SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 262

PRINTER NO. 2266

AMOUNT

FY 2019-20: ($29,200,000)

FUND

General Fund

DATE INTRODUCED

January 29, 2019

PRIME SPONSOR

Representative Metzgar

DESCRIPTION AND PURPOSE OF BILL

House Bill 262, as amended, amends the Tax Reform Code of 1971 (Act of March 4, 1971, P.L. 6, No. 2) by serving as the omnibus tax bill with regard to fiscal year 2019-20 budget implementation. The legislation amends the Tax Reform Code of 1971 ("TRC") as follows:

SALES AND USE TAX

Marketplace Sales and *Wayfair* Court Decision (i.e. Internet Sales) – Update

- Updates and expands the provisions enacted in Act 43 of 2017 regarding marketplace sellers (e.g. out-of-state retailers selling into PA through the Internet) and marketplace facilitators (e.g. forums such as Amazon.com) to conform to the U.S Supreme Court decision in *South Dakota v. Wayfair, Inc;*
- Requires vendors, including marketplace sellers and marketplace facilitators, with aggregate sales of at least $100,000 in the preceding twelve-month calendar period to collect and remit sales tax and removes the Act 43 reporting requirement option that was in place prior to the *Wayfair* decision; and
- Updates sales and use tax assessment and collection rules to accommodate the prevalence of sales by marketplace sellers through forums such as Internet websites that are operated by marketplace facilitators.

Fiscal impact: $5 million FY 2019-20; $5 million FY 2020-21.

Malt Beverage Manufacturers (Brew Pubs) – SUT Collection

- Clarifies the assessment of sales and use tax on the purchase price of malt or brewed beverages sold on the premises of a PA brewery;
- Provides that the purchase price of "malt or brewed beverages" sold by a "manufacturer of malt or brewed beverages" (i.e. craft brew pubs) directly to the ultimate consumer for consumption on or off premises is 25% of the retail price of the product sold to the ultimate consumer for consumption on or off premises;
- Supersedes the Department of Revenue's *Sales and Use Tax Bulletin 2018-02* that is scheduled to take effect July 1, 2019 and which would impose the 6% sales tax on the full retail price of each sale in most instances; and

- Allows the Philadelphia School District and Allegheny County to continue to levy their respective local alcoholic beverage taxes on the sale at retail of malt or brewed beverages by a manufacturer of such beverages (i.e. craft brew pubs).

Fiscal impact: *Minimal General Fund revenue gain.*

SUT Absorption and Advertising – Removal of Prohibition

- Removes prohibitions against vendors (i.e. retailers) from advertising or holding out to the public that the vendor will absorb all or part of the sales and use tax on behalf of the purchaser, subject to certain conditions; and
- Requires a vendor to expressly state on any receipt, invoice or sales slip that the vendor will pay the tax on behalf of the purchaser, and the vendor shall not indicate or imply that the transaction is exempt from tax.

Fiscal impact: *No adverse fiscal impact.*

SUT on Food and Beverages Sold by Nonprofits that Support Youth Centers – Exemption

- Expands the existing sales and use tax exemption for food and beverage sales by nonprofit organizations supporting youth sports to include nonprofits supporting youth development programs.

Fiscal impact: *-$0.6 million FY 2019-20; -$1.5 million FY 2020-21.*

SUT on Food and Beverages Sold by Volunteer Firefighter Companies – Exemption

- Provides for a sales and use tax exemption for food and beverages sold by volunteer firefighter companies for fundraising efforts.

Fiscal impact: *-$0.3 million FY 2019-20 and -$0.6 million thereafter.*

SUT on Animal Housing Facilities - Exemption

- Provides a sales tax exemption for the sale at retail of building materials and supplies used for the construction or repair of an animal housing facility, regardless of whether the sale is made to the purchaser directly or pursuant to a construction contract.

Fiscal impact: *-$1.7 million FY 2019-20 and -$4 million thereafter*

PERSONAL INCOME TAX

Conformity with Federal Opportunity Zones for Treatment of Capital Gains

- Conforms Pennsylvania's personal income tax to the Federal Opportunity Zones Program, which was enacted as part of the Federal Tax Cuts and Jobs Act in 2017; and
- Federal program allows investors in Opportunity Funds to receive federal tax deferrals/eliminations and other tax benefits on unrealized capital gains associated with these investments. Conforming PA's personal income tax to the federal rules that allow for the tax deferral/elimination of only those capital gains associated with the Opportunity Zones will incentivize investment in low-income urban and rural communities throughout the state.

