2018 IN REVIEW: PENNSYLVANIA AND PHILADELPHIA TAX DEVELOPMENTS

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Response to the Tax Jobs and Cuts Act

On Dec. 22, 2017, Public Law 115-97, which was originally referred to as the Tax Cuts and Jobs Act of 2017 (TCJA), was signed into law. The TCJA provides numerous changes to the Internal Revenue Code, including introduction of a Repatriation Transition Tax (RTT) in Section 965, and full expensing provisions under section 168(k), among many others.

RTT: On April 20, 2018, the Pennsylvania Department of Revenue (the department) released Information Notice 2018-1 regarding the state’s treatment of the Repatriation Transition Tax (RTT) under IRC section 965, and full expensing provisions under section 168(k), among many others.

For personal income tax purposes, RTT income is not considered a dividend since there is no actual cash distributed. “If and when an actual distribution of cash out of E&P is made to a PIT taxpayer, it will be subject to PIT as a dividend. PIT taxpayers must report this taxable dividend income regardless of whether they receive a Form 1099-DIV with respect to the actual distribution.”

The notice also provides for the following guidance relevant to pass-through entities:

Pass-through entities required by the IRS to report the RTT on Schedule K, line 11 (Form 1065) or line 10 (Form 1120S) as other income should adjust this income out of the Pennsylvania tax base by using Schedule M of the PA-20S/PA-65. Specifically, the income included on Schedule K, line 11 (Form 1065) or line 10 (Form 1120S) will be reported on Schedule M, Part A, line 11, column (a), classified as business income under column (b) and then backed out by reporting the income on Schedule M, Part B, Section C, line d. A statement explaining this adjustment should accompany the return. When an actual distribution of cash out of E&P is made to the pass-through entity, it should be reported on Schedule B, line 5 of the PA-20S/PA-65.


Global Intangible Low Tax Income (GILTI): It is anticipated that the department will provide guidance on this topic early in 2019.

Foreign-Derived Deferred Intangible Income (FDII): It is anticipated that the department will provide guidance on this topic early in 2019.

Base Erosion Anti-Abuse Tax (BEAT): The department noted that because BEAT is a separate tax at the federal level, there is no Pennsylvania corporate tax effect.
Disqualified Corporate Interest Expense Disallowance

Section 163(j): It is anticipated that the department will provide guidance on this topic early in 2019.

Bonus Depreciation: Following the enactment of the TCJA, the department released Corporation Tax Bulletin 2017-02, which announced the department’s position that it would decouple from the IRC section 168(k) 100 percent bonus depreciation. This applied to qualified property acquired or placed in service after Sept. 27, 2018. The department’s response contradicted its previous Corporation Tax Bulletin 2011-01, which allowed for the recovery of 100 percent bonus depreciation in the year that such depreciation was claimed and allowed for federal income tax purposes. Corporation Tax Bulletin 2011-01 also allowed for recovery of previously disallowed and unrecovered 30 percent and 50 percent bonus depreciation of qualified property, where there was a complete write-off of the remaining basis of such property for federal income tax purposes pursuant to an accounting method change in accordance with section 481(a).

The Act 72 of 2018, effective for tax years beginning on or after Jan. 1, 2017, revised the position described in Corporation Tax Bulletin 2017-02. While Act 72-2018 continues the disallowance of bonus depreciation for all qualified property, for property placed in service after Sept. 27, 2017, it provides that companies can take an additional deduction under IRC sections 167 and 168 on their Pennsylvania return, which generally would be depreciation under modified accelerated cost recovery system (MACRS) or other accounting methods.

For additional information, please refer to Corporation Tax Bulletin 2018-02.

In an advisory statement, the city of Philadelphia noted that it will follow Pennsylvania on the topic of bonus depreciation. After the passage of Act 72 of 2018, “the City of Philadelphia requires the amount of a 100 percent deduction under the federal IRC 168(k) to be added back to their federal taxable income. However, the City allows taxpayers to take normal depreciation.”

For additional information, please refer to the Philadelphia Department of Revenue’s advisory announcement on bonus depreciation.

