



OUCH! DO PA REVENUE SHORTFALLS FORETELL PA TAX INCREASES? *by James L. Fritz*

After April General Fund revenues painfully fell short of April 2013 revenues, and well short of the official revenue forecast, Pennsylvania's year-to-date General Fund shortfall now exceeds \$400 million and is forecast to exceed \$500 million by the end of the 2013-14 fiscal year. Looking ahead to the budget for 2014-15, which must be passed by June 30, the Commonwealth faces a very large gap between the Governor's proposed budget and forecast revenues. Many observers have been saying for some time that, with 2014 being an election year for Governor as well as the House and half of the Senate, no tax increases would be enacted this year. However, one can only think that all bets are now off. At this point we can only speculate where the revenues will come from but it is time for all Pennsylvania taxpayers to watch the legislative budget process closely and stay in touch with your state representatives and senators. ■

COUNTY PROPERTY ASSESSMENT APPEALS DEADLINES APPROACHING! *by Randy L. Varner*

Those who pay property tax in Pennsylvania have an annual opportunity to appeal the assessed value of property. Deadlines for these appeals vary by county, but most are either August 1 or September 1, so now is the time to analyze your assessment to determine whether you may be able to have it lowered to reduce your tax burden.

In order to properly analyze your assessment, you must have an idea of what your property is actually worth. That is, what is the price at which you would be able to sell it to a willing buyer? Once you have made that determination, you must then go to your assessed value and apply your county's applicable common level ratio to determine the "implied market value." If the "implied market value" from your assessment is higher than what you believe your property is worth, your assessment is likely too high which results in you paying more property tax than is warranted.



In this economy, many property owners are experiencing issues that result in a lowering of property values. For instance, landlords may be experiencing higher than normal vacancy rates, for prolonged periods of time, which will affect the value of property. Those who own factories may be facing factors relating to obsolescence. Property owners may own property in blighted areas that have seen dramatic decreases in property values since the last revaluation. Regardless of context, all property owners should examine assessments annually to make sure they are in line with fair market value. ■

WE CAN HELP

The property tax assessment and appeal process can be confusing and intimidating and directly affects the bottom line of your business. We can help you analyze the assessment on your property and, if necessary, handle an appeal. Feel free to contact us for any questions related to the assessment and appeal process.

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MCNEES ATTORNEYS GOODMAN AND VARNER AUTHOR 2014 EDITION OF ASSESSMENT LAW & PROCEDURE IN PENNSYLVANIA

McNees Wallace & Nurick attorneys Bert M. Goodman and Randy L. Varner are the proud authors of the 2014 edition of *Assessment Law & Procedure in Pennsylvania*, published by the Pennsylvania Bar Institute. The treatise is a comprehensive manual incorporating years of practical experience by McNees attorneys in this specialized area of the law. Designed to provide the reader with a guide through each step of the assessment and appeal process, *Assessment Law & Procedure in Pennsylvania* also provides detailed discussions of the relevant case law and statutory provisions that provide the framework for Pennsylvania assessment law. Originally circulated informally, the first edition was published in 1994 by the Pennsylvania Bar Institute and quickly became the “assessment bible” for counsel, assessment appeal board members, assessors and appraisers. ■

LOCAL BUSINESS PRIVILEGE TAXES LIMITED

by James L. Fritz

Governor Corbett has signed legislation (H.B. 1513, Act 42 of 2014) which establishes a threshold for local business privilege taxation and precludes double taxation. The new law, applying outside of Philadelphia, authorizes the adoption of local taxes on gross receipts where the privilege of doing business is exercised by conducting transactions in the jurisdiction for 15 or more days in the calendar year or is exercised through a “base of operations” in the municipality or school district. The law is effective for tax years beginning on or after January 1, 2014.

Receipts taxed in jurisdictions based on conducting transactions therein are excluded from tax in jurisdictions basing their tax on the presence of a base of operations. A “base of operations” is an actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location.

