

Bipartisan Push for Royalty Addbacks

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In January 25th, Pennsylvania House Members Dave Reed and Eugene DePasquale, together with 62 bipartisan cosponsors, introduced legislation (HB 2150, PN 3019) to disallow deductions under Pennsylvania's Corporate Net Income Tax (CNI) for royalties paid to affiliated entities. Reed is Chairman of the House Majority Policy Committee; DePasquale is the endorsed candidate for the Democratic nomination for Auditor General, Pennsylvania's statewide fiscal watchdog office. Although it is not clear at this point whether this legislation may gain support in the PA Senate or the Governor's Office, we believe it should be taken seriously because of the degree of bipartisan support in the House.

In its present form, the bill provides for addback of royalties paid to affiliated entities. Additional revenues generated by the addback would be used to (a) phase-down Pennsylvania's 9.99% CNI rate to 6.99% by 2019; (b) immediately implement single sales factor apportionment (current weighting is 90%); and (c) over a period of years, eliminate the current cap on net loss carryforwards. The rate-reduction, single sales factor and elimination of the loss cap are tax reforms long sought by Pennsylvania's business community.

The bill currently provides an exception to addback where the transaction is "directly related to a valid business purpose" and attempts to provide a credit for tax paid to another state (not a foreign country) by the affiliate receiving the disallowed royalty payment. These provisions almost certainly will be subject to various amendments before the bill comes up for final passage.

For further details on this legislation and actions being taken by PA businesses with respect to it, please contact Jim Fritz at jfritz@mwn.com or another member of the McNees SALT group.

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