Corporate Income Tax Update

Net Operating Losses

Following the Nextel decision, there was some speculation about whether or not the Pennsylvania Department of Revenue would apply the decision to tax years beginning before Jan. 1, 2017. In the Corporate Tax Bulletin 2018-02, the department announced that “it will not apply the Nextel decision to taxable years beginning prior to Jan. 1, 2017. The department will determine the corporate net income tax liability of taxpayers for taxable years beginning after Dec. 31, 2006 through Dec. 31, 2016, by allowing taxpayers the greater of the flat dollar cap or the percentage cap as authorized by statute prior to the issuance of the decision in Nextel. For taxable years beginning prior to Jan. 1, 2007, the department will determine the corporate net income tax liability of taxpayers by applying the flat dollar cap as authorized by statute prior to the issuance of the decision in Nextel.”

For additional information, please refer to Corporation Tax Bulletin 2018-02.

Sales & Use Tax Update

Marketplace Sales: The department issued a bulletin advising taxpayers that the tax collection, notice and reporting requirements of the marketplace sales provisions of Act 43 of 2017 are taking effect and will be enforced by the department. On or before March 1, 2018, a remote seller, marketplace facilitator or a referrer who had aggregate taxable sales in Pennsylvania worth at least $10,000 in the previous 12 months, but that did not maintain a place of business in Pennsylvania, must either file an election to collect and remit sales tax going forward, or comply with the notice and reporting requirements.

For additional information, please refer to Pennsylvania Sales Tax Bulletin No. 2018-01, 01/26/2018.

Taxation of the Sale of Malt or Brewed Beverages in Pennsylvania by Manufacturers: The department issued a bulletin, effective July 1, 2019, which provides that taxpayers engaged in the manufacture and sale of malt or brewed beverages to customers must collect and remit sales tax to Pennsylvania.
For additional information, please refer to Sales and Use Tax Bulletin 2018-02 - Taxation of the Sale of Malt or Brewed Beverages in Pennsylvania by Manufacturers.

**Gaming:** In *Downs Racing, LP v. Commonwealth*, Pa. Sup. Ct., No. 70-71 MAP 2017 (10/25/2018), the Pennsylvania Supreme Court held that separately billed payments of royalties or licensing fees for intellectual property used in the operation of gaming machines are not subject to sales and use tax. The fees were billed separately from the purchase of the poker machines and applied, not to the machines or the software itself, but to the right to use intellectual property in the form of trademarks, copyrights and patented methods of play owned by third parties.

The court held that “the Code does not identify intellectual property — such as trademarks, copyrights, and patented inventions (including processes) — as a form of tangible personal property.” Further, “[b]ecause these legal rights are intangible, it would be tenuous to suggest they are included by implication within the definitional provision as a form of ‘corporeal personal property,’ particularly in view of the precept that taxing statutes are to be strictly construed against the taxing authority.”

**Application of Local Sales and Use Tax Performed Outside of a Taxable County:** In Sales & Use Tax Letter Ruling, No. SUT-18-004, 10/23/2018, the department ruled that “[t]he local sales and use tax is a point of sale tax and a sale of property or a service delivered to a location within this Commonwealth is deemed to occur at the place of business of the retailer.” In this ruling, the taxpayer located in Allegheny County offered private house cleaning services to clients located in Allegheny County, Beaver County, Butler County and Washington County and scheduled such services from its Allegheny County location. Based on these facts, the department concluded that “taxpayer has one place of business, which is located in Allegheny County. Since taxpayer only has one location, all of its sales originate in Allegheny County, a taxable county. Taxpayer must charge the local sales tax on any taxable services it provides to its customers, regardless of where the customer is located, because all of taxpayer’s sales originate from a taxable county.”

For additional information, please refer to SUT-18-004 - Application of Local Sales and Use Tax Performed Outside of a Taxable County.

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**Personal Income Tax Update**

**Withholding:** Per Act 43 of 2017, effective Jan. 1, 2018, anyone who pays Pennsylvania source nonemployee compensation or business income to a nonresident individual or disregarded entity that has a nonresident member and is required to file a Federal Form 1099 MISC is required to withhold Pennsylvania tax. Secretary of Revenue announced that the new nonresident withholding provisions are not subject to assessment for a failure to withhold on tax periods ending prior to July 1, 2018.

