# FY 2013-14 TAX BILL SUMMARY

*(HOUSE BILL 465, AS AMENDED)*

## *SALES AND USE TAX*

Call Center Tax Credit

- Repeals the substantially underutilized Call Center Tax Credit.

Exclusion for Fixed-Wing Aircraft Repairs and Maintenance

- Excludes the sale at retail or use of aircraft parts, services to aircraft and aircraft components from the sales and use tax. The term "aircraft" includes a fixed-wing aircraft, powered aircraft, tilt-rotor or tilt-wing aircraft, glider or unmanned aircraft.

Repeal – Local Receivers of Use Tax

- Repeals section 226 of the TRC with regard to local receivers of use tax, which is an obsolete provision that authorizes county treasurers to receive use tax from any person other than a licensee and remit it to the Commonwealth.

Appeals Regarding Licenses

- Requires that an appeal regarding a license must be filed within 30 days of the date of notice of any refusal, suspension or revocation by the department. Presently, a vendor without a sales and use tax license can continue to operate without a license for an extended period of time until all appeals are finalized. This provision accelerates the process to prevent non-licensees from operating and collecting sales tax without a license.

Federal Marketplace Fairness Act (Remote Sales) Report

- Directs the Independent Fiscal Office, in conjunction with the Department of Revenue ("DOR"), to report on implementation of the Federal "Marketplace Fairness Act" whereby remote sellers can be required to collect sales tax. Report is due within 90 days of Federal enactment.

## *LOCAL PHILADELPHIA SALES TAX*

Establishes Article II-B

- Removes the sunset provision of the additional 1% local Philadelphia sales and use tax authorized under Act 44 of 2009.
- Provides that up to $120 million in revenues generated will be earmarked for the Philadelphia School District.

- An amount up to $15 million, if available, will be given to the City of Philadelphia and used for debt service for up to four years.
- Any remaining tax revenues will go to the City of Philadelphia for pension costs.

## *PERSONAL INCOME TAX*

Start-up Business Deduction

- Aligns Pennsylvania with Federal rules to allow for a start-up business deduction in the year a business is established. Federal law permits businesses to deduct $5,000 from taxable income in the year a business is established. C-corporations are currently allowed to utilize this deduction for CNIT, which is based on Federal taxable income.

Intangible Drilling and Development Costs

- Permits a taxpayer to recover the costs of IDCs by using either a ten-year amortization period or an election to expense up to one-third of the allowable costs under Federal IRC § 263(c) rules for personal income tax.

Elimination of Resident Credit for Taxes Paid to Foreign Countries

- Eliminates the PIT credit for taxes paid to foreign countries. Credit allowed for taxes paid to other states will remain in effect. Most other states do not provide for credits on taxes paid in other countries.

Check-Offs

- Establishes check-offs on personal income tax returns for Contributions for the Children's Trust Fund and Contributions for American Red Cross.
- Extends to 2018 the existing PIT check-offs for Wild Resource Conservation, Organ and Tissue Donation Awareness, and Military Family Relief Assistance, which were set to expire in 2014.

## *CORPORATE NET INCOME TAX*

Intangible Expense Add-back

- Requires the add-back of intangible expenses to income for interest, royalties, patents, trademarks, etc., between affiliated companies in certain instances. Addresses the so-called “Delaware Loophole” issue. Effective for taxable years beginning in 2015.

Sales Factor – Market Sourcing

- Adopts market-based sourcing for the sales apportionment factor with regard to the sales of services. Sales related to services would be sourced to where the benefit is being derived by the customer. The revenue generated primarily will be from out-of-state businesses with PA-sourced service income.

Sales Factor – Apportionment of Satellite Television Services

- Establishes an apportionment factor for providers of satellite television services based upon the value of equipment used in generating, processing or transmitting satellite television services.

Net Operating Loss Deduction (“NOL”)

- Increases the NOL cap from $3 million or 20% of taxable income to $4 million or 25% of PA taxable income for tax year 2014 and to $5 million or 30% for tax years 2015 and beyond.