This legislation does not expand existing taxes which, by their terms, are already more restrictive. ■

NEW CORPORATION TAX NOTICES AND STATEMENTS

by Sharon R. Paxton

In 2013, the Pennsylvania Department of Revenue implemented a “modernized” computer system for processing corporate tax returns and maintaining corporate tax accounts for Capital Stock Tax, Foreign Franchise Tax, Corporate Net Income Tax, Shares Taxes, Gross Receipts Taxes and Insurance Premiums Taxes. Some issues have been encountered during this transition, and various Pennsylvania tax groups have been working with the Department to address these issues. Recently, there has been confusion among taxpayers regarding some of the new notices being issued by the Department and how to respond to them – e.g., whether a specific notice should be appealed. An explanation of the new notices and statements is set forth below, together with some common tax return errors identified by the Department.

Notice of Adjustment Letter and Worksheet

The Department’s new system has an “auto-calculation” feature, which reviews data within a tax return. If this analysis results in a change to a line item on a tax return, a Tax Calculation Worksheet is generated and mailed to the taxpayer with a Notice of Adjustment letter. The Notice of Adjustment explains options for dealing with the adjustment, including that an amended return should be filed if the adjustments resulted from incorrect data provided on the original tax return.

A tax increase reflected in a Notice of Adjustment is not appealable. If the Notice reflects a tax increase that is disputed by the taxpayer, the tax increase can be appealed only after a Notice of Assessment has been issued by the Department. A Notice that reflects adjustment(s) not resulting in an increased tax liability may, however, be appealed if the adjustment(s) will increase the amount of tax due in a subsequent year. Examples of such adjustments include recalculation by the Department of a taxpayer’s net loss carryforward for future Corporate Net Income Tax purposes and recalculation of a taxpayer’s average net income for Capital Stock and Franchise Tax purposes. A taxpayer may appeal such adjustment(s), which do not increase its tax liability for the year to which the Notice relates, within 90 days of the mailing date of the Notice of Adjustment, or wait to file an appeal for a subsequent tax year when the adjustment creates an increase in its reported tax liability.

Billing Notices

A Notice of Adjustment that results in an increased tax liability will also trigger a Billing Notice. Billing Notices may be accompanied by a coupon for remittance. However, coupons should be used only for payments under \$1,000. Payments of \$1,000 or more should be remitted by EFT in order to avoid the imposition of an EFT penalty. If a Billing Notice is not paid within 45 days, the Department will then proceed to issue a Notice of Assessment.

Notices of Assessment

A Notice of Assessment, which will be clearly labeled as such, must be timely appealed in order to protect the taxpayer’s right

to contest the deficiency. A Notice of Assessment includes a “Tax Period Review” section which lists the tax due, including interest and penalties. The Notice should state the due date for filing a petition for reassessment. If an appeal is not filed within the applicable time period, the taxpayer may appeal the disputed tax only by paying the tax and filing a petition for refund. (While the Department may accept a compromise proposal for un-appealed tax delinquencies under certain circumstances, the taxpayer technically has no appeal rights if it does not file a timely petition for reassessment or pay the tax and file a timely refund claim. Thus, even if a compromise can be negotiated in a particular case, the end result will not be as beneficial as if a timely appeal had been filed.) Filing an amended report or calling and writing letters to the Department does not extend the time period for filing an appeal from a Notice of Assessment and does not

eliminate the need to file a petition for reassessment with the Board of Appeals.