Fiscal impact: *-$2.3 million FY 2019-20; -$2.8 million FY 2020-21.*

Exclusion for Medals and Prizes from the U.S. Olympics and Paralympics

- Exempts from state income taxes Olympic prize winnings and medals received from the United States Olympic Committee on account of competition in the Olympic Games or Paralympic Games.

Fiscal impact: Minimal General Fund revenue loss.

Veterans' Trust Fund Check-Off

- Adds a new PIT check-off donation option on the PA-40 income tax return for contributions to the Veterans' Trust Fund.

Fiscal impact: No adverse fiscal impact.

Income Tax Reporting for Estates and Revocable Trusts

- Conforms the PIT to federal law by allowing the executor or administrator of a decedent's estate to elect to file a combined annual income tax return for an estate and revocable trust during the period the estate is open.

Fiscal impact: No adverse fiscal impact.

Paid Tax Preparer ID Number Requirement

- Requires paid tax return preparers to sign and include their IRS Preparer Tax Identification Number (PTIN) on any Pennsylvania income tax return or claim for refund that they prepare; and
- Establishes a penalty of up to $50 per return for failure to comply (maximum of $25,000).

Fiscal impact: No adverse fiscal impact.

CORPORATE NET INCOME TAX

Manufacturing Innovation and Reinvestment Program

- Expands the existing Manufacturing Innovation and Reinvestment Deduction program within the corporate net income tax (CNIT) to create two tiers of private investment levels in order to allow additional businesses to make investments in the state and create new jobs;
- The two-tiered scale would allow manufacturers making qualified private capital investments to claim a deduction against their taxable income under the CNIT as follows:
  - Greater than $60 million but not more than $100 million - a maximum deduction from taxable income equal to 37.5% of the private investment over a ten-year period; and
  - $100 million or more - a maximum deduction from taxable income equal to 25% of the private investment over a ten-year period.

Fiscal impact: -$6.2 million FY 2019-20; -$9.2 million FY 2020-21.

REALTY TRANSFER TAX

Exemption for Sale of Preserved Farms to Qualified Beginning Farmers

- Defines a "qualified beginning farmer" as follows:
  - Has demonstrated experience in the agriculture industry or related field or has transferable skills as determined by the Department of Agriculture;

  - o Has not received Federal gross income from agricultural production for more than the ten most recent taxable years;
  - o Intends to engage in agricultural production within the borders of this Commonwealth and to provide the majority of the labor and management involved in that agricultural production; and
  - o Has obtained written certification from the Department of Agriculture confirming "qualified beginner farmer" status.
- Provides an exclusion from tax for a transfer of real estate that is subject to an agricultural conservation easement established under authority of the Agricultural Area Security Law to a qualified beginner farmer.

Fiscal impact: Minimal fiscal impact.

Increase RTT Transfer Cap from $25 Million to $40 Million to the Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund (PHARE)

- Raises the $25 million limit on RTT funds deposited into the PHARE Fund to $40 million annually and moves the enabling statutory language from the Housing Finance Agency Law to the Tax Reform Code.

Fiscal impact: -$15 million FY 2019-20; -$15 million FY 2020-21.

INHERITANCE TAX

Establishes a Zero Percent Tax Rate for Transfers from Parents to Children 21 Years of Age or Younger

- Eliminates the inheritance tax for transfers of property to or for the use of a child aged 21 years or younger from a natural parent, adoptive parent or step-parent by amending the tax rate to zero percent; and
- The current inheritance tax rate on transfers to children is 4.5%.

Fiscal impact: -$3 million FY 2019-20; -$12.5 million FY 2020-21.

TABLE GAMES TAX

Extends Sunset Date of Additional 2% Table Games Tax to August 1, 2021

- Extends the sunset date of the additional 2% tax on table games enacted in Act 84 of 2016 to August 1, 2021 and
- The additional 2% table games tax was set to expire June 30, 2019.

Fiscal impact: $17.9 million FY 2019-20; $19.6 million FY 2020-21.