Non-filer Penalty

- Creates a $500, plus 1% for every dollar of tax greater than $25,000, non-filing penalty for C-corporations in order to encourage greater compliance with the tax law. The current penalty is a percentage of the tax due, and so if a company believes that it owes little or no tax, there is no incentive to file a return.

## *CAPITAL STOCK AND FRANCHISE TAX*

Rate Adjustment and Phase-out Extension

- Adjusts the CSFT rate and extends the phase-out for two years as follows:
    - Tax year 2014 rate is 0.67 mills versus zero mills under current law.
    - Tax year 2015 rate is 0.45 mills.
    - CSFT expires for tax years 2016 and thereafter.

## *BANK SHARES TAX*

Comprehensive Revenue-Neutral Bank Shares Tax Reform

- Adjusts the rate of the Bank Shares Tax (“BST”) from 1.25% of total equity capital to 0.89% of total *bank* equity capital.
- Replaces a six-year moving average valuation formula with a one-year valuation formula. This provision will mitigate the uncertain effects of ongoing litigation regarding this issue.
- For purposes of apportionment, eliminates the payroll factor and deposits factor, thereby apportioning the taxable value of shares by only a receipts factor, which is similar to a single sales factor.

- Provides for definitions such as "doing business in the Commonwealth", "receipts factor", and "institution", which will broaden the tax base to include more out-of-state banks.
- Repeals the current provision that requires a special appeals process for BST and includes it in the newly reformed Board of Finance and Revenue process.

Comprehensive Tax Reform Analysis and Report

- Directs DOR and the Department of Banking and Securities, along with representatives from the banking industry, to analyze the comprehensive tax reform in light of structural and regulatory changes in the industry to determine whether the tax reform is appropriate to protect the State funds derived from the BST. Requires a report within 18 months.

## *REALTY TRANSFER TAX*

Real Estate Company Transactions (“89-11 Loophole”)

- Eliminates the realty transfer tax 89-11 loophole. Presently, RTT is imposed if at least 90% of the ownership of an acquired company is transferred within three years. In an 89-11 transaction, the buyer acquires 89% of a real estate company along with an option to purchase the remaining 11% after three years. Once the three-year period expires, the buyer purchases the remaining 11%, thereby avoiding the state and local realty transfer tax.

Volunteer Fire and Emergency Organizations

- Provides that a transfer of real estate for no or nominal consideration from the Commonwealth or any of its instrumentalities, agencies or political subdivisions to a volunteer emergency medical services agency, volunteer fire company or volunteer rescue company, or a transfer of real estate between two or more volunteer agencies is exempt from the realty transfer tax.

## *NONLICENSED CORPORATION PARI-MUTUEL WAGERING TAX*

Establishment

- Establishes a new 10% tax on advance deposit account wagering conducted on horse races in this Commonwealth. The tax is designed to impose a pari-mutuel tax on wagers made over the phone and online and that may be escaping taxation under the existing pari-mutuel tax.
- Up to $5 million annually may be appropriated from the General Fund to the State Racing Commissions within the Department of Agriculture for operations of the Commissions. For FY 2013-14, any funds that exceed $5

million shall be transferred to the Pennsylvania Race Horse Development Fund.

## *FILM PRODUCTION TAX CREDIT*

Technical Changes and Clarifications

- Requires that Pennsylvania PIT shall be withheld by a production company and paid on that portion of Pennsylvania income paid to individual talent through a pass-through entity.
- Makes a technical change to the definition of “start date.”

Evaluation of Film Projects

- Allows the Director of the Film Office to consider criteria that will ensure maximum employment and benefit to the Commonwealth when reviewing and approving applications for a tax credit.

Carryover

- 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.

## *EDUCATIONAL OPPORTUNITY SCHOLARSHIP TAX CREDIT*

Scholarships

- Allows a scholarship recipient who resides within the attendance boundary of a school that was removed from the list of eligible schools to receive a scholarship for enrollment in a participating public or non-public school for up to the lesser of five years or completion of grade 12.

## *COAL WASTE REMOVAL AND ULTRACLEAN FUELS TAX CREDIT*

Repeal

- Repeals the never-utilized Coal Waste and Ultraclean Fuels Tax Credit. The tax credit expired for any construction of a facility after January 1, 2013.

