

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 2006-02

DATE: July 24, 2006

SUBJECT: Legislation passed during the First Session of the 143rd Delaware General Assembly.

During the Second Session of Delaware's 143rd General Assembly, ending June 30, 2006, 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 decrease the rate of interest assessed on tax (HB397) to the initiation of a cybershame website for tax evaders (HB118).

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 or altering Division of Revenue processes 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>.

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. 381 w/HA 1 + SA 1

Signed by Governor on 06/01/2006

It is the purpose of this legislation to define sports officials of non-professional games and events as independent contractors for purposes of workers compensation.

Any person providing services as a sports official at a sports event in which the players are not compensated shall not be considered employees under this Title. For purposes of this Title 'sports officials' includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event. This exclusion does not apply to workers' compensation claims against schools, associations of schools or other organizations sponsoring a sports contest where the claimant is a sports official who is a regular employee of such school, association of schools, or other organization sponsoring the sports contest.

House Bill No. 382 w/SA 1

Signed by Governor on 06/27/2006

This Act establishes an exemption from business license and gross receipts taxes for individuals providing instructional services to the Delaware State Fire School on a contractual basis.

House Bill No. 398

Signed by Governor on 07/10/2006

This Bill will conform Delaware law to amendments of the Internal Revenue Code made in response to rulings by the World Trade Organization, which effectively eliminated Foreign Sales Corporations and Delaware's own export trading companies.

House Bill No. 455 w/SA 2, SA 4

Signed by Governor on 06/30/2006

This Act authorizes the Department of Natural Resources and Environmental Control to develop regulations governing management of scrap tire piles and establishes a matching fund and program, the Scrap Tire Management Fund, to accomplish the cleanup of existing scrap tire piles.

The Act creates an additional license registration requirement, at no additional cost, for every person engaged in the business of selling tires for vehicles other than farm tractors and off highway vehicles. As a funding source, such businesses must pay a fee of \$2 for each tire sold. The fee is due monthly to the Division of Revenue, on or before the 20th day of the month for tires sold the proceeding month, and will be deposited into the Scrap Tire Management Fund. Each retailer of tires may list the amount of the tire fee as separate line item on an invoice to their customer.

Every person engaged in the business of selling tires at retail must obtain a General Retail Business License and Retail Tire License for each location at which it sells tires. In addition, any person who provides services and sells tires that are incidental to providing services, instead of obtaining a General Retail Business License may include the sales of tires with their service receipts on their gross receipts tax coupon, must also obtain a Retail Tire License and pay the \$2.00 per tire fee.

(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no affect on tax-filing requirements for the upcoming year:

HS 1 FOR HB 118

Signed by Governor on 07/10/2006

This Act requires the Secretary of Finance to prepare, maintain and publish on the Division of Revenue's Internet Website two (2) lists of 100 taxpayers owing outstanding tax liabilities. One (1) list would consist of delinquent personal income taxpayers, the other would be devoted to delinquent business taxpayers. Each list will be limited to the taxpayers having the largest outstanding balances. Taxpayers will not be included on the list until (i) their tax liability has been reduced to judgment, i.e., they have exhausted all their rights to administrative and judicial review, and (ii) they have been notified by certified mail at least sixty (60) days prior to the date of publication of the Secretary's intent to publish their name.

Taxpayers who have (i) filed for bankruptcy protection, (ii) entered into and complied with the terms of an installment plan, (iii) a total outstanding liability of less than \$1,000, or (iv) a liability that resulted from extraordinary circumstances will be excluded from the published list.

Taxpayers shall be removed from the published list within thirty (30) days of receiving full payment or written agreement to enter a payment plan. If, however, the taxpayer issues a bad check to the Division or fails to meet the terms of a payment agreement, the taxpayer may be immediately returned to the published list.

House Bill No. 330 w/HA 2

Signed by Governor on 01/26/06

This Bill is designed to close the "merger" loophole established in a recent judicial decision. Merger transactions and all kinds of indirect dealings in intangible property that are properly characterized as a sale of real property under § 5401(7) are intended to be taxed under the Realty Transfer Tax.

House Bill No. 397

Signed by Governor on 07/10/2006

This act amends Title 30 of the Delaware Code relating to assessments of interest and penalty.

Section 1 of this Bill will decrease the rate of interest assessed on tax and additions to tax not paid by the last day prescribed for payment.

Section 2 of this Bill will decrease the rate of interest assessed on the recovery of erroneous refunds.

Section 3 and 5 of this Bill will increase the rate of penalty assessed in the case of failure to pay the amount shown as tax due on any return, or in the case of failure to pay any amount in respect of any tax required to be shown on a return before the date prescribed for payment.

Section 4 of this Bill will decrease the rate of interest paid on overpayments of tax.

Section 6 of this Bill makes the change to penalty and interest effective for tax periods beginning on or after January 1, 2007. For tax filings received after this date, but for which the tax period began before January 1, 2007, the effective penalty and interest rates will be the same as prior to the effective date of this bill. The change to penalty and interest for unpaid tax liabilities will be effective on January 1, 2007 or 30 days after the first billing of a tax return filed on or after January 1, 2007 for tax periods beginning before January 1, 2007.

Senate Bill No. 277

Signed by Governor on 07/10/2006

This Bill authorizes the Director of Revenue to remind taxpayers, who filed their personal income tax returns using 2-D bar code technology or other nontraditional tax preparation medium, of their filing obligation by post card instead of by mailing a complete package of tax forms and instructions.

Senate Bill No. 278

Signed by Governor on 07/20/2006

This Act makes uniform the language regarding the location of special fund contribution items on the personal income tax return thereby clarifying the Director of Revenue's authority to ensure that all special contribution items are treated equitably.

Senate Bill No. 400 § 33

Signed by Governor on 07/01/2006

This act makes appropriations for certain grants-in-aid for the fiscal year ending June 30, 2007; it specifies certain procedures, conditions and limitations for the expenditure of such funds, amends the fiscal year 2007 Appropriations Act, and amends certain pertinent statutory provisions.

Patrick Carter
Director of Revenue