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# STATE AND LOCAL TAX INSIGHTS



INSIGHT ■ INNOVATION ■ EXPERIENCE

Summer 2009

ASSURANCE & TAX ADVISORS ■ BUSINESS ADVISORS ■ CORPORATE FINANCE ADVISORS ■ TECHNOLOGY ADVISORS ■ WEALTH MANAGEMENT ADVISORS

## UPDATE » SALT BRIEFS

### Pennsylvania — Local Earned Income Tax

Pennsylvania Act 32 of 2008 changed the way earned income is calculated. Beginning January 1, 2009, taxpayers that have a loss resulting from unincorporated business income may no longer deduct the loss from earned income they receive as an employee. This change should be taken into account when calculating quarterly estimated tax payments. ■

### Ohio — Sales Tax Vendor Compensation

On July 1, 2009, the Ohio Department of Taxation issued Sales and Use Tax Information Release ST 2009-01 regarding vendor compensation. The information release was in response to recent legislation requiring in-state vendors who, due to prior law, switched from origin-based sourcing to destination-based sourcing and are now required to convert back to origin-based sourcing by January 1, 2010.

Vendors required to convert back to origin-based sourcing for sales tax may be eligible for compensation to reduce some of the cost of compliance. To qualify, the retailer must have received temporary compensation for the original switch from origin-based to destination-based sourcing under section 5739.123 of the Revised Code. The compensation will be a one-time payment equal to the actual cost the vendor incurred capped at \$1,000 for vendors who were required to by law to convert to destination-based sourcing and \$600 for vendors who

### FEATURE STORY

## Pennsylvania — Local Business Privilege Tax

The Pennsylvania Commonwealth Court (Court) recently ruled in the case of *A&L, Inc. v. Township of Rostraver and Belle Vernon Area School District*, regarding the assessment of business privilege tax. In this case, A&L, Inc. (A&L) is a construction company with its headquarters in Belle Vernon, an additional office in McKeesport and other locations throughout Pennsylvania. One of the main issues of the case was whether or not A&L was entitled to the office exception in Township Ordinance 112, § II (f)(5) and District Business Privilege Tax Resolution § II (f)(5) regarding gross receipts attributable to its other Pennsylvania locations.

A&L first argued that the trial court improperly relied upon the Pennsylvania Supreme Court decision *Gilberti v. City of Pittsburgh*, 511 Pa. 100, 511 A.2d 1321 (1986) (Gilberti) and failed to consider the more recent Pennsylvania Supreme Court ruling in *V.L. Rendina, Inc. v. City of Harrisburg*, 595 Pa. 407, 938 A.2d 988 (2007) (Rendina). The Court disagreed with A&L stating that the Supreme Court noted that the two cases address separate issues. Gilberti addresses the issue of when a business privilege tax may be applicable to revenues generated outside the taxing jurisdiction, while Rendina addresses the application of the business privilege

tax to revenues generated within a taxing jurisdiction's boundaries.

The Court then directed their attention to the application of the office exception. The Court determined that the office exception in Township Ordinance 112, § II (f)(5) and District Business Privilege Resolution § II (f)(5) is an exemption and not an exclusion; therefore, the burden of proof rested upon A&L to demonstrate that they were entitled to the exemption and that their other Pennsylvania locations qualify as "an office or place of business regularly maintained by the taxpayer." A&L submitted the testimony of their former CFO regarding the activities that took place at the other A&L locations. In addition, A&L submitted additional documents that the Court ruled to be very general in nature and did not correspond with one another. As a result, the Court ruled that A&L did not meet its burden of proof for the locations to qualify for the office exemption.

Contractors and other businesses with multiple temporary locations should be aware of the significance of the Pennsylvania Supreme Court's rulings in Gilberti and Rendina and the standards applicable to applying the office exemption often found in local ordinances and resolutions similar to those of Township Ordinance 112, § II (f)(5). ■

**Disclaimer:** The information presented is general information and is not intended to be relied upon without consulting a tax professional regarding your specific facts and circumstances. This advice is not intended or written to be used for, and it cannot be used for, the purpose of avoiding any federal tax penalties that may be imposed, or for promoting, marketing or recommending to another person, any tax-related matter.

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# >> SALT BRIEFS UPDATE

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elected to convert to destination-based sourcing prior to April 18, 2008.

Compensation can be applied for by filing an Application for Compensation of Expenses Incurred for Origin Based Sourcing Tax Collections (form ST-AR-OBS) with the Ohio Department of Taxation.

## **Ohio—Commercial Activity Tax (CAT) Voluntary Disclosure Program**

The Ohio Department of Taxation (Department) recently issued an information release revising the Department's policy towards voluntary disclosure agreements (VDA) for the Commercial Activity Tax (CAT). Since the CAT has only been in existence since 2005, the Department did not previously have an established voluntary disclosure program. Under the current policy guidelines, taxpayers who are interested in becoming compliant with their CAT obligations may enter into a VDA by contacting the Department in writing and providing the following information:

- A description of taxpayer's activities in Ohio;
- How long such activities have been performed by the taxpayer in Ohio;
- A brief description regarding the source of taxable gross receipts and whether such amounts will be greater than one million dollars;
- The taxpayer's type of organization;
- Description of the taxpayer's organizational structure including ownership percentages; and
- Any additional pertinent information.

*continued*

For more information about any of these tax issues, contact:

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*Ohio Commercial Activity continued*

The requirements for the CAT voluntary disclosure agreement are similar to other disclosure agreements; the taxpayer must register, file all applicable returns and pay all taxes and related interest. In exchange, the Tax Commissioner agrees to waive all associated penalties due related to registration, filing of returns and remittance of tax. It should be noted that as is common with most VDAs, the Department reserves the right to audit the returns for the period covered by the agreement. Additional information can be found on the Ohio Department of Taxation's web site at [www.tax.ohio.gov](http://www.tax.ohio.gov). ■

## **TAX AMNESTY PROGRAMS**

**Update: Maryland** – In May, Maryland Governor Martin O'Malley signed the proposed bill authorizing the tax amnesty program for the period of September 1 through October 30, 2009. Taxpayers who failed to file returns or pay corporate income, withholding, personal income, sales and use, or admission and amusement taxes may apply within the amnesty period and have penalties and one-half of the interest waived. The program is not applicable to taxpayers who have more than 500 U.S. employees, who took part in the 2001 amnesty program, or who were eligible to participate in the 2004 Delaware holding company settlement period.

**Louisiana** has announced a tax amnesty program that will run from September 1 through October 31, 2009. The Louisiana program is open to all taxpayers except those who are under criminal investigation or for periods for which a civil fraud penalty has been asserted. The amnesty program applies to all taxes administered by the Louisiana Department of Revenue, except for motor fuel taxes that were due during the period of

July 1, 2001 to January 1, 2009, with some specific exceptions.

The program provides a two-month opportunity for taxpayers to settle account balances, overdue audit assessments, and certain tax disputes with no penalties and only one-half of the interest. Taxpayers must file an amnesty application and any applicable returns; pay any taxes, collection fees and billed notices or demands issued by the Department of Revenue; and remit 50% of the accrued interest charges.

**Vermont** has instituted a tax amnesty program that will run from July 20 through August 31, 2009. Similar to other amnesty programs, the Vermont Department of Taxes will forgive penalties when outstanding tax and related interest are paid in full. The program applies to most Vermont taxes that were due on or before January 26, 2009. In addition to applying to unfiled tax returns, amnesty will apply to late payment of taxes for which a proper return was filed, but the taxes not paid; to assessments; and to installment plans if all taxes and interest are paid during the amnesty period. ■



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