SURPLUS LINES TAX

Clarifies that Charter Schools are Exempt from Surplus Lines Tax to the same extent as School Districts

- Adds new Article XXIX-H (Independent Public Schools) to clarify that charter schools, regional charter schools and cyber charter schools are independent public schools entitled to the same tax exemption from surplus lines tax as a public school district. Surplus lines tax is a tax imposed on the purchaser of insurance from an unregistered insurance company.

Fiscal impact: Minimal fiscal impact.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

TAX CREDIT PROGRAMS

Film Production Tax Credit

- Adds the cost of obtaining music rights to the definition of "postproduction expenses";
- Updates provisions related to film production tax credit districts by extending the timeframe with regard to capital investment and lowers the threshold for sound stages from six to two;
- Allows a corporate taxpayer who receives film tax credits to allocate those credits among its parent or affiliated companies that are part of the same consolidated federal income tax group. Current law stipulates that a wholly owned subsidiary of a parent company can only offset 50% of the entity's qualified tax liability for the year. This restriction is being removed in the case of related Pennsylvania companies; and
- Increases the cap of the Film Production Tax Credit from $65 million per fiscal year to $70 million per fiscal year, beginning with FY 2019-20.

Fiscal impact: No impact FY 2019-20; -$0.4 million FY 2020-21.

Entertainment Economic Enhancement Program (aka, Concert Rehearsal and Tour Tax Credit)

- Permanently increases the cap of the Entertainment Economic Enhancement Program from $4 million to $8 million, beginning in fiscal year 2019-20;
- Updates the individual limitations per tour by establishing a tiered system of individual limitations based upon the level of purchase or rental of concert tour equipment from PA companies. The current limitation is $800,000 per tour and is being revised as follows:
    - For PA purchases or rentals of at least $3 million but less than $4 million, $800,000 of tax credits for the tour.
    - For PA purchases or rentals of at least $4 million but less than $8 million, $1.25 million of tax credits for the tour.
    - For PA purchases or rentals of at least $8 million, $2 million of tax credits for the tour.
- Amends the term "rehearsal expense" to expand the definition to include the costs of ground transportation and broaden the cost of insurance coverage. Amends the term "taxpayer" to a musical performer or a concert tour management company of a musical performer. Revises the definition of "tour expense" to be in sync with the updated definition of "rehearsal expense";
- Adds a definition of "representative"; and
- Revises the section relating to carryover, carryback and assignment of tax credit to alleviate the effects of a significant administrative delay in the program becoming operational to allow an applicant who has received an extension of time to file a 2018 PA tax return to apply their awarded tax credits to their 2018 tax liability or to sell or assign such credit.

Fiscal impact: -$4 million FY 2019-20; -$4 million FY 2020-21.

Resource Enhancement and Protection (REAP)

- Increases the cap of the REAP tax credit from $10 million per fiscal year to $13 million per fiscal year, beginning with FY 2019-20;
- The $3 million cap increase is targeted for geographic areas and best management practices for nutrient and sediment reductions within the Chesapeake Bay watershed area;
- Raises and expands the existing cap per eligible applicant from $150,000 per lifetime to $250,000 in tax credits in any consecutive seven-year period;
- Permits the tax credit to be applied to a spouse when a joint income tax return is filed. Currently, the term "eligible applicants" is limited to only a business firm or an individual; and
- Includes a manure management plan as an eligible project for a tax credit and makes other technical changes recommended by the Department of Agriculture.

Fiscal impact: -$0.2 million FY 2019-20; -$0.8 million FY 2020-21.

Historic Preservation Incentive Tax Credit

- Extends the current sunset date of the program from 2020 to 2031 and increases the program's annual cap from $3 million to $5 million;
- Amends the definition of "qualified historic structure" to remove the existing provision which requires that the structure be a "commercial" building, thereby opening up the program to include non-commercial buildings such as residential buildings;
- Establishes a "workforce housing" initiative inside the program that will provide for a higher tax credit percentage (30% vs. 25%) for projects in which at least 20% of the units are affordable for individuals earning 80% of the area median income;
- Establishes an application fee of up to $2,000, the proceeds of which will be deposited into the Historic Rehabilitation Tax Credit Administration Account to offset the program's administrative costs; and
- Requires an annual report to be submitted to the General Assembly.

Fiscal impact: -$2 million FY 2019-20; -$2 million FY 2020-21.

