

2008 MA Tax Highlights

Dear Tax Practitioner:

In July 2008, the Governor signed a corporate tax reform bill, which makes significant changes to Massachusetts' corporate tax laws, including a phased-in reduction of corporate and financial institution tax rates. I would like to take this opportunity to explain a number of these changes that may be of interest to you and your clients. In addition, I'll highlight the new excise rates on cigarettes, the sales tax holiday weekend, a newly organized tax unit, a DOR-produced video highlighting the small business energy exemption, changes to the WebFile for Business application, and an update on the billing of dismissed health care appeals.

Corporate Tax Reform Changes

*For tax years beginning **on or after January 1, 2009**, Massachusetts will switch from a "separate company" reporting state to a "**combined**" reporting state and adopt business entity classification rules that broadly conform to the federal "check-the-box" rules.*

*New corporate tax reform changes also include corporate tax rate reductions to be implemented over a period of years for business corporations (**down to 8% by January 1, 2012**), financial institutions (**down to 9.0% by January 1, 2012**), S corporations and financial institutions that are S corporations. The corporate tax reform covers several additional tax provisions and technical changes, including the elimination of prior statutory distinctions between "domestic" and "foreign" corporations by designating both to be "business" corporations. For more detailed information about the corporate tax reform changes, including the phased-in rate reductions, please see Working Draft TIR 08-XX: *An Act Relative to Tax Fairness and Business Competitiveness*.*

Tax and Administrative Changes Contained in the Fiscal Year 2009 Budget

- **Increase in Late-Pay Penalties**
Effective July 1, 2008 the late-pay penalties under M.G.L. c. 62C, §§ 33(b) and (c) increased from one-half of one

percent to one percent per month. The maximum amount of these penalties remains unchanged at 25 percent. For more detailed information, please see TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008.

- **Demand Fee Increase**

Section 15 of the Chapter 182 of the Acts of 2008 increases the one-time "demand" fee established by M.G.L. c. 60, § 15 from \$5 to an amount "not more than \$30." For more detailed information, please see TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008.

- **Limitation on Sales Tax Exemption for Pesticides**

Pesticides, including insecticides, herbicides, fungicides, and miticides are now generally taxable unless purchased by an applicator licensed or certified by the Department of Agricultural Resources or if they are used in agricultural production. For more detailed information, please see TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008.

- **Driver's License Revocation for Nonpayment of Tax**

Effective July 1, 2008, upon notification from DOR, the Massachusetts Registry of Motor Vehicles may revoke or suspend a driver's license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration for nonpayment of taxes. The statute also clarifies the licensee's appeal rights. For more detailed information, including details about the applicable notice provisions, please see TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008.

- **Extension of Limitations for Collection of Tax**

Effective January 1, 2009, the statute of limitations for collection of taxes is extended from six to 10 years, to coincide with previously extended lien provisions in M.G.L. c. 62C, § 50. For more detailed information, please see TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008.

- **Changes in Law Relating to Tobacco Sales**

The Legislature recently amended M.G.L. c. 62C, M.G.L. c. 64C and M.G.L. c. 64H to expand the definition of "cigarettes" for purposes of the cigarette excise to

include "little cigars." This change was effective July 1, 2008. In addition, the imposition of the cigar and smoking tobacco excise is now moved to the wholesale level, effective October 1, 2008. Also effective October 1, 2008 is a requirement for the licensing of cigar and smoking tobacco distributors and retailers. New provisions also require wholesalers of tobacco products (cigarettes, smokeless tobacco and smoking tobacco) to collect and prepay sales tax on wholesale sales of these products, effective September 1, 2008. For more detailed information, please see TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008 and TIR 08-9: Changes in Law Relating to Tobacco Sales under G.L. c. 62C, G.L. 64C, and G.L. c. 64H.

