

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

BILL NO. House Bill 542

PRINTER NO. 2259

AMOUNT

\$1,796,500,000

FUND

General Fund

DATE INTRODUCED

February 17, 2017

PRIME SPONSOR

Representative Thomas

DESCRIPTION AND PURPOSE OF BILL

House Bill 542, 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 2017-18 budget implementation. The legislation amends the Tax Reform Code of 1971 ("TRC") as follows:

SALES AND USE TAX

Technical Support Services - Exclusion

- Amends the definition of "tangible personal property" to exclude services that provide advice or guidance concerning otherwise taxable digital or electronic tangible personal property including help desk support or call center support. This change in definition effectively excludes such support services from the sales and use tax.

Imposition of Sales Tax on Marketplace Providers (Remote, i.e. Internet, Sellers)

- Requires a marketplace provider to collect sales tax on each separate sale that they facilitate for a marketplace seller. A "marketplace provider" is a person or entity who has an agreement with a "marketplace seller" to facilitate sales. A person or entity "facilitates" a sale under the following conditions:
 - The marketplace provider collects the payment made by a customer to or for a marketplace seller; and
 - The marketplace provider provides the forum in which the sale takes place, including a shop, store, booth, Internet website, catalog or similar forum.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Clarification – SUT Exclusion for Kegs

- Clarifies that kegs used to contain malt or brewed beverages are excluded from the sales and use tax if they are reused in the delivery of products. Currently, most packaging materials purchased by manufacturers to deliver their products to retail establishments are excluded from the sales and use tax when they are initially purchased from a supplier. Under an interpretation by the Department of Revenue, if those packaging materials, such as kegs, are then reused by the manufacturer, they are subject to the sales and use tax.

Remote Sales Notification Study

- If Federal legislation addressing the issue of requiring remote (i.e. out-of-state) sellers to collect the sales tax is not enacted by December 31, 2018, the Independent Fiscal Office and the Department of Revenue shall conduct a study addressing the legal and fiscal implications of mandating notice requirements for remote sellers.

PERSONAL INCOME TAX

ABLE Savings Program Tax Exemption

- Codifies the Pennsylvania ABLE Savings Program Tax Exemption Act within the Tax Reform Code. Senate Bill 677 would have established the PIT exemption as a freestanding act. The tax exemption provides that the following shall be exempt from all taxation by the Commonwealth and its political subdivisions:
 1. Undistributed earnings on an account.
 2. A rollover distribution that is excludable from tax under section 529A(c) of the Internal Revenue Code.
 3. An amount distributed from an account that is excludable from tax under section 529A(c) of the Internal Revenue Code.
- An amount paid as contribution into an account shall be deductible from taxable income on the annual personal income tax return, subject to federal limitations on gifts as provided in the Internal Revenue Code. The deduction shall not result in taxable income being less than zero.
- An amount that is distributed from an account which is not described as being exempt from taxation shall be subject to tax under the Pennsylvania personal income tax.

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

PIT Checkoff Contributions

- Repeals the already-expired PIT checkoff for contributions to the Korea/Vietnam Memorial National Education Center.
- Eliminates the sunset date and extends the PIT checkoff for the following contributions:
 - Wild Resource Conservation
 - Organ and Tissue Donation Awareness
 - Military Family Relief Assistance
 - Children’s Trust Fund
 - American Red Cross

CORPORATE NET INCOME TAX

Net Operating Loss Deduction

- Alters the cap on net operating loss deductions (NOLs) from the greater of \$5 million or 30% of taxable income to a cap based on the amount of taxable income of 35% for 2018 and 40% for 2019.
- The change is predicated upon a future PA Supreme Court decision that would nullify current law NOL provisions. If the court decides to maintain the existing NOL rules, the change will not take effect.

Manufacturing Innovation and Reinvestment Program

- Establishes a Manufacturing Innovation and Reinvestment Deduction program within the corporate net income tax (CNIT).
- Allows manufacturers making qualified capital investments in excess of \$100 million to claim a deduction against their taxable income under the CNIT.
- The program requirements and operational procedures ensure there most likely will be no fiscal impact for several years.

GROSS RECEIPTS TAX

Imposition on Natural Gas

- Imposes the gross receipts tax (“GRT”) on the retail sale of natural gas at the rate of 57 mills (i.e. 5.7%). Effective August 1, 2017.
- Exemptions include sales made to electric generation companies for the purpose of generating electricity, sales of LP gas, and sales for resale.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

Rate Increase on Telecom and Electric

- Increases the gross receipts tax rate on telecommunications and transportation companies from 50 mills to 60 mills (i.e. from 5% to 6%). Effective August 1, 2017.
- Increases the gross receipts tax rate on electric companies from 59 mills to 65 mills (i.e. from 5.9% to 6.5%). Effective August 1, 2017.