This provision applies if all of the following are true:

- You are responsible for making payments of nonwage income from Pennsylvania sources
- The payment will exceed $5,000 per payee in the calendar year
- The payment is made to a resident of another state

The provision does not apply:

- Wages paid to employees
- Payments for goods and materials
- Sales of real estate located outside of Pennsylvania
- Residential rental agreements or residential lease payments

Withholding is not required when the payee is a corporation, a partnership or multimember liability company or a nonresident with no Pennsylvania source income. The payee is a disregarded entity owned by a corporation or partnership.

The department provides for the following guidance:

How should I determine the right amount to withhold from director fees earned inside and outside of Pennsylvania?

- Example: A nonresident of Pennsylvania is on the Board of Directors of ABC Corporation. The Pennsylvania Corporation will pay its directors $5,000 a quarter. The duties of a director include preparing for and attending committee and board meetings and addressing company matters as they arise. ABC Corporation board members will engage in business activity both within and outside of Pennsylvania.
- ABC Corporation, as the payor, should withhold and
allocate the compensation based upon working days within and outside the commonwealth. (61 Pa. Code §§ 101.8 and 109.1-109.9)

For additional information, please refer to New 1099-MISC Withholding Tax Requirements.

**Untimely Filing of Appeal:** *Kerr v. Commonwealth*, Pa Commw. Ct. Dkt. No. 158 F. R. 2012, 05/07/2018 – A case disputing the untimely filing of a petition against a Notice of Assessment was decided in favor of the trial court that found the taxpayer had not filed a petition for reassessment within the time limitations allowed under the Tax Code. The notice was sent to the taxpayer in April of 2009, and the taxpayer neglected to file a petition for reassessment until March 2011, when it should have been sent by June 2009. The taxpayer argued he never received the notice, but his CPA contacted the Department of Revenue three weeks after the notice was mailed and included a copy of said notice and, at the time, the department replied to the CPA explaining the taxpayer’s right to appeal. Due to this evidence and the taxpayer’s inability to explain the delay of another year and half before filing his appeal, the Commonwealth Court maintained the validity of the previous trial court’s conclusion.

**Real Property Tax Update**

*Woodhouse Hunting Club Inc. v. Hoyt Royalty LLC*, Pa. Super. Ct., Dkt. No. 327 MDA 2017, 03/29/2018 – The Superior Court of Pennsylvania affirmed the decision of the trial court regarding subsurface oil and gas rights in granting quiet title to the owners who possessed the title of the property after its tax sale. The original property owners (Hoyts) sold the property in 1893 but retained the rights to the subsurface oil and gas, but they never notified the county of the severance. In 1902, the property was sold again, but the Hoyts maintained their ownership of the subsurface rights; again, in 1932, the property was sold at tax sale and the purchasers redeemed the property in 1935. The current owners, “Woodhouse,” bought the property in 1952, and, after several assignments through which they reserved the subsurface rights, Woodhouse maintained ownership of the property. Successors to the Hoyts disputed the grant of quiet title, but the court determined that since notice was never given regarding the severed interests after the 1893 sale, the tax sale in 1902 rejoined the subsurface rights and resulted in the current rights belonging to Woodhouse.

*City of Philadelphia v. Thuy Phan and DMB Investments LLC* (Appeal of DMB Investments, LLC), Dkt. No. 862 C.D. 2017, 04/02/2018 – In 2014, in an effort to recoup delinquent real estate taxes from 2010 and 2011, the city of Philadelphia sold property to DMB Investments (DMB) for $46,000 in a tax sale. Shortly after the sale, Thuy Phan (Phan) filed a petition to set aside the sale and requested to redeem the property; the law allows for redemption of property in the event of a tax sale provided that the redeemer pays the bid amount and any costs associated with the third-party purchase. The trial court granted Phan’s petition and limited DMB’s reimbursement to the $46,000 plus interest, denying DMB the request for an additional amount of repair costs, nearly $38,000, due to insufficient evidence the sum was actually paid. DMB appealed the decision, but the subsequent court upheld the previous decision, since the owner of DMB failed to prove the repairs were necessary or performed and paid for, and, further, the court found his testimony not credible.