- **Changes to Withholding Requirements**

The Legislature amended the withholding provisions in M.G.L. c. 62B concerning the commissioner of revenue's authority to require persons other than employers to withhold. One change clarifies that, effective January 1, 2009, in the case of **S corporations** and entities treated as **partnerships**, *the commissioner may require withholding with respect to the distributive shares of income attributable to shareholders or members*. Please see, TIR 08-8: Sales/Use Tax, Withholding and Administrative Changes Contained in Chapter 182 of the Acts of 2008, for more information. See also Regulation 830 CMR 62B.2.2: Pass-Through Entity Withholding, for more information. In addition, a proposed regulation requiring withholding on sales of real estate by nonresidents is forthcoming.

- **Excise on Cigarettes Increased**

Effective July 1, 2008, the excise imposed on cigarettes was increased by 50 mills per cigarette (\$1.00 per pack of 20 cigarettes and \$1.25 per pack of 25 cigarettes). Consequently, the excise rates have increased from \$1.51 to \$2.51 per pack of 20 cigarettes and from \$1.8875 to \$3.1375 per pack of 25 cigarettes. For more detailed information, please see TIR 08-7: Excise Increase on Cigarettes under G.L. c. 64C.

- **Sales Tax Holiday Announced**

Massachusetts will offer a "sales tax holiday weekend" on August 16 and 17, 2008. On those days, most purchases made by individuals on items for personal use costing \$2,500 or less will not be subject to Massachusetts sales or use tax. For more detailed information, please see TIR 08-10: The

2008 Massachusetts Sales Tax Holiday Weekend and Purchaser's Certification Form.

- **Wage Enforcement Unit**

DOR has formed a new Wage Enforcement Unit within its Audit Division. Established in response to the Governor's Executive Order on the Underground Economy and Employee Misclassification and the recent success of similar units in Connecticut and New York, the Unit's desk and field audit staff will work to identify and audit noncompliant taxpayers. The group also receives regular referrals from the Commonwealth's Joint Wage Enforcement Task Force, an interagency group charged with identifying and taking action against those involved in employee misclassification and the underground economy.

- **New Video Highlights Small Business Energy Exemption**

Many Massachusetts small business owners – those with five or fewer employees and income less than \$1 million – qualify for a sales tax exemption on their energy purchases. The Department has created a short informational video, available on the DOR homepage, which explains the basics of the exemption and how to claim it by completing Form ST-13.

- **WebFile for Business "Add Power of Attorney Client"**

Function Updated DOR has streamlined and enhanced the "Add Power of Attorney Client" function of WebFile for Business. In addition, the online registration process (Form TA-1) has been modified to include the "Add Power of Attorney Client" feature. These changes, which became effective August 7, 2008, will ensure that the access rights you seek, and your client has authorized, are clearly outlined. The screens that you use to add POA clients will remain the same, but will contain a summary of the access rights requested.

Once you submit an application, you will be presented with a "Power of Attorney Request Confirmation," which must be signed by you and your client and faxed to 617-660-9975. As in the past, you will be notified by e-mail when your request has been approved. Your clients will be notified by mail that you have submitted the registration request. This "Power of Attorney Request Confirmation" will remain in effect until such time as you or the client disables this access on WebFile for Business.

- **Health Care Billings About to Begin**

Uninsured taxpayers who appealed the Individual Mandate associated with Health Care Reform to the Commonwealth Health Connector were required to file appropriate documentation to support their appeals. Those who failed to respond to the Connector with documentation have had their appeals dismissed and DOR has been notified to begin billing these taxpayers for the amount of their personal exemption. These billings will begin later this month.

Thank you for your time. I look forward to working with you as we implement many ambitious projects in the coming months. Please watch for further announcements as we continue to keep you apprised of the latest developments at the Department of Revenue.

If you have any questions or require assistance, please send an e-mail by visiting our website at www.mass.gov/dor and clicking on 'Contact Us'. We will respond to all e-mails within 48 hours. If you would prefer to reach us by phone, please call 617-887-MDOR or toll-free in Massachusetts 800-392-6089.

Sincerely,

Navjeet K. Bal
Commissioner of Revenue

The above letter from the Commissioner of Revenue earlier this year summarizes the business, individual and administrative changes in state tax law for 2008 and later. We have taken the liberty of modifying certain segments of the above paragraphs to hopefully provide more clarification. However, if you do have questions on any of the above items, please feel free to call our offices anytime.

Sincerely,

Solar & Kilcoyne, PC