

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 2009-02

DATE: July 26, 2009

SUBJECT: Legislation passed during the First Session of the 145th Delaware General Assembly.

During the First Session of Delaware's 145th General Assembly, ending June 30, 2009, eleven (11) 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 various tax rates to a Voluntary Compliance Initiative (HB268 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:

House Bill 138

Signed by Governor on 07/08/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO THE DELAWARE LAND AND HISTORIC RESOURCES PROTECTION INCENTIVES ACT.

This bill extends the time period in the Delaware Land and Historic Resources Protection Incentives Act for the allocation of tax credits authorized and capped therein.

House Bill 191

Signed by Governor on 09/04/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

This bill creates a tax check-off for Delaware taxpayers to designate contributions to the Delaware Chapter of the National Multiple Sclerosis Society Fund. The use of contributions will be restricted locally by the Delaware Chapter to benefit Delaware residents.

House Bill 211

Signed by Governor on 07/01/09

AN ACT TO AMEND CHAPTER 53, TITLE 30 OF THE DELAWARE CODE RELATING TO THE LEVY, COLLECTION AND USE OF TOBACCO PRODUCT TAX REVENUE.

This bill increases the tax on cigarettes from \$1.15 to \$1.60 per 20-cigarette pack. Section 1 increases the cigarette tax rate. Section 2 makes the cigarette tax effective for possession within the state after midnight July 31, 2009. It also imposes a "floor tax" on inventories of cigarettes and requires that the difference between the new tax and the old tax be paid on stamps purchased on or before midnight July 31, 2009, but not affixed to any cigarettes as of the effective date of this Act.

House Bill 228 as amended by House Amendments 1 and 2

Signed by Governor on 09/01/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

This bill creates a tax check-off for Delaware taxpayers to designate contributions to the Delaware Ovarian Cancer Foundation Fund at the Delaware Community Foundation to be used for ovarian cancer research, with emphasis on early detection, education, and awareness.

House Substitute 1 for House Bill 260

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE TAXATION OF LOTTERY WINNINGS.

This Act eliminates the personal income tax exemption for Delaware lottery winnings. This Act shall be effective for tax years beginning after December 31, 2009.

House Substitute 1 for House Bill 264 as amended by House Amendment 2

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TAXES ON PERSONAL INCOME

This Act will increase by one percentage point the personal income tax rate for taxable income in excess of \$60,000. This Act shall be effective for tax years beginning after December 31, 2009. This Act shall sunset four (4) years from the effective date.

House Substitute 1 for House Bill 268

Signed by Governor on 07/01/09

AN ACT TO AMEND CHAPTER 5, TITLE 30 OF THE DELAWARE CODE RELATING TO PROCEDURE, ADMINISTRATION AND ENFORCEMENT.

Section 1 is intended to establish a Voluntary Compliance Initiative for eligible taxes administered by the Division of Revenue for a period running from September 1, 2009 through October 30, 2009. Any taxpayer who has a current outstanding liability for tax periods before January 1, 2009 and makes payment during the Initiative period or enters into a payment plan and makes payment before June 30, 2010 will have penalty and interest for late filing the return waived. Any non filer who files returns will have any tax, penalty and interest for non filed returns for any period prior to January 1, 2004 waived. Section 2 is intended to remove the 50% limitation on the penalty for failure to file timely tax returns. Section 3 is intended to remove the 75% limitation on the penalty for any fraudulent tax returns. Sections 4, 5 and 6 change the period for which interest accrues on an amended refund to 46 days after the receipt of the amended tax return. Previously interest accrued 46 days after the original return was filed, which could have been three years earlier.

House Bill 287

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLES 7 AND 30 OF THE DELAWARE CODE RELATING TO OCCUPATIONAL LICENSES AND FEES.

This Act establishes a business license for firms engaged in the business activity of crude oil lightering. The annual license fee is \$100,000. Crude oil lightering operators would not be subject to

the gross receipts tax. Section 1 of the Act establishes the annual business license fee for crude oil lightering operators. Section 2 of the Act exempts crude oil lightering operators from the gross receipts tax and revises out-of-date references. Section 3 directs that all license fees generated by this Act are deposited into the Hazardous Substance Cleanup Fund. This Act shall be effective for tax periods beginning after December 31, 2009.

House Bill 288

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITY TAXES.

This Act adds direct-to-home satellite services to the public utility tax base and increases tax rates on public utilities other than cable television. This Act shall be effective for tax periods beginning after July 31, 2009.

House Bill 289 as amended by House Amendment 2

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 7 AND TITLE 30 OF THE DELAWARE CODE AND CHAPTER 282, VOLUME 76 OF THE LAWS OF DELAWARE RELATING TO GROSS RECEIPTS TAXES.

This Act increases certain General Fund business and occupational gross receipts tax rates. Sections 1 and 5 through 19 of the Act set forth the specific gross receipts tax rate increases made by the Act. Sections 2, 3 and 4 of the Act correct outdated cross references to service business license categories for purposes of the Occupational License Taxes. Section 20 of the Act eliminates a sunset provision that would have automatically repealed the gross receipts tax rate increases that were enacted in 2008. Sections 21 and 22 of this Act directs that the first \$1 million collected each year under the gross receipts tax surcharge on petroleum be deposited in the General Fund. Section 23 of the Act is a severance provision. Section 24 of the Act provides that the rate increases made by Sections 1 and 5 through 19 of the Act are effective for taxable periods beginning after December 31, 2009, and, except for Sections 21 and 22, that the other sections of the Act are effective upon enactment. This Act shall sunset one (4) years from the effective date and the rates in effect immediately prior to this Act shall be re-imposed.

House Bill 291 as amended by House Amendments 1 and 4

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLES 3, 12 AND 30 OF THE DELAWARE CODE RELATING TO THE ESTATE TAX.

Sections 1, 2, and 3. of the Act decouple the Delaware estate tax on the estates of resident individuals from any repeal of the federal estate tax by referencing the federal law as it existed on January 1, 2001 as updated by other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax. Section 4 of the Act decouples the Delaware estate tax on the estates of non-resident

individuals from any repeal of the federal estate tax by referencing the federal law as it existed on January 1, 2001 as updated by other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax. The estate tax for non-residents will be calculated in the same manner as the estate tax for residents, the sum of which will be reduced by the ratio of Delaware taxable assets over total taxable assets. Sections 5, 6, and 7, reinstate enforcement and procedural requirements that would sunset with the repeal of the federal estate tax, such as the duty to file a Delaware estate tax return, creation of a special lien for estate taxes, and the duty to file an affidavit in cases where a return need not have been filed pursuant to the Internal Revenue Code in effect on January 1, 2001 as updated by other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax. Section 8 exempts from tax farm land participating in the Delaware Agricultural Lands Preservation Act program. This Act shall sunset four (4) years from the effective date.

Senate Bill 62

Signed by Governor on 07/09/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO DELAWARE PERSONAL INCOME TAX CHECKOFF PROGRAMS.

This Bill establishes a procedure to allow taxpayers to designate a contribution to a newly established Delaware Children's Fund. Money deposited to the Fund will periodically be turned over to the 21st Century Fund for Delaware's Children, Inc.

(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:

No legislation passed under section II.

Patrick Carter
Director of Revenue