Statements of Account

The Department will routinely issue a “Statement of Account” with all Billing Notices, Notices of Assessment and Tax Period Overpayment Summaries. A Statement of Account includes three sections: a “Summary of Filed Tax Periods with Balances Due,” a “Summary of Non-Filed Tax Periods” and a new section summarizing restricted credits available for application to future liabilities, sale or assignment. Except for the “Summary of Filed Tax

(continued on page 4)

**IF THE NOTICE REFLECTS
A TAX INCREASE THAT IS
DISPUTED BY THE TAXPAYER,
THE TAX INCREASE CAN BE
APPEALED ONLY AFTER A
NOTICE OF ASSESSMENT HAS
BEEN ISSUED...**



PA SENATORS CONTINUE PUSHING TO REPLACE SCHOOL PROPERTY TAXES WITH EXPANDED PERSONAL INCOME & SALES TAXES

by James L. Fritz

On April 30th the Pennsylvania Senate’s Finance Committee held a hearing on S.B. 76 which would eliminate school district property taxes in Pennsylvania. The bill would replace the lost revenues: (a) by boosting the Personal Income Tax rate from 3.07% to 4.34%; (b) by increasing the state sales tax rate from 6% to 7% (making the total rate 8% in Allegheny County and 9% in Philadelphia); (c) by broadening the sales tax to apply to many more services; (d) by narrowing or eliminating many sales tax exemptions (including food and clothing); and (e) by limiting the vendor’s sales tax discount to \$300 per year.

The bill now has twenty-six co-sponsors – a majority of the Senate. When this article was prepared, it was not clear when the Senate Finance Committee may vote on the bill, but it could be scheduled at any time.

One of the more interesting non-tax issues raised at the Senate hearing related to the fact that S.B. 76 would freeze in place existing differentials in per-pupil spending between poor districts and rich districts. Without changes to the school funding formula, these discrepancies would become state-funded rather than local-funded, thereby exposing the state’s school funding system to more serious constitutional challenge.

An extensive and detailed review of S.B. 76, with recently-proposed amendments to resolve objections, appeared in our April e-blast. If you did not receive the e-blast, or just didn’t have time to read it at the time, it may be accessed at the Newsroom/Publications page on our website (www.mwn.com). ■

NEW CORPORATION TAX NOTICES AND STATEMENTS *(continued from page 3)*

Periods with Balances Due,” only sections with financial activity will be displayed on the Statement.

Tax Period Overpayment Summaries

A new notice, the “Tax Period Overpayment Summary” was developed to show the resolution of tax overpayments resulting from the processing of tax returns, tax reductions resulting from audits or appeals, corrections and the application of restricted tax credits. A Tax Period Overpayment Summary contains a “Summary of Tax Period Activity,” which lists the tax type(s) where the overpayment(s) were developed, and a “Summary of Overpayment(s) Applied to Open Liabilities Within the Account,” which summarizes the application of overpayments to open liabilities within the taxpayer’s account. If additional credit remains, the Summary will also include a third section identifying the overpayment option(s) selected by the taxpayer and the Department’s resolution of the remaining overpayment. For example, the Summary will indicate whether the remaining overpayment has been transferred to the next tax period or scheduled for refund.

Common Tax Return Errors

Several common corporate tax return errors have been identified by the Department to help taxpayers avoid mistakes that may result in the issuance of one or more of the notices listed above:

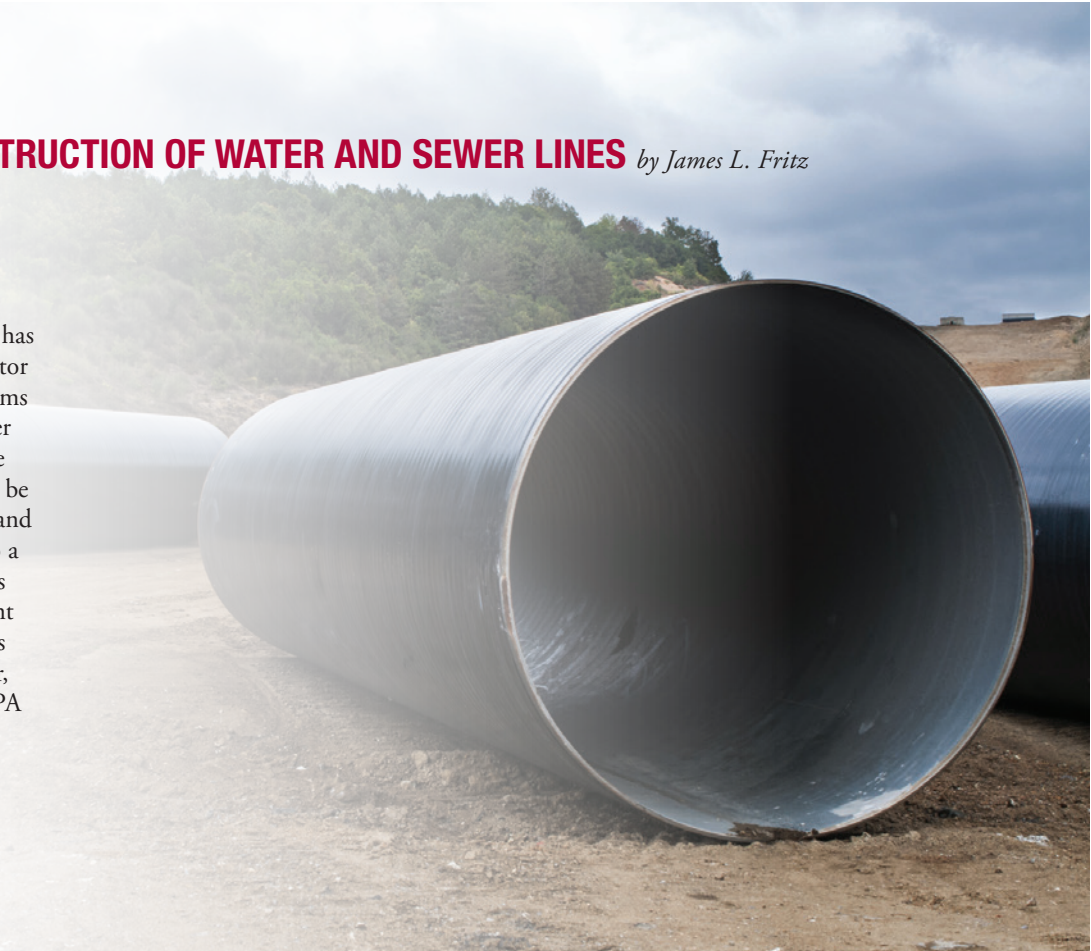
- *History of Earnings.* When filing Capital Stock and Franchise Tax Reports, taxpayers should be careful to properly report their Book Income for prior years. The Department’s return processing system will generate a notice if the reported Book Income figures do not match the Book Income figures in the Department’s records for prior years.

- *Investments in LLCs.* If a taxpayer’s activity in Pennsylvania is limited to an investment in an LLC, the taxpayer should check the appropriate box on page 2 of the PA Corporate Tax Report to so indicate. If the Capital Stock/Foreign Franchise Tax section of the tax report is completed in error by such a taxpayer, using a zero over zero apportionment (which the computer will treat as 100% apportionment), a Notice of Adjustment and Billing Notice may be generated.
- *Other Common Errors.* Other common errors identified by the Department include incorrect or missing Revenue ID numbers, incomplete data submitted with an amended return, gaps in a taxpayer’s History of Earnings, and incomplete returns. Also, the word “NONE” should not be used on an apportionment schedule or anywhere else in a tax report. Finally, it is important for taxpayers to accurately complete various “indicators” throughout the PA Corporate Tax Report because the computer processing system has tied unique programming features to these “indicators.” Special “indicators” on the RCT-101 include Step B, page 1 (Amended Report, Federal Extension, Regulated Inv. Co., 52-53 Week Filer, Address Change, Change Fed Group, First Report, KOZ/EIP/SDA Credit, File Period Change), Section A, page 2 (Investment in LLC, Holding Company, Family Farm), Section B, page 3 (Business Trust, Solicitation Only, Single-Member LLC, PA-S Corp., Taxable Built-In Gains) and Section E, page 5 (Corporate Status Changes). ■

If you have questions about a corporate tax notice received from the Department, please contact a member of the McNees SALT group to discuss.