Coal Refuse Energy and Reclamation Tax Credit

- Extends the current sunset date of the program from 2026 to 2036 and increases the program's annual cap from $10 million to $20 million; and
- Provides that if a federal tax credit program is later adopted to the extent that it equals or exceeds the state program, the state program will be suspended and would relieve Pennsylvania of its entire budgetary impact.

Fiscal impact: -$7.2 million FY 2019-20; -$9.3 million FY 2020-21.

Tax Credit for New Jobs (aka, Job Creation Tax Credit)

- Effectively repeals the Tax Credit for New Jobs program by providing that DCED may not approve any new applications for tax credits after June 30, 2020; and
- Repeal is consistent with a recent finding by the Independent Fiscal Office that the program is unlikely to incentivize job creation in its current form and a recommendation that the program's funding be repurposed to a better use.

Fiscal impact: No impact FY 2019-20; $1.3 million FY 2020-21.

Rural Jobs and Investment Tax Credit

- Increases the tax credit cap from $1 million per year over four years ($4 million total over life of the program) to $6 million per year over five years ($30 million total over life of the program) to make the economics of the program feasible so that the existing goal of $100 million of private capital investment may be raised;
- Includes improved job creation and retention metrics and goals. Failure to meet these goals results in a "State repayment amount" (i.e. clawback penalties) paid back to the Commonwealth by the investors; and
- Amends the size of businesses that may apply by altering the definition of a "rural business" to one which has fewer than 150 employees and not more than $15 million in net income per year. The program's current definition is a business that has fewer than 250 employees and not more than $15 million in net income per year.

Fiscal impact: -$3.6 million FY 2019-20; -$4.7 million FY 2020-21.

Neighborhood Assistance Tax Credit

- Adds "youth and adolescent development services" to the list of allowable policy goals that are eligible for a tax credit; and
- Provides that no more than $2 million of the existing $36 million cap may be used for youth and adolescent development services.

Fiscal impact: No adverse fiscal impact.

Mixed Use Development Tax Credit

- Increases the cap of the tax credit from $2 million per fiscal year to $3 million per fiscal year, beginning with FY 2019-20.

Fiscal impact: -$1 million FY 2019-20; -$1 million FY 2020-21.

Computer Data Center Equipment Incentive Program

- Increases the current $5 million cap by $2 million for sales and use tax refunds paid on purchases related to computer data center equipment by a computer data center that meets certain minimum investment and payroll requirements as specified by Act 84 of 2016.

Fiscal impact: -$2 million FY 2019-20; -$2 million FY 2020-21.

ECONOMIC DEVELOPMENT ZONES

City Revitalization and Improvement Zones (CRIZ)

- Amends the existing definition of "infrastructure" such that the standard used to determine whether any improvements in or out of the zone is changed from being "…*primarily* related to the development of *and required by* a facility in the zone…" to a standard of any improvements in or out of the zone "…*that the contracting authority determines* to be related to the development of a facility in the zone…." (Emphasis added); and

- Amends the CRIZ program with regard to the allowable uses of money received from zone-certified state taxes over and above the baseline, plus all local taxes certified as attributable to the zone. Utilization of money is expanded to include payment of debt service on bonds issued or refinanced to establish a revolving loan fund that will provide financial assistance in the form of a loan to a qualified business acquiring property for the business constructing a new facility, reconstructing or renovating an existing facility or acquiring new equipment to be used in a zone.

Fiscal impact: Minimal fiscal impact.

Keystone Opportunity Expansion Zones

- Provides for an application period for the designation of one or more Keystone Opportunity Expansion Zones (KOEZs) in each of the following counties if the applicant meets the criteria for approval: Cambria, Clearfield and Lancaster;
- Requires an application for KOEZ designation to be submitted no later than October 1, 2021. DCED must act on an application for designation within three months of receipt or by December 31, 2021; and
- Failure to approve a zone requires DCED to hold a public hearing explaining its decision to disapprove.

Fiscal impact: No adverse fiscal impact.

Strategic Development Areas

- Clarifies an existing sales and use tax exemption on certain goods or services purchased by qualified businesses located within a Strategic Development Area (SDA) for "exclusive use, consumption and utilization" within the SDA; and
- The term "exclusive use, consumption and utilization" shall be construed to include the use of specified tangible personal property such as computers, laptops, software and cell phones by employees assigned to a facility located within a SDA when such items are used by those employees at a location outside the SDA.

Fiscal impact: -$3 million FY 2019-20; -$2.7 million FY 2020-21.