

## PA Notes

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July 5, 2010

**Sales & Use Tax - Building and Pole Signs:** The sale of a building or pole sign may qualify as a “construction contract,” where the vendor installs the sign to become permanently affixed to the real estate. While no tax is required to be collected by the vendor, tax may still be due on any materials used by the vendor in the performance of the construction contract. Ruling No. SUT-03-043 (reissued April 21, 2010).

**Sales & Use Tax - Manufacturing of Electricity:** Purchases of natural gas, machinery, equipment, parts and supplies used directly and predominantly to produce electricity at a generating peaking power facility qualify for the manufacturing exclusion from PA Sales & Use tax. Ruling No. SUT-05-003 (reissued February 23, 2010).

**Sales & Use Tax - Installed MRI Equipment:** The Department of Revenue has reissued a ruling that installed magnetic resonance imaging (MRI) equipment remains tangible personal property, so that the vendor/lessor is required to collect sales tax on a lease to the ultimate consumer, and qualifies for the “resale” exclusion on the initial purchase of the equipment. [Note: This issue is currently being litigated by our firm.] PA Ruling No. SUT-05-008 (reissued May 20, 2010).

**Amended Corporation Tax Return Regulations:** On June 19th, the Department of Revenue finalized its amended corporation tax return regulations. Among other things, the regs have been updated to recognize that Act 119 of 2006 replaced the archaic settlement process for corporation tax returns with a process of assessment akin to that used in other taxes. The amendments provide updated guidance on the filing of amended returns, and the procedure for the filing of a report of change following a change to a taxpayer’s federal return.

**Realty Transfer Tax - Refund Applications:** An “application for refund” is an alternative method of seeking relief from Realty Transfer Tax, and is available to certain taxpayers in place of filing a formal petition with the Department’s Board of Appeals. An application may only be filed where the tax was paid to a county Recorder of Deeds, and not as a result of an assessment. The application must be filed with the Department’s Bureau of Individual Taxes within three years of the date of payment, and should be filed using its standard application form, available online. In the event that an application for refund cannot be processed due to lack of information, or is deemed unwarranted, the Department will transfer the application to the Board of Appeals for consideration. The Board will treat the application as a petition for refund filed as of the same date that the application was filed with the Bureau of Individual Taxes. Realty Transfer Tax Bulletin No. 2010-01 (June 4, 2010).

**Personal Income Tax - Withdrawal from Partnership:** Taxpayers claiming an abandonment of an interest in, or disassociation or withdrawal from, a partnership or a limited liability company that is taxed as a partnership may be required to submit supporting documentation of the abandonment to the Department of Revenue. Taxpayers who have received notices from the partnership or LLC that are inconsistent with their withdrawal are required to submit certain forms of documentation of their withdrawal, in the year in which the notice is received. Taxpayers who received notices prior to the issuance of the bulletin should immediately submit the required documentation. Taxpayers who have filed or will file petitions in connection with the withdrawal should instead enclose the documentation with their petition. Personal Income Tax Bulletin No. 2010-03 (June 14, 2010).

**Personal Income Tax - Military Spouses:** Under the Military Spouses Residence Relief Act, which was signed into federal law on November 11, 2009, military spouses may be entitled to relief from PA Personal Income Tax. Under the Act, qualifying spouses retain their non-Pennsylvania domicile, and consequently will not be liable for PA Personal Income Tax on certain types of income, where the spouse and the service member have the same out-of-state domicile, the spouse is in Pennsylvania solely to be with the service member, and the service member is in Pennsylvania complying with military orders. The Act applies retroactively to January 1, 2009. Personal Income Tax Bulletin No. 2010-01 (March 17, 2010).

**Personal Income Tax - Interest-Free Loan to Child:** Where an interest-free or below-market rate of interest loan is made by a parent to a child, the foregone interest from the loan will be treated as a gift to the child, and will be imputed as interest income to the parent. Ruling No. PIT-10-002 (June 7, 2010).

**Personal Income Tax - Partnership Investment Loss:** The Commonwealth Court, in an unreported opinion, has partially sustained a taxpayer's exceptions to an order of the court, at 985 A.2d 984, which affirmed an assessment of personal income tax and penalty in connection with the Department's disallowance of a partnership investment loss claimed by the taxpayer on his personal income tax return. The Court, however, did accept the taxpayer's claim for penalty abatement because he did not act negligently or with intentional disregard of the law, because he had relied on the advice of a national accounting firm and because he reported in a manner consistent with the reporting of income from the investment in prior years. *Hvzidak v. Commissioner*, 739 F.R. 2006 (June 8, 2010).

**Unclaimed Property - Bond Funds:** On April 28, 2010, the Pennsylvania Supreme Court determined that a local government is required to report only the principal, as opposed to principal and the interest earned thereon, of unclaimed bond funds to the Pennsylvania Treasury Department as unclaimed property upon expiration of the holding period. Any earnings that a local government unit earns on an unclaimed bond fund do not attach to the principal because the bondholders are entitled to receive only the principal amount of the bonds and have no ownership interest in the earnings of the fund. *Delaware County v. First Union Corporation*, 992 A.2d 112 (Pa. 2010).

Pennsylvania Revenue Department bulletins and letter rulings are available on the Department's website: [www.revenue.state.pa.us](http://www.revenue.state.pa.us). Regulations may be accessed at [www.pacode.com](http://www.pacode.com). Some court decisions are available at: [www.courts.state.pa.us](http://www.courts.state.pa.us).

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