EXEMPTION FOR CONSTRUCTION OF WATER AND SEWER LINES *by James L. Fritz*

The PA Department of Revenue has renewed a ruling that a contractor may claim exemption for certain items installed in the construction of water and sanitary sewer lines for a private developer where the sewer lines will be dedicated to a municipal authority and the water lines will be transferred to a regulated water company. Examples include water mains, sewer treatment equipment, pipes, fittings, manholes and covers, stone bedding and cover, cement and pumping equipment. PA Sales and Use Tax No. SUT-04-015 (extended April 17, 2014). ■



SHARON PAXTON ELECTED CHAIR OF PBA TAX LAW SECTION

On May 15th, Sharon Paxton was elected to serve as Chair of the Tax Law Section of the Pennsylvania Bar Association for a two-year term through May 2016. The Section deals with substantive and procedural issues relating to the development and practical application of Pennsylvania tax laws and regulations. ■



NET LOSS LITIGATION *by Sharon R. Paxton*

Pennsylvania’s Corporate Net Income Tax statute permits taxpayers with net losses to carry the losses over to future tax years. See 72 P.S. § 7401(3)4.(b), (c)(2)(A). However, the amount of the net loss deduction that may be taken in a particular year is currently subject to both a “flat cap” and a “percentage-based cap.” For the 2013 tax year, for example, the deduction was limited to the greater of \$3 million or 20% of a taxpayer’s taxable income. See 72 P.S. § 7401(3)4.(c)(1)(A) (IV). The cap is being raised incrementally until it reaches a \$5 million “flat cap” and a 30% “percentage-based cap” in 2015.

Various taxpayers have filed appeals arguing that the net loss cap violates the Uniformity Clause of the Pennsylvania Constitution because the cap produces “progressive” effective tax rates and improperly subjects companies with large amounts of income to a

higher effective tax rate. In the past, the Department of Revenue agreed to settle some appeals filed by taxpayers with NOLs in excess of the statutory cap. However, the Commonwealth has been considering moving forward with argument to the Commonwealth Court. By letter dated April 16, 2014, the Council on State Taxation (“COST”) submitted a letter to the Secretary of Revenue urging the Department to (1) continue its “practice of allowing this issue to be settled with taxpayers in recognition of the constitutional infirmity of the NOL cap;” and (2) “have the Department of Revenue support a permanent, legislative solution by eliminating the cap on a prospective basis.”

Corporations with unused net loss deductions in excess of the NOL cap for prior years should consider filing protective refund petitions, if they have not already done so. ■



Solving State & Local Tax Problems

Call upon the McNees State and Local Tax Group whenever you need assistance with Pennsylvania and other state and local tax problems. Members of our SALT Group routinely advise companies of all sizes, individuals and nonprofit entities on state and local tax issues. We have handled more than 1,000 appeals involving Pennsylvania sales and use tax, corporate net income taxes, capital stock and franchise taxes, insurance taxes, fuels taxes, personal income and other state taxes. Members of our Group also have authored the leading treatise on Pennsylvania local real estate tax law and represented clients in local tax matters in 66 of the Commonwealth's 67 counties.

Our services include:

- Assistance in dealing with State & Local Tax Auditors
- Assessment and Refund Appeals to the PA Department of Revenue Board of Appeals
- Appeals to the PA Board of Finance and Revenue
- Appeals to PA County and Appellate Courts
- Abandoned and Unclaimed Property (Escheat) Advice and Appeals
- Real Estate Valuation and Exemption Appeals before County Boards of Assessment and in PA Courts
- Obtaining Letter Rulings
- Negotiating Compromises – both in the appeals context and in the collections process
- Advice Concerning Legislative Approaches to Solving State & Local Tax Issues

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