In *Re: Sale of Real Estate by Lackawanna County Tax Claim Bureau* (Appeal of Lackawanna County Tax Claim Bureau), Pa. Commw. Ct. Dkt. No. 1708 C.D. 2016, 05/08/2018 (opinion not reported) – The Commonwealth Court found that a decision made by a trial court to nullify a judicial tax sale by the tax bureau was legally correct. An upset tax sale in 2011 resulted in purchase, but the tax bureau argued that since the purchaser never claimed the deed, the property sale was abandoned and the property was able to be sold in a judicial tax sale. The judicial tax sale was in 2016, and once the previous purchasers learned of the sale, they filed a petition with the court to set aside the judicial sale. The court found that, since the tax bureau neglected to strictly comply with statutory requirements regarding providing tax sale notifications and failed to hold another tax upset sale prior to the judicial tax sale, the judicial sale was nullified and the property returned to the previous purchasers.

*Lehighon Area School Dist. v. Carbon County Tax Claim Bur.*, Pa Commw. Ct., Dkt. No. 977 C.D. 2017; 978 C.D. 2017; 979 C.D. 2017, 05/18/2018 – A school district that hired a private entity to collect delinquent property taxes was enti-
tled to second priority status in the distribution of proceeds from the sale of properties for delinquent property taxes. The Tax Claim Bureau sold the properties at judicial sale, then filed petitions for confirmation of the sales and proposed schedules for distribution of proceeds that did not include the school district. When the school district filed a protest, the Tax Claim Bureau argued, and the trial court agreed, that by hiring a private entity to collect delinquent property taxes on behalf of the school district (as authorized under the Tax Liens Act), the district had “opted out” of the bureau's collection services under the Tax Sale Law, which meant that the sale proceeds due the district were no longer “taxes” entitled to treatment as second priority claims under the Tax Sale Law. The Commonwealth Court disagreed, finding that both the Tax Liens Act and the Tax Sale Law establish that all taxes levied on property by any taxing district are considered a first lien on the property, subordinate only to tax liens imposed by the Commonwealth. The court also noted that the Tax Liens Act and Tax Sale Law are not mutually exclusive, but their provisions are designed to operate in conjunction with one another.

In re Kapopoulos, Pa. Commw. Ct., No. 940 C.D. 2017, 06/01/18 – The Pennsylvania Commonwealth Court determined that the Fayette County Tax Claim Bureau appropriately served a tax sale notice. The bureau sent certified letters notifying the taxpayer of overdue property taxes, which were returned unclaimed. Notices of the property’s tax sale were published and posted on the property. The taxpayer was also notified that the property was sold. Therefore, the court found that the bureau’s notice-posting method as reasonable and likely to inform the taxpayer of the intended sale.

Helping Enjoying and Loving People 2 Salvation Ministries Inc. v. Delaware County Board of Assessment Appeals, Pa. Commw. Ct. Dkt. No. 558 C.D. 2017, 07/09/2018 (opinion not reported) – A nonprofit corporation that owned a community center providing a variety of services, including free computer classes and free computers, failed to qualify for a property tax exemption because the nonprofit did not meet the criteria for being a purely public charity under HUP because it failed to demonstrate that it benefited a substantial and indefinite class of persons who are legitimate subjects of charity. The Commonwealth Court held in Appeal of Sewickley Valley YMCA, 774 A.2d 1 (Pa. Commw. 2001) that, in order to meet that prong of the HUP test, the entity must show that it makes a bona fide effort to service those persons who are unable to afford the usual fee or for whom the fee is outside their financial reach. The taxpayer in this case provided no evidence regarding whether the recipients of goods and services under its various programs were unable to pay and therefore could not meet its burden of proof with regard to proving that it benefited a substantial and indefinite class of persons who were legitimate subjects of charity.

