



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 542

PRINTERS NO. 2598

PRIME SPONSOR: Thomas

REVENUE INCREASE / (DECREASE)

FUND	FY 2017/18	FY 2018/19
General Fund	\$1,584,600,000	\$159,000,000

SUMMARY: House Bill 542, Printer's Number 2598, amends the Tax Reform Code of 1971 further providing in sales and use tax for definitions, imposition of tax, exclusions from tax, marketplace providers and sellers, and remote sales reports; in personal income tax for definitions and operational provisions, exemptions for ABLE savings programs, tax return check-offs, withholding of tax and providing of information; in corporate net income tax for net operating loss provisions and qualified manufacturing innovation and reinvestment deduction; in realty transfer tax for definitions and exempt parties; in tax credits for eligibility; in entertainment production tax credits for definitions, film production tax credit districts and entertainment economic enhancement program; in city revitalization and improvement zones for restrictions and transfer of property; in neighborhood improvement zones for transfer of property; in keystone opportunity zones for application and approval of zones; in inheritance tax for timely filing and payment; in public transportation assistance fund for carsharing; providing for fireworks; providing for administration, reassessment, review and timely filing; providing for tobacco master settlement payment revenue bonds and sale of revenue; and making repeals.

ANALYSIS: This legislation makes various changes and additions to the Tax Reform Code of 1971. More specific details on each provision are as follows as well as the corresponding fiscal impact for each provision:

Sales and Use Tax (SUT)

- **Support Services** - Act 84 of 2016 imposed the sales and use tax on digital downloads including maintenance, updates and support. This legislation removes the taxation on separately invoiced support services.

Fiscal Impact: This provision clarifies the provisions of Act 84 and has no adverse fiscal impact.

- **Kegs Exclusion** - Wrapping and packing supplies which are incidental to the delivery of personal property are currently exempt from taxation. This legislation adds kegs used to contain malt or brewed beverages to the current exemption.

Fiscal Impact: The exclusion of kegs is estimated to have a minimal revenue loss to the General Fund.

- **Marketplace Sales Tax Collections and Reporting** – On or before March 1, 2018, remote sellers, marketplace facilitators or referrers with aggregate sales of \$10,000 or more in the previous calendar year shall file an election to (1) collect and remit the sales tax or (2) comply with notice and reporting requirements.

Notice and reporting requirements include (1) posting notice on its platform informing purchasers with a delivery location in PA that sales tax may be due on the purchase and PA requires the purchaser to file a use tax return; (2) providing a written notice to each purchaser at the time of sale stating that sales tax is not being collected and the purchaser may be required to remit use tax to PA; (3) providing instructions for obtaining information from the department on how to remit the use tax; (4) prominently displaying this information on each invoice, order form, sales receipt or similar document; (5) filing a report with the department no later than February 28 of each year providing the names of purchasers including mailing address, address to which the product was delivered, aggregate dollar amount of purchases, name and address of the remote seller, marketplace facilitator or marketplace seller.

Fiscal Impact: This provision is estimated to generate additional revenues of \$10.0 million in 2017-18 and \$50.5 million in 2018-19.

- **Remote Sales Report** – If Federal legislation has not been enacted addressing remote sellers by December 31, 2018, the IFO in conjunction with Department of Revenue shall conduct a study assessing the legal and fiscal implications of mandating notice requirements for remote sellers. Results of the study shall be provided to the General Assembly by April 1, 2019.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.

Personal Income Tax

- **ABLE Savings Accounts** – Act 17 of 2016 established the Pennsylvania ABLE (Achieving a Better Life Experience) Act. This provision allows a deduction for contributions to an ABLE account and exempts undistributed earnings in the ABLE account as well as distributions from the ABLE account.

Fiscal Impact: This provision is estimated to reduce revenues by \$0.5 million in 2017-18 and \$1.1 million in 2018-19.

- **Income Tax Return Check-offs** – Makes the following checkoffs permanent on the PIT return: Wild Resource Conservation Fund; Organ and Tissue Donation Awareness Fund; Military and Family Relief Assistance Fund; Children’s Trust Fund; and American Red Cross. Repeals the checkoff for the Korea / Vietnam Memorial National Education as this has been expired since December 31, 2005.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.

