

Have You Filed Your Gross Receipts Tax Refund Claims?

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If your company pays Pennsylvania Gross Receipts Tax and you have not recently filed assessment appeals and/or protective refund claims, you should consider doing so immediately! Pending court appeals and a recent Pennsylvania Department of Revenue bulletin highlight a number of issues that you should be keeping in your sights and which you should be addressing through assessment appeals and refund petitions.

Subject to certain limited exceptions, Pennsylvania imposes tax on gross receipts “received” from, among other things:

- Telephone messages transmitted wholly within the state
- Telephone messages transmitted in interstate commerce, originating or terminating in PA and billed to a PA service address
- Mobile telecommunications service messages sourced to PA under 4 U.S.C. § 117
- Sales of electric energy within PA

Bad Debts Bulletin

For some time, the Department of Revenue has insisted on taxing bad debts. The Department has done so notwithstanding the fact that such amounts have not been received by the company and the statute clearly taxes only amounts “received.” Facing imminent litigation, the Department issued Pennsylvania Corporation Tax Bulletin No. 2011-02 on July 20, 2011, discussing accepted accounting methods and explicitly recognizing a “deduction” for bad debts.

Companies which have included bad debts in their reported gross receipts or have been assessed by the Department on bad debt amounts should immediately determine what appeals and refund claims may be timely filed and make those filings!

Unfortunately, the issuance of the Department’s bulletin may not signal the end of this issue, as we have seen indications that Revenue Department auditors intend to insist that taxpayers provide onerous bad debt documentation detail, failing which they will assess tax on the bad debts. The Department’s characterization of this as a bad debt “deduction” which must be affirmatively documented by the taxpayer is in error. Bad debts are simply amounts which have not been “received” and need not be included in

reported taxable gross receipts. Taxpayers, of course, must maintain auditable records. But, the Department bears responsibility for auditing those records and developing a factual basis for any under-reporting it believes should be assessed.

Other Issues Pending Litigation

As the Department has never issued regulations explaining its interpretation of the Gross Receipts Tax statute, it should come as no surprise that many cases are now pending in Pennsylvania's Commonwealth Court, contesting the inclusion of many types of charges and fees in the tax base. Telecommunications companies are preparing to litigate the taxability of private line charges, directory assistance charges, voicemail and features charges, and a number of other types of charges. We are advising companies to at least file protective appeals and refund claims to maintain their options pending the outcome of this lead litigation. Generally, we can file appeals and refund petitions, and then arrange to have action on them deferred at one of the administrative boards or in court, pending the ultimate resolution of a case which was filed earlier and involves the same issues.

If you have any questions concerning how to protect your company's rights regarding Pennsylvania's Gross Receipts Tax, Jim Fritz may be reached by phone at (717) 237-5365 or by e-mail at jfritz@mwn.com.

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