In Betters, et. al. v. Beaver County, 152 C.D. 2018 (12/18/18), the Commonwealth Court affirmed the trial court’s determination that Beaver County’s (county) base-year method of property valuation violated the Uniformity Clause of Article VIII, Section 1 of the Pennsylvania Constitution and the Consolidated Assessment Law and mandated the county to complete a countywide reassessment by 2020. The county appealed the trial court’s order claiming that the trial court erred by refusing to exclude objected-to expert testimony and in determining that the taxpayers were entitled to relief despite the fact they did not introduce any evidence that they have suffered a specific harm to their particular properties.

In December 2015, a group of taxpayers (the taxpayers) filed a complaint in mandamus to compel the county to perform a countywide reassessment. The taxpayers alleged that the last countywide reassessment was in 1982 and that the county has been applying insufficient and outdated methods for valuing properties, which are grossly inequitable and nonuniform. During a nonjury trial, the taxpayers offered testimony from two expert witnesses regarding expert conclusions pertaining to data that was compiled by two of their colleagues that did not testify. That data was used to determine that the county had a coefficient of dispersion of 34.5 percent, thus indicating that the system of tax assessment employed by the county was not uniform. The county and Green Township (township) objected to the conclusions during trial, arguing that they were hearsay because the data collectors did not testify and thus there was not a proper foundation for the expert’s conclusions. However, the trial court overruled the objections and ultimately found that the base-year method of valuation employed by the county violates the Uniformity
Clause and the Assessment Law because it does not reflect, uniformly and accurately, the proper assessed values of the 96,000 parcels in the county.

At Commonwealth Court, the county argued that the trial court erred by admitting the expert conclusions into evidence over the county and township’s objections because the facts upon which the expert relied were not articulated or made part of the record pursuant to Rule 705 of the Pennsylvania Rules of Evidence. The Commonwealth Court noted that in Commonwealth v. Thomas, 282 A.2d 693 (Pa. 1971), the Pennsylvania Supreme Court permitted an exception to the rule allowing experts to rely upon reports of others not in evidence, i.e., inadmissible hearsay, provided the reports were of a type customarily relied on by the expert in the field in forming opinions. Additionally, the Commonwealth Court mentioned that Pennsylvania Rules of Evidence 104 allows the rules of evidence to not apply when the judge is the fact finder. Accordingly, the Commonwealth Court determined that the trial court did not err or abuse its discretion by admitting the expert testimony over the objections because the county and township chose not to subpoena the data gatherers and because the county offered no basis upon which to conclude that the data gathered and relied upon by the experts was unreliable.

The county also argued that the trial court erred by denying the county’s motions for nonsuit where the taxpayers failed to introduce any evidence of a harm or damage personal to them. The Commonwealth Court quickly dispatched this argument by concluding that the taxpayers here challenged the entire statutory scheme of valuation in the county as violative of the Uniformity Clause and thus under Clifton v. Allegheny County, 969 A.2d 1197 (Pa. 2009), evidence of a harm or damage personal to them was not required.

In In Re: Consolidated Appeals of Chester-Upland School District and Chichester School District v. Board of Assessment Appeals of Delaware County, 633 C.D. 2017 (12/27/18), the Commonwealth Court (court) vacated the trial court’s April 27, 2017 order ruling that Chester-Upland School District and Chichester School District (appellants) may not consider the presence of an outdoor advertising sign on a property when determining its fair market value for the purposes of a real estate tax assessment.

The Consolidated County Assessment Law (CCAL) excludes signs and sign structures from real estate taxation as follows:

No sign or sign structure primarily used to support or display a sign shall be assessed as real property by a county for purposes of the taxation of real property by the county or a political subdivision located within the county or by a municipality located within the county authorized to assess real property for purposes of taxation, regardless of whether the sign or sign structure has become affixed to the real estate.


On appeal to court, appellants acknowledged that a billboard and the structure that supports it are not to be considered as part of an assessment of property pursuant to Section 8811(b)(4), but the sign-and-sign-structure exclusion does not preclude assessment of the land on which a billboard sits and the consideration of income derived from a lease of that land for the purpose of erecting and operating a billboard.

