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House of Representatives

Commonwealth of Pennsylvania

Harrisburg

DAVE REED

62ND LEGISLATIVE DISTRICT

MEMORANDUM

TO: All House Members

FROM: Representative Dave Reed

SUBJECT: Proposed Legislation
Closing the Delaware Loophole

DATE: October 10, 2011

In the near future, I will be introducing legislation that will help level the playing field among Pennsylvania businesses by taking steps to address what has become known as the Delaware Loophole. This issue, which has garnered serious attention in recent years, should be addressed as part of a comprehensive effort to revamp the state's business tax structure and in turn improve our job creation efforts.

The Delaware Loophole is the name that has been given to a tax planning practice of multi-state corporations in which they reduce tax liabilities in Pennsylvania and other states through certain inter-company asset transfers. Although not exclusive to Delaware, our neighboring state's corporate tax structure makes these transfers to entities based in Delaware a viable option for reducing tax liabilities.

To ensure business activities in Pennsylvania are properly assessed for tax purposes, I intend to unveil two separate proposal options that will address this issue.

The first measure will implement an expense add-back provision to the state's tax code. This proposal will ensure very specific transactions among business affiliates cannot be used to reduce tax liabilities in Pennsylvania. The plan would require multi-state corporations operating in Pennsylvania to "add-back" specific transactions to their Pennsylvania taxable income to ensure they are not being made solely for tax reduction purposes. Similar measures have been successfully employed in other states throughout the country.

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The second proposal will amend to state's tax code to change the manner in which very specific business transactions are sourced to Pennsylvania. This plan would require transactions such as payments for the use of patents, trademarks, etc. to be taxable in the Commonwealth on principles of market-based sourcing. This means the specific business transactions would be taxable based on where the customer receives the benefit – in this instance, Pennsylvania.

Each of these concepts provides a precise and targeted approach to addressing the Delaware Loophole, avoiding many of the concerns that have been raised with proposals calling for unitary combined reporting. Whereas combined reporting would completely revamp the way all multi-state businesses pay taxes in Pennsylvania, the measures I am proposing aim to focus on the specific tax planning practices that have drawn attention to the so-called Delaware Loophole.

As previously noted, the primary goal of these measures is to level the playing field for all businesses operating in Pennsylvania. However, it is equally important to note that addressing this issue will provide opportunities to improve our corporate tax structure and make Pennsylvania more competitive for business growth and job creation.

Members who would like to cosponsor one or both of these measures may contact Cheryl Griffith at (717) 705-7173 or cgriffit@pahousegop.com. If there are any questions, I would welcome the opportunity to discuss them with you.

Thank You,

Dave Reed