

**DIVISION OF REVENUE**

**TECHNICAL INFORMATION MEMORANDUM 2005-02**

**DATE: November 14, 2005**

**SUBJECT: Legislation passed during the First Session of the 143<sup>rd</sup> Delaware General Assembly.**

During the First Session of Delaware's 143<sup>rd</sup> General Assembly, ending June 30, 2005, fourteen (14) bills were enacted of interest to or having an impact on Delaware taxpayers and the state's Division of Revenue. The subjects of these bills range from the technological neutrality of the Internet for taxation purposes (HB11) to a \$10 million earmark of Realty Transfer Tax revenues for the Farmland Preservation Fund (HB229).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease: (I) legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and (II) legislation implementing broad policy changes with little to no affect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed online through the Delaware General Assembly website: <http://www.legis.state.de.us>.

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This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the Delaware Code, or Delaware regulations in all matters conflicting with any part of this memorandum.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at [<http://www.state.de.us/revenue>] where information about tax topics and links to phone numbers for other information may be found.

**(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:**

**House Bill No. 56**

Introduced 02/04/05

Signed 07/12/05

This Bill extends the period which a Delaware taxpayer can apply for a tax credit in regards to research and development expenses. This Bill also changes the timeline for when the Director can approve a research and development tax credit to 2010.

**House Bill No. 163**

Introduced 05/04/05

Signed 06/30/05

It is in the best interests of the people of the State of Delaware to recognize and encourage the valuable service contributed to their communities by the members of their local fire, ambulance and rescue companies and their auxiliaries.

In appreciation of that service, and to encourage active membership in such companies and auxiliaries, this Act will allow a non-refundable income tax credit of \$400 for active members of Delaware fire, rescues, and ambulance companies, and their auxiliaries without requiring the proof of expenditures in the performance of their service. Active status of the members shall be verified annually by the volunteer fire, ambulance or rescue service or their auxiliaries.

**House Bill No. 220**

Introduced 06/09/05

Signed 07/12/05

This Act creates a new Section establishing a Delaware State Income Tax deduction to be credited to the Delaware Juvenile Diabetes Fund through the Delaware Juvenile Diabetes Foundation.

**House Bill No. 228**

Introduced 06/14/05

Signed 07/12/05

This Act changes the total availability of Land and Historic Resource credits to \$5,000,000 per fiscal year.

**House Bill No. 264**

Introduced 06/21/05

Signed 07/07/05

This Act amends statutes relating to the tax on Headquarters Management Corporations.

Section 1 of the Act makes the income tax rate for all corporations and Headquarters Management Corporations uniform.

Section 2 permits Headquarters Management Corporations that are members of an affiliated group to file consolidated income tax returns.

Sections 3, 4 and 5 of the Act clarify that the credit permitted under § 2061 is intended as a credit against the tax of a Headquarters Management Corporation for economic development.

Section 6 of the Act provides an exception in § 2061(b)(2)b that is consistent with the exception in § 2061(b)(2)a.

Section 7 of the Act permits Headquarters Management Corporations to combine the employment and expenditure factors of multiple affiliated Headquarters Management Corporations to earn tax credits under § 2061 when a consolidated return is filed.

### **House Bill No. 303**

Introduced 06/29/05

Signed 07/19/05

This Act reduces General Fund business and occupational gross receipts tax rates by 20% for all categories of taxpayers except automobile manufacturers, for which rates are reduced 25%. Further, the Act increases the monthly exemption amount by \$30,000 for all categories except manufacturing.

### **Senate Bill No. 25**

Introduced 01/27/05

Passed 03/22/05

Sections 1 and 2 of the Act move the time for the payment and delivery of all types of abandoned property to the time the report is required. The new payment date will provide for more time in and better information for budget estimations.

Section 3 of the Act will require holders to immediately report and pay over property that would ordinarily be payable to this State but which some other state might require be paid to it because of some shorter dormancy period or report period.

Section 4 of the Act will permit, but not require, the State Escheator to accept early custody of abandoned property without ambiguity as to his authority to do so, provided such property would eventually be paid over in a subsequent year. Because of the timing of audits and other economic efficiencies, holders often request the Director to take custody of property that is not yet ripe for abandonment. The interests of the owner in property paid over early are also protected.

### **Senate Bill No. 108**

Introduced 05/04/05

Signed 07/12/05

This Bill will reduce the cost of certain occupational and business licenses for certain persons 65 years of age or older whose gross receipts from such licensed occupation or business are less than \$10,000 per year.

### **Senate Bill No. 227**

Introduced 06/29/05

Signed 07/12/05

Section 1 of the Act eliminates the requirement to file a Delaware estate tax return for dates on which the federal estate tax law does not allow a credit for state death tax (currently 2005 through 2010). Under such circumstances, it is not possible for a Delaware estate tax to be due.

Section 2 eliminates the special lien on the gross estate tax if the decedent dies on a date on which the federal estate tax does not allow credit for state death taxes paid.

Section 3 eliminates the requirement of filing an affidavit with the Register of Wills that no estate tax return is required for decedent's dying on such a date.

### **Senate Bill No. 230**

Introduced 06/29/05

Signed 08/22/05

This bill establishes an earned income tax credit equal to 20% of the corresponding federal tax credit.

**(II) Legislation implementing broad policy changes with little to no affect on tax-filing requirements for the upcoming year:**

**House Bill No. 11**

Introduced 01/11/05

Signed 02/07/05

This Bill ensures technological neutrality by providing that all Internet access is free from taxation, regardless of the technology used.

Section 2 defines "Internet access" and includes telecommunications, wireless and cable services to the extent they are purchased, used, or sold by a provider of Internet access to provide Internet access.

Sections 3 and 4 exempt the charges for Internet access, as defined in Section 2 of the Bill, from the excise tax imposed on telephone, wireless and cable providers in the state.

Section 5 of the Bill clarifies that the entire sales price of bundled transactions, consisting of distinct and identifiable services which are sold for a single non-itemized sales price but which are treated differently for tax purposes, are subject to tax unless the provider identifies and allocates the non-taxable portion from its books and records kept in the ordinary course of business.

**House Bill No. 141**

Introduced 04/26/05

Signed 07/07/05

This act eliminates the Sunset Provision of the law passed in the 142nd General Assembly that permits municipalities with a population greater than 50,000 to impose a lodging tax. The provision would expire, without this legislation, in July 2005.

**House Bill No. 229**

Introduced 06/29/05

Signed 07/12/05

This act creates an annual earmark of \$10 million in Realty Transfer Tax revenues to the Farmland Preservation Fund.

**House Resolution No. 43**

Introduced 07/01/05

Passed 07/01/05

This resolution establishes a committee to review and report Delaware's abandoned property laws and practices. The committee is required to issue a written report of its findings by January 31, 2006.

Patrick Carter  
Director of Revenue