit Changes (cont.)

- Partner level adjustment alternative
 - With 45 days, after notice of final partnership adjustment, the partnership can elect to issue adjusted information returns to the reviewed-year partners
 - Partners take the adjustment into account on their returns in the adjustment year through a simplified amended return process

Partnership Audit Changes (cont.)

- Small partnerships
 - Partnerships with 100 or fewer qualifying partners can elect out of the new rules for any tax year
 - All partners must be:
 - Individuals
 - C corporations
 - S corporations (shareholders included in 100)
 - Estates of deceased partners
 - Election made with timely filed return for the applicable year which discloses the name and ID of each partner and all partners must be notified
 - IRS can issue rules that allow elections out in cases where one or more partners do not meet these rules

Partnership Audit Changes (cont.)

- Partnership agreement issues
 - Formerly tax matters partner
- Partnership representative
 - Any person with substantial presence in the United States
 - Does not need to be a partner
 - Designation procedures to be prescribed by the IRS
 - Sole and exclusive authority to act on behalf of the partnership and to bind all partners

Tax Return Due Dates

- Information returns
- Accelerated due dates for filings with the IRS and Social Security Administration
 - Forms W-2 & forms 1099 due by January 31
 - Due date to payees remains unchanged
 - Effective for 2016 returns filed in 2017

Tax Return Due Dates (cont.)

- Penalties - Unintentional
 - One failure to file (indexed annually)
 - \$260
 - Maximum \$3,193,000 – small business \$1,064,000
 - Delinquency corrected within 30 days (indexed)
 - \$50 per return
 - Maximum \$532,000 – small business \$186,000
 - Delinquency corrected after 30 days but no later than August 1
 - \$100 per return
 - Maximum \$1,596,500 – small business \$532,000
- Penalties – Willful failure to file
 - \$530
 - No upper limit

Tax Return Due Dates (cont.)

- Form 1065
 - 3/15/2017
 - 9/15/2017
- Form 1120
 - 4/15/2017
 - 9/15/2017
- Form 1041
 - 9/30/2017 extended due date
- Form 990
 - 6 month extension versus two 3 month extensions
- FinCen Form 114
 - 4/15/2017 – not 4/18/2017
 - 10/15/2017

Pennsylvania Tax Update

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Course Outline

1. Corporate Tax Update
2. Sales and Use Tax Update
3. Miscellaneous Tax
4. Tax Amnesty Program
5. Tax Credits and Economic Development
6. Potential Property Tax Reform
7. Potential Corporate Tax Reform

Corporate Tax Update

- As of 12/31/2015 no more Capital Stock/Foreign Franchise Tax
 - Entities no longer required to file RCT-101, should have filed “final reports”
- Corporate Report Due Dates – effective as of 12/31/2015, Corporate Tax Reports due 30 days after federal
- Amending Corporate Tax Reports – Amended reports filed after 12/31/2016, Pennsylvania must act upon filing within 1 year or it is deemed accepted as filed
- Inter-company add-backs for Corporate Net Income Tax effective for tax years beginning after December 31, 2014
- Corporate Net Income Tax Rate and NOL Limitations are not changed

Sales Tax Updates

- Electronically or digitally downloaded property is deemed subject to sales and use tax
 - Effective August 1, 2016
 - Examples – Hulu, Netflix, Sirius, e-books, games, ringtones and any maintenance or updates to these purchases
- Sales tax vendor discount
 - Effective August 1, 2016
 - Discount limited to \$25 for monthly, \$75 for quarterly and \$150 for semi-annual filers.
- Snack food packaging expansion, effective immediately
- Convention center exemption effective September 11, 2016
- Timbering exclusion, effective July 1, 2017

Miscellaneous Tax and Credits

- Lottery winnings are now subject to Pennsylvania personal income tax retroactive to January 1, 2016
- Cigarette tax increased \$1 per pack, effective August 1, 2016
- Pipe tobacco, chewing tobacco and snuff (does not include cigars) are subject to \$0.55 per ounce tax and electronic cigarette will be subject to a 40% wholesale tax effective October 1, 2016
- Bank Shares Tax rate increased from 0.89% to 0.95 percent effective January 1, 2018

Pennsylvania Tax Amnesty Program

Tax Amnesty period will run from April 21, 2017 through June 19, 2017

Applies to taxes administered by Pennsylvania's Department of Revenue

Applies to tax liabilities that existed as of December 31, 2015

Provides for limited look-back, abatement of penalties and reduction of $\frac{1}{2}$ of the interest due

May not participate if taxpayer participated in the 2010 Tax Amnesty



Credits and Economic Development

Research and Development Credit – Sunset provision removed

Entertainment Production Tax Credit (former Film Production Tax Credit) – Renamed and expanded to Concert Rehearsal and Tour Credit as well as Video Game Production Tax Credit

Educational Tax Credits – funding increased from \$100M to \$125M

Tax Credit for New Jobs (formerly Jobs Creation Tax Credit), \$2,500 for eligible veteran hires

Manufacturing and Investment Tax Credit



Potential Property Tax Reform

- Property tax elimination??
 - Proposals were only for school district property tax
 - Proposal included maintain school district property tax for any school district with outstanding debt
- How would revenue be replaced?
 - Higher sales and use tax rates
 - Increased property and services subject to sales and use tax
 - Increased personal income tax rate
 - Additional revenues to cover the gap

Potential Corporate Tax Reform

- Pennsylvania NOL deduction for Corporate Net Income Tax ruled unconstitutional (Nextel Communications Case)
- Options to resolve Nextel issue
 - Eliminate Cap on NOLs
 - Eliminate NOL deduction
 - Provide for specific calculation of limit for every taxpayer
- Pennsylvania Corporate Net Income Tax rate
- Pennsylvania separate company versus combined reporting