## *JOB CREATION TAX CREDIT*

Clarification

- Clarifies current policy allowing DCED to award the total amount of the tax credit authorized for a multiple year tax credit in the first year in which the new job is created and the tax credit is earned.

## *CITY REVITALIZATION AND IMPROVEMENT ZONES*

Establishment

- Establishes the CRIZ program to provide economic development and job creation in third class cities meeting certain criteria through the construction of one or more facilities within a zone (e.g. sports complex, conference center, etc.).
- Excludes cities that have had a receiver appointed under the Municipalities Financial recovery Act (Act 47 of 1987).
- Limited to the creation of two zones until 2016, when two additional zones may be approved each year. Eligible taxes raised within the zone are transferred in order to fund the construction and debt service costs incurred.
- DCED may approve one “pilot zone”, which is a zone within a township or borough having a population of at least 3,000 people.

## *MOBILE TELECOMMUNICATIONS BROADBAND INVESTMENT TAX CREDIT*

Establishment

- Establishes a new tax credit against CNIT based upon 5% 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 and is designed to offset a portion of the additional tax liability resulting from a change to the market sourcing of sales from services.
- The credit is capped at $5 million per year and will be prorated if necessary.

## *INNOVATE IN PA TAX CREDIT*

Establishment

- Establishes the new Innovate in PA Tax Credit program which provides a new and predictable source of funding for early-stage venture capital investment through the Ben Franklin Technology Partners Program, the Venture Investment Program and the Life Sciences Greenhouses.
- The Innovate in PA program offers $175 million of deferred insurance premiums tax credits to qualified insurance companies. The credits will be sold at auction for no less than a minimum amount established in the program. The capital raised would be a discount between the face value of the tax credits and the amount raised at auction. Investment received from participating insurance companies will be distributed as follows:
    - 50% to the Ben Franklin Technology Partners Program.

- 45% to the Venture Investment Program.
- 5% to the Life Sciences Greenhouses.

### ***NEIGHBORHOOD IMPROVEMENT ZONES***

Codification

- Codifies the existing NIZ program into the Tax Reform Code from The Fiscal Code.

### ***KEYSTONE SPECIAL DEVELOPMENT ZONES***

Codification

- Codifies the existing KSDZ program into the Tax Reform Code from The Fiscal Code.

### ***INHERITANCE TAX***

Small Business Exclusion

- Provides that a transfer of a qualified family-owned business interest to one or more qualified transferees (i.e. members of the same family) shall not be subject to the state inheritance tax, provided that after the transfer the qualified family-owned business interest continues to be owned by a qualified transferee for a minimum of seven years after the decedent's date of death.
- Specifies that any qualified family-owned business interest which is 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 DOR that the family-owned business interest qualifies for the exemption and notification to the department within 30 days if it fails to qualify.

Repeal – Exemption for Poverty

- Repeals section 2112, which provides an inheritance tax exemption on account of poverty for transfers between spouses. The inheritance tax is no longer imposed on transfers of property between spouses, and so the exemption language is obsolete.

### ***TAX APPEALS REFORM***

Board of Finance and Revenue

- Reorganizes the existing Board of Finance and Revenue to include three full-time members as follows:
    - Two members nominated by Governor and approved by Senate.
    - Treasurer or designee.
    - Must be either attorneys or CPAs having substantial knowledge of PA tax law.
- The petitioner (i.e. taxpayer) and the Department of Revenue 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.

## ***ADMINISTRATION AND ENFORCEMENT***

<u>Pass-Through Business Compliance</u>

- Authorizes actions by the Department to improve income tax compliance and administrative efficiency for pass-through entities such as partnerships, LLCs and S-corporations.
- Enables the Department of Revenue to more effectively collect PIT from out-of-state partners, owners and shareholders with Pennsylvania-source income.
    - Authorizes the assessment of tax at the entity level in certain instances.
    - Requires a partnership to maintain an accurate list 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 a PA-20S/PA-65 (pass-through information return) and RK-1 and NRK-1 is mandatory.

<u>Citation Authority</u>

- Allows the Department of Revenue to fine, and in rare cases imprison, a person who does not pay or underpays employer withholding tax, or fails to file an employer withholding return or report.