- **Nonresident Withholding** – Requires entities making rent and royalty payments on PA property to nonresidents in excess of \$5,000 to withhold personal income tax on those payments. Requires companies that bring out-of-state independent contractors into PA for work in excess of \$5,000 to withhold personal income tax from the compensation. Businesses are required to electronically file 1099-MISC forms for all employees and all classes of PA source income.

Fiscal Impact: This provision is part of the Revenue Maximization proposal which is estimated to generate additional revenues of \$20 million annually for the General Fund.

Corporate Net Income

- **Net Operating Losses** – Removes the \$5 million cap on NOL deductions and increases the cap of 30% of taxable income as follows: 35% of taxable income for tax year 2018 and 40% of taxable income for tax year 2019 and thereafter. This provision shall take effect if all or part of the operation of the NOL deduction has been deemed unconstitutional by a decision by the PA Supreme Court.

Fiscal Impact: This provision is estimated to generate additional revenues of \$52.6 million in 2017-18 and \$80.3 million in 2018-19 in the event that the PA Supreme Court rules against the current NOL provisions.

- **Manufacturing Innovation and Reinvestment Deduction** – A taxpayer must make a capital investment in excess of \$100 million for the creation of new or refurbished manufacturing capacity within 3 years of a designated start date. Within 5 years of the start date the taxpayer must attest to DCED that the project is completed. Upon approval of completion, DCED shall determine the maximum allowable deduction from taxable income for the taxpayer which shall be equal to 5% of the private capital investment utilized and may be utilized each year for the 5 tax years immediately following the DCED satisfaction determination. The deduction is nontransferable, the taxpayer cannot reduce its liability by more than 50% and any unused portion shall expire at the end of the corresponding tax year.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth in 2017-18 or 2018-19 as the taxpayer has 3 years to make the qualified capital investment and 5 years to attest to DCED for determination of the allowable deduction for the taxpayer.

Realty Transfer Tax

- **Veterans' Service Organizations** – Act 84 of 2016 provided that "veterans' organizations" were exempt parties from paying the RTT. This legislation renames the term "veterans' service organization" and adds language in the definition clarifying that it is an organization that has been chartered by Congress to service veterans or is a member of the PA State Veterans' Commission under Title 51, Chapter 17.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.

Tax Credit Eligibility

- Provides that before a tax credit can be awarded, the department may make a finding that the taxpayer has filed all required State tax reports and returns for all taxable years and paid any balance of State tax due, unless the tax due is currently under appeal.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.

Film Production Tax Credit Districts

- Allows the department to designate no more than 2 tax credit districts for the purpose of enhancing, promoting and expanding film production opportunities and establishing a film production industry within the Commonwealth. Tax credit districts must be located on deteriorated property and contain at least one qualified production facility and six soundstages. The property must be occupied by two or more qualified businesses that make a total capital investment of at least \$400 million within five years after the designation of the district. Tax credits may be authorized in fiscal year 2019-20 and thereafter. Tax credits under this section are in addition to the current Film Production Tax Credit program and are available exclusively for activities occurring within the designated district.

Fiscal Impact: This provision will have no adverse fiscal impact in 2017-18 and 2018-19 as tax credits may first be authorized in 2019-20 and thereafter by subsequent legislation.

Entertainment Economic Enhancement Program

- The Entertainment Economic Enhancement Program currently exists as Chapter 33 of Title 12. This provision adds Subarticle E to the Tax Reform Code codifying the exact language of the program into the Tax Reform Code and repeals the language in Title 12.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.

City Revitalization and Improvement Zones (CRIZ)

- Provides that excess money transferred to a CRIZ fund for utilization in a pilot zone is not required to be returned to the State by the contracting authority of the pilot zone and must be used in accordance with the current utilization provisions in the article.
- Provides that the department shall request documentation regarding State eligible taxes paid or refunds received from the agency required to collect the tax or issue the refund before requiring such documentation from the qualified business.
- Current law allows parcels to be transferred out of a zone where a facility has not been constructed, reconstructed or renovated and additional acreage, not to exceed the acreage transferred out of the zone, may be simultaneously added to the zone. This legislation removes the word "simultaneously" allowing acreage to be added to the zone at a later date.

Fiscal Impact: These provisions will have no adverse fiscal impact to the Commonwealth.

Neighborhood Improvement Zones (NIZ)

- Adds a new section providing for parcels in a zone to be transferred out of the zone and replaced with parcels not to exceed the acreage transferred out of the zone at any given time.

Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.