The court found that Section 8811(b)(4), like other exclusions of that subsection, plainly requires by its text only that the physical billboard sign and the structure that supports the sign be excluded from the valuation, but this provision does not have any effect on a taxing authorities’ valuation of the land and other non-excluded or non-exempt taxable real estate situated on that land.

The court looked to Tech One Associates v. Board of Property Assessments, Appeals and Review of Allegheny County, 53 A.3d 685 (Pa. 2012) to determine that when real estate is subject to a long-term lease, the portions of the property subject to a leasehold interest cannot be disregarded in valuing the property.

Accordingly, the court held that the trial court erroneously interpreted the sign-and-sign-structure exclusion of Section 8811(b)(4) to foreclose any consideration of any potential income that a property owner may receive from the placement of a billboard on the property in arriving at a fair market value. Thus, the court remanded the matter back to the trial court for further proceedings consistent with its holding.
Miscellaneous

Gross Receipts Tax: Act 52 of 2018 excludes from the Gross Receipts Tax the sales of telephones, telephone handsets, modems, tablets and related accessories, including cases, chargers, holsters, clips, hands-free devices, screen protectors and batteries from both landline receipts and mobile telecommunications receipts. Act 52 is effective immediately and retroactively applies to gross receipts from transactions occurring on or after Jan. 1, 2004, except claims for refund or credit for a tax paid prior to the effective date. The Pennsylvania Department of Revenue issued a corporate tax bulletin providing a general discussion of the tax; clarifications of the tax provided by the Pennsylvania Supreme Court in Verizon Pennsylvania Inc. v. Commonwealth, 127 A.3d 745 (Pa. 2015); and provides two lists: a non-comprehensive sample of service and equipment sales that generate taxable receipts and a comprehensive list of authorized deductions. Pa. Dep’t of Revenue, Corp. Tax Bull. No. CT 2018-04, 08/20/18.


Insurance Premiums Tax Credit: The Pennsylvania Department of Revenue issued a tax bulletin explaining how insurance providers should calculate the amount for the Pennsylvania insurance premiums tax credit to use to offset a “proportionate part of the assessment paid to the [Pennsylvania Life and Health Insurance] Association for life insurance, accident and health insurance, and annuities.” The maximum tax credit able to be taken “for each type of assessment is 20 percent of the assessment for each of the five calendar years following the year in which the assessment was paid.” The bulletin included a worksheet that is required to be completed in order to obtain the tax credit. (Corporation Tax Bulletin 2018-01, 4/24/18.)

Credits: Vetri Navy Yard, LLC v. Department of Community and Economic Development, Pa. Commw. Ct. Dkt. No. 499 M.D. 2017, 07/16/2018 – The Commonwealth Court held that application of the recapture provisions is not limited to situations where the qualified business physically relocates outside the Keystone Opportunity Zone (KOZ). During 2013, the taxpayer constructed a restaurant in the KOZ, which it operated until January 2016, at which time it sold all assets and interest in the restaurant to another company. The company that purchased the restaurant continued to operate it in the same location but had no affiliation with the taxpayer. The taxpayer maintained an office in the KOZ but did not actively operate any business in the KOZ. The Department of Community and Economic Development learned of the sale and determined that the taxpayer was subject to the recapture provisions. At issue was the definition and interpretation of the term “relocation.” The court found that the General Assembly’s intent was clearly to have incentives apply only to the extent that the business is located and actively conducting business in a KOZ subzone. Therefore, since the taxpayer was no longer actively conducting business in the KOZ, the taxpayer was not a “qualified taxpayer” after January 2016 and was therefore subject to recapture.

Philadelphia Update

Soda Tax: Effective Jan. 1, 2017, Philadelphia levied a 1.5 cent per fluid ounce tax, known as Philadelphia Beverage Tax (PBT), on non-retail distribution of certain sugar-sweetened beverages. The tax applies to the supply, acquisition, delivery or transport of beverages and is collected when beverages are transferred from a distributor, wherever located, to a Philadelphia retailer (dealer) and collected in connection with the transport of any covered beverage into the city by a dealer. A group of consumers, retailers, distributors, producers and trade associations commenced the present civil action against Philadelphia, challenging the legality and constitutionality of the tax and seeking declaratory and injunctive relief. In Williams v. City of Philadelphia, Pa. Nos. 2 & 3 EAP 2018, 07/18/2018, the Pennsylvania Supreme Court held that the Philadelphia Beverage Tax (PBT) was not duplicative of the Pennsylvania’s state sales tax and was not preempted by the
Sterling Act. Further, the court has dismissed various public policy arguments made by the taxpayers.