Transfers to Natural Gas Optimization Program and LIHEAP

- Redirects \$20 million annually from the GRT on natural gas to fund a new Natural Gas Optimization Program.
 - Creates a competitive grant process open to natural gas distribution companies to expand access to gas, accelerate the placement of infrastructure, make the use of gas more efficient and affordable to consumers, etc.
 - Administered by the PA Public Utility Commission.
- Redirects \$20 million annually from the GRT on natural gas to augment the Low-Income Home Energy Assistance Program (LIHEAP).

REALTY TRANSFER TAX

Veterans' Service Organization

- Clarifies the existing realty transfer tax exemption for veterans' organizations by replacing the current definition of "veterans' organizations" with a new definition of "veterans' service organizations."
- Veterans' service organizations are defined as: "A not-for-profit organization that has been chartered by the Congress of the United States to service veterans or is a member of the Pennsylvania State Veterans' Commission under 51 Pa.C.S. Ch. 17 (relating to State Veterans' Commission and Deputy Adjutant General for Veterans' Affairs)."

ELECTRIC GRID VIRTUAL FINANCIAL TRANSACTIONS TAX

Establishment

- Imposes a new tax at the rate of 5% on the gross transaction amount of electric grid virtual financial transactions in the electricity markets administered by the regional transmission organization (i.e. PJM).
- Applies to transactions occurring 30 days or more after the effective date.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

VEHICLE RENTAL FEE

Car-sharing Service

- The existing \$2 per day vehicle rental fee deposited into the Public Transportation Assistance Fund is modified to incremental amounts for rental vehicles used pursuant to a membership based car-sharing service.
- The incremental fee will range from 25¢ for less than two hours to \$1.25 for three to four hours. The fee for a rental of four hours or more is subject to the same \$2.00 fee that is now imposed on all vehicles regardless on the rental interval.

CONSUMER FIREWORKS TAX AND FIREWORKS LAW MODERNIZATION

Establishment

- 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 12% tax would be in addition to the sales and use tax already imposed on such sales.
- The new 12% tax does not apply to display fireworks used by professional pyro technicians licensed by the Department of Agriculture.
- Incorporates the existing Fireworks Law into the Tax Reform Code as part of new Article XXIV of the TRC. The Fireworks Law is modernized and further expands the legalization of consumer fireworks.
- One-sixth of the consumer fireworks taxes collected, not to exceed \$2 million annually, is transferred from the General Fund to the Emergency Medical Services Grant Program under Chapter 78 of Title 35 (Health & Safety).

UNCONVENTIONAL GAS WELL FEE

Establishment – Volume Differential Tax

- Imposes a new tax at a rate ranging from 1.5 cents to 3.5 cents per thousand cubic feet of natural gas (Mcf) on each producer subject to the existing unconventional gas well fee (i.e. local impact fee) under Act 13 of 2012.
- The applicable rate for fiscal year 2017-18 is 2 cents per Mcf.
- The applicable tax rate is tied to the impact fee rate schedule, which is based upon the average annual price of natural gas.
- The new volume differential tax applies only to unconventional gas wells that are subject to the existing impact fee.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- Money from the tax will be used to ensure that the existing local impact fee revenue is maintained at no less than \$200 million per year. The remainder of the money will be deposited into the General Fund. If the existing local impact fee generates at least \$200 million in a given year, then all of the money from the volume differential tax will be deposited into the General Fund.
- Requires the Independent Fiscal Office to publish quarterly reports showing the average effective tax rate of the volume differential tax and the local impact fee.

Issuance of Permits.

- Requires the Department to review unconventional natural gas well permits, earth disturbance permits and any general air quality permit within their statutory or regulatory timeframes. If the department fails to meet those timelines and has not denied the permit, the permit is deemed approved.
- If the review period has been extended for cause, the department must refund the permit fee to the applicant.
- If the department has notified the person of deficiencies with the application, the period of time from the date of receipt of the deficiencies to the date of the receipt of the person's response shall toll the applicable time period for review.
- Nothing in this section relieves the applicant from complying with each law pertaining to the permit application.
- This language simply requires the Department to abide timeframes that are currently established in law or regulation.

Unconventional Air Quality Protection

- Unlike regulations which fall under the regulatory review act, general permit revisions have no legislative oversight. In February, the Department released for public comment a total rewrite to general air quality permits (GP5/GP5A) which impact only the unconventional natural gas industry.
- This article creates the Air Quality Permit Advisory Committee, which is tasked with reviewing the new general permits and voting to approve or disapprove. The Committee consists of the following members:
 - One member appointed by the President pro tempore of the Senate.
 - One member appointed by the Majority Leader of the Senate.
 - One member appointed by the Minority Leader of the Senate

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- One member appointed by the Speaker of the House of Representatives.
- One member appointed by the Majority Leader of the Senate.
- One member appointed by the Minority Leader of the House of Representatives.
- One member appointed by the Governor.
- If the Committee votes to disapprove, the department is required to make modifications and resubmit a new version within 14 legislative days.
- The new general permits shall not apply to:
 - Temporary activities on site, which includes well site and access road preparation, pad construction, drilling and well completion.
 - A natural gas well site which commenced production prior do the date the new permits are approved by the Committee and published in the PA Bulletin.

