

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 2008-01

DATE: July 09, 2008

SUBJECT: Legislation passed during the Second Session of the 144th Delaware General Assembly.

During the Second Session of Delaware's 144th General Assembly, ending June 30, 2008, eight (8) bills were enacted of interest to or having an impact on Delaware taxpayers and/or the state's Division of Revenue. The subjects of these bills range from an increase in gross receipts tax rates (HB 513) to the creation of a 'Retail Crime Unit' to investigate and prosecute retail crime (HB458 w/HA1).

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 effect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed on the Delaware General Assembly website: www.legis.delaware.gov.

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 [www.revenue.delaware.gov] 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:

Senate Bill 334

Signed by Governor on 06/30/08

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO ESCHEATS

This Act lowers the period of dormancy to 3 years for investment type properties. As federal securities laws generally require due diligence to be performed twice before the expiration of 3 years of dormancy and if an owner cannot be located within this period and reunited with their property the property shall now be turned over to the State in this shorter period of time as the holder has completed their due diligence requirements.

The Act became effective when signed on June 30, 2008 and therefore the first filing period will result in a three year catch up of property with a dormancy period of three, four and five years.

Senate Bill 335

Signed by Governor on 06/30/08

AN ACT TO AMEND TITLES 3 AND 12 OF THE DELAWARE CODE RELATING TO ESCHEATS

This Act provides for the escheat of monies due on unclaimed pari-mutuel tickets after a one year period of dormancy. The Act became effective when signed on June 30, 2008. Any pari-mutuel tickets sold prior to this date are not subject to this amendment.

House Bill 513

Signed by Governor on 07/01/08

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO GROSS RECEIPTS TAXES

Delaware has enacted legislation increasing a number of gross receipts tax rates. The rate increases are effective for taxable periods beginning after December 31, 2008 and are repealed for taxable periods beginning after March 31, 2012. After March 31, 2012, the rates in effect before the increase are restored.

Occupations requiring licenses. The gross receipts license fee for occupations requiring licenses rises from 0.307% to 0.384% of aggregate gross receipts.

Contractors. The contractors' gross receipts license fee rises from 0.499% to 0.624% of aggregate gross receipts.

Manufacturers. The manufacturers' gross receipts license fee rises from 0.144% to 0.180% of aggregate gross receipts.

Wholesalers. The wholesalers' gross receipts license fee rises from 0.307% to 0.384% of aggregate gross receipts.

Petroleum products wholesalers. The additional petroleum product wholesalers' gross receipts license fee rises from 0.192% to 0.240% of all taxable gross receipts derived from the sale of petroleum or petroleum products.

Food processors wholesalers. The food processors wholesalers' gross receipts license fee rises from 0.154% to 0.192% of aggregate gross receipts.

Commercial feed dealer wholesalers. The commercial feed dealer wholesalers' gross receipts license fee rises from 0.077% to 0.096% of aggregate gross receipts.

Retailers. The retailers' gross receipts license fee rises from 0.576% to 0.720% of aggregate gross receipts.

Transient retailers. The transient retailers' gross receipts license fee rises from 0.576% to 0.720% of aggregate gross receipts.

Restaurant retailers. The restaurant retailers' gross receipts license fee rises from 0.499% to 0.624% of aggregate gross receipts.

Farm machinery retailers. The farm machinery retailers' gross receipts license fee rises from 0.077% to 0.096% of aggregate gross receipts.

Grocery store retailers. The grocery store retailers' gross receipts license fee rises from 0.307% of the first \$2 million per month and 0.576% of aggregate gross receipts afterwards, to 0.315% of the first \$2 million per month and 0.590% of aggregate gross receipts afterwards.

Lessees. The leasing use tax rises from 1.536% to 1.92% of the rent paid under a lease of tangible personal property.

Lessors. The lessors' gross receipts license fee rises from 0.230% to 0.288% of lease rental payments received.

Senate Bill 213

Signed by Governor on 06/3/08

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE PERTAINING TO THE DELAWARE BANK FRANCHISE TAX AND TITLE 30 OF THE DELAWARE CODE PERTAINING TO THE DELAWARE CORPORATION INCOME TAX

This Act recognizes the changing nature of the financial services industry by permitting certain types of corporations to apportion their apportionable income based on a single ratio of Delaware-sourced gross receipts from asset management services to all gross receipts from asset management services, rather than the 3 ratio average apportionment factor used by other corporations.

The Act creates a definition of an "asset management corporation," which is a corporation, 90% or more of the federally reported gross receipts of which are derived from asset management services, which is also defined by the Act. The Act permits, but does not require, corporations that meet the criteria for treatment as asset management corporations to elect such treatment for each taxable year. Asset management services are services rendered with respect to intangible investments and consist of rendering investment advice, determining the timing of sales and purchases of intangible investments, selling and purchasing intangible investments, rendering administration and distribution services and managing contracts for sub-advisory services. The sourcing of gross receipts derived

from providing asset management services is based generally on the domicile of the consumer of asset management services.

The Act prevents the election by subsidiary corporations of banking organizations, trust companies or electing banking organizations and trust companies under the Delaware Bank Franchise Tax to be taxed as asset management corporations under the Corporation Income Tax of Title 30 of the Delaware Code rather than under the Delaware Bank Franchise Tax under Title 5 of the Delaware Code.

House Bill 515

Signed by Governor on 07/01/08

AN ACT TO AMEND CHAPTER 82 OF TITLE 3 OF THE DELAWARE CODE PERTAINING TO THE VETERINARIAN SERVICES TAX AND OTHER MATTERS

This Act eliminates the veterinarian services tax credit after December 31, 2008. Veterinarians participating in the Animal Population and Control Program and Spay/Neuter Fund, after December 31, 2008, are entitled to monthly reimbursements for services rendered thereby eliminating the need for the tax credit. It also makes technical corrections and clarifies eligibility requirements for participation in the Spay/Neuter Program.

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

Senate Bill 336

Signed by Governor on 06/30/08

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO GROSS RECEIPTS TAXES

This Act repeals the earmark of the lessees' use and the lessors' license taxes to the Transportation Trust Fund, which will result in the deposit of such taxes into the General Fund, upon enactment.

Patrick Carter
Director of Revenue