A bill introduced to the Pennsylvania House would not only rescind the Philadelphia Beverage Tax, but would also prohibit any city, township or borough within Pennsylvania from enacting any future tax on a food or beverage or any container for food or beverages, with the exception being for beer, wine or spirits. The bill was removed from the table on May 2 and is up for second consideration in June, but no additional update has been released. (H.B. 2241).

**Realty Transfer Tax:** Effective July 1, 2018, Philadelphia Bill No. 180167 increased the rate of Philadelphia Realty Transfer Tax from 3.10 percent to 3.278 percent. The increased rate will remain in effect through Dec. 31, 2036, and will be reduced to 3.178 percent effective Jan. 1, 2037 and thereafter.

**Proposed BIRT Regulations:** Philadelphia released a proposed draft of the BIRT economic nexus regulations, which it plans to finalize sometime in 2019.

**Other Cases:**

*Carson Concrete Corp. v. City of Philadelphia Tax Review Bd.*, Dkt. No. 179 C.D. 2017, 12/21/2017 – The Philadelphia Tax Review Board (TRB) denied a construction company’s petition to review an audit assessment over unpaid Business Income & Receipts Taxes (BIRT) and wage taxes. The company’s president testified that, since the year 2000, the company used subcontractors rather than its own employees within Philadelphia due to rising workers’ comp rates, but in 2011, the city noted the company was operating within Philadelphia but not paying any BIRT or wage taxes. An audit was conducted, finding over $1 million in outstanding taxes due and resulting in a bill of $4 million with penalties and interest. The company filed an appeal, but it was denied due to discrepancies in the related tax returns and other documents. After another appeal was filed by the company, the city’s TRB was given the duty of determining whether the company acted in good faith or not and, after being able to only implicitly find the company not acting in good faith, the original assessment amount was upheld, but the penalties and interest were waived.

*Duffield House Associates LP et al. v. City of Philadelphia*, Docket No. 170901536, in the Court of Common Pleas, County of Philadelphia – Over 50 property owners in the city of Philadelphia filed a set of consolidated cases accusing the city of a constitutional violation in singling out commercial and other classes of property. Judge Daniel J. Anders gave the case the go-ahead despite arguments the property owners should have appealed to the Board of Revisions of Taxes first, deciding that since the issue is an alleged violation of the constitutional principles of uniform taxation and not the correctness of the assessed value, the BRT would be unqualified to render an opinion. The case is scheduled for 2019.

**Local Taxes**

Gov. Wolf signed into law House Bill 866, also known as Act 18 of 2018, which amends the Local Tax Enabling Act (LTEA) provisions and helps to relieve the potential double taxation on Pennsylvania residents’ local earned income. The act will take effect July 3, 2018, and the amendments: (1) clarify certain technical definitions; (2) prohibit the use of contingent audit fees to collect delinquent taxes; (3) clarify that if an individual does not meet domicile requirements related to state income taxes, the individual also does not meet domicile requirements for the purposes of local income taxes; (4) explain that taxpayers who make timely estimated tax payments equal to 100 percent of the previous year’s tax liability or 90 percent of the current year’s liability are provided a safe harbor free of late-payment penalties when declaring earned income tax; (5) detail withholding tax rates for temporary employees; and (6) permit a tax collector or officer to abate any penalty imposed under the act. (L. 2018, H.B. 866, Act 18, effective 07/03/2018.)
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The Tax Law Section newsletter is now accepting article submissions.
The subject matter should be relevant to tax lawyers and articles should be no longer than 1,500 words. All submissions must include a short author biography. Electronic submissions (MS Word) are preferred. Submit articles to: Ilya Lipin at Ilya.Lipin@bakertilly.com and Paul Morcom at pmorcom@mcneslaw.com.

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