Keystone Opportunity Zones (KOZ)

- Extends the application date for additional Keystone Opportunity Zones that are currently allowed in law from October 2016 to October 2018.
- Extends the date for DCED action on applications for additional KOZs that are currently allowed in law from December 2016 to December 2018.

Fiscal Impact: These provisions will have no adverse fiscal impact to the Commonwealth.

Inheritance Tax

- Provides that any inheritance tax return filed between July 1, 2012, and January 1, 2017, under section 2136 that reports transfers of property that are exempt from the inheritance tax under section 2111 shall be considered timely filed if filed within one year of the tax return due date.

Fiscal Impact: This provision is estimated to reduce revenue by \$100,000 in 2017-18.

Public Transportation Assistance Fund (PTAF)

- Provides for a new carsharing fee schedule as follows: (1) \$0.25 for less than 2 hours; (2) \$0.50 for 2 hours to 3 hours; (3) \$1.25 for more than 3 hours and less than 4 hours; and (4) \$2.00 for 4 hours or more.
- "Carsharing" shall mean a membership based on service that provides an alternative to personal car ownership and which meets the following conditions: (1) does not require a trip-specific written agreement each time a member rents a vehicle; (2) does not require an attendant to be present at the beginning or end of a rental; (3) offers members access to a dispersed network of shared vehicles 24-hours per day, 7 days per week, 365 days per year; and (4) allows a vehicle to be rented on a per minute, per hour, per day, or per trip basis, and at per mile or per kilometer rates, which typically includes fuel, insurance and maintenance.

Fiscal Impact: These provisions will have no adverse fiscal impact to the Commonwealth.

Fireworks

- Incorporates the current fireworks law into the Tax Reform Code modernizing and expanding the legalization of consumer fireworks.
- Imposes a new tax at the rate of 12% of the sale price on consumer fireworks that are suitable for use by the public. The tax would be in addition to the sales and use tax already imposed on such sales. The new tax does not apply to display fireworks used by professional pyro technicians.
- One-sixth (2%) of the consumer fireworks taxes collected, not to exceed \$2 million annually, shall be transferred from the General Fund as follows: (1) 75% to the Emergency Medical Services Grant Program and (2) 25% to a special account for volunteer firefighter training.
- There is a nonrefundable license application fee of \$2,500 for a facility and \$1,000 for a temporary structure.

- Annual license fees for a permanent facility or temporary structure to sell fireworks are: (1) \$7,500 for a facility up to 10,000 square feet; (2) \$10,000 for a facility greater than 10,000 square feet and up to 15,000 square feet; (3) \$20,000 for a facility greater than 15,000 square feet; and (4) \$3,000 for a temporary structure licensed to sell a limited selection of consumer fireworks.
- A temporary structure licensed to sell consumer fireworks must be located at least 5 miles from a permanent facility prior to January 1, 2023, and at least 2 miles thereafter. Temporary structures are limited to selling fireworks during the following periods: (1) June 15 through July 8 and (2) December 21 through January 2.

Fiscal Impact: These provisions are estimated to generate additional revenues in 2017-18 of \$2.6 million and \$9.3 million in 2018-19.

Revenue Maximization

- Reduces the period of time a taxpayer has to file a petition for reassessment, review or adjustment with the Board of Appeals (BOA) from 90 days after the mailing date of the notice of assessment to 60 days after the mailing date of the notice of assessment.
- Reduces the period of time a taxpayer has to appeal a BOA decision to the Board of Finance Revenue (BFR) from 90 days after the mailing date of the notice of decision to 60 days after the mailing date of the notice of decision.

Fiscal Impact: These provisions are part of the Revenue Maximization proposal which is estimated to generate additional revenues of \$20 million annually for the General Fund.

Tobacco Master Settlement Payment Revenue Bonds and Sale of Revenue

- Authorizes the Commonwealth Financing Authority (CFA) to enter into a sales agreement or issue bonds utilizing a portion of the annual payments from the Tobacco Master Settlement Agreement. Such sales agreement or bond issuance shall be in the best interest of the Commonwealth, provide the greatest value to taxpayers and raise net proceeds of \$1,500,000,000 which shall be deposited into the General Fund.
- The term of the sales agreement shall not exceed 10 years.
- The term of the bonds shall not exceed 30 years.

Fiscal Impact: This provision will generate \$1.5 billion for the general fund in 2017-18.

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House Appropriations Committee (R)

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.