Environmental Permitting Reform.

- This article requires the Department to review its current backlog for all permits under their oversight and implement a program where a third-party licensed professional can review permits.

TAX CREDITS

Recodification

- Recodifies the Economic Enhancement Program (i.e. Concert Rehearsal and Tour Production Tax Credit) as a Tax Reform Code sub-article within the existing Entertainment Production Tax Credit (i.e. film, concert rehearsal and video game tax credits).
- The Concert Rehearsal and Tour Production Tax Credit was originally established in the Tax Reform Code by Act 84 of 2016. For technical reasons, changes were made to the program in Title 12 (Commerce) by Act 7 of 2017. The program is merely being repealed from Title 12 and recodified into the TRC.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Film Production Tax Credit

- Revises the existing Film Production Tax Credit to authorize the creation of not more than two film production tax credit districts.
- Film production tax credit districts must be located on deteriorated property and contain at least one qualified production facility and six soundstages.
- The deteriorated property must be occupied by two or more qualified businesses that make a total capital investment of at least \$400 million on the property within five years after the designation of the district.
- Tax credits may be approved for fiscal years 2019-2020 and thereafter.

ECONOMIC DEVELOPMENT ZONES

City Revitalization and Improvement Zone (CRIZ)

- Makes a technical correction to an existing provision with regard to the transfer of property within a zone by eliminating the word “simultaneously” as it applies to additional acreage permitted to be added to the zone under existing law.
- 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 a pilot zone.

Neighborhood Improvement Zone (NIZ)

- Makes administrative changes to the process of appointing members to, and the composition of, the board of the contracting authority.
- Adds a provision similar to the existing provision for a CRIZ, which allows for inactive property to be transferred out of a zone and replaced with parcels of equal or lesser acreage.
 - The Department of Revenue must certify that there is currently no activity in the parcels transferred in the zone that generates tax receipts or other revenue to the Commonwealth.
 - The municipality where the NIZ is located must certify that there is currently no activity in the parcels transferred into the zone that generates tax receipts or other revenue, other than property taxes, to the municipality, school district and county where the zone is located.
 - Establishes a public hearing process with regard to the transfer of property.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Keystone Opportunity Zones

- 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 an application for additional KOZs that are currently allowed in law from December 2016 to December 2018.

ADMINISTRATION AND ENFORCEMENT

Tax Appeals Reform

- Shortens appeal period deadlines from 90 days to 60 days, which is a common appeal period in many, if not most, other states.
- Implements a process whereby appeals may be categorized as either a summary claim or a standard claim.
 - Summary claim procedure for petitions where contested tax does not exceed \$6,000.
 - Petitioner or Department of Revenue can elect to treat a summary claim as a standard claim.
 - Once decided, summary claims cannot be appealed further.
 - All petitions where the contested tax exceeds \$6,000 will be treated as a standard claim.

TOBACCO SETTLEMENT SECURITIZATION

Securitization

- Authorizes the Commonwealth Financing Authority to issue bonds in the amount of \$1.3 billion by utilizing a portion of the annual payments received through the Master Settlement Agreement.
- The net proceeds of the bond issuance shall be deposited into the General Fund and shall be available for appropriation.
- A portion of the annual payments received under the Master Settlement Agreement may be used to pay the debt service, and the Commonwealth may also use general revenues to pay the debt service for bonds issued.
- Interest on the bonds may be capitalized for a period not to exceed two years, which means that debt service payments must also start within two years.

FISCAL IMPACT:

House Bill 542, as amended, will have the following fiscal impact to the General Fund in FY 2017-18:

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

(millions)

| | |
|--|---------|
| <i>Severance Tax - Volume Component (2 cents/Mcf, effective 7/1/17)</i> | \$80.0 |
| <i>GRT for Gas @ 57 mills; Electric @ 65 mills; Telecom @ 60 mills (eff. 8/1/17; net of \$20M pipeline & \$20M LIHEAP)</i> | \$405.8 |
| <i>PJM</i> | \$0.0 |
| <i>Tax Appeals Reform and Revenue Maximization</i> | \$40.0 |
| <i>SUT - Online Marketplace</i> | \$43.5 |
| <i>Fireworks - 12% tax (10% Tax to General Fund)</i> | \$2.8 |
| <i>PIT - Tax Check-offs</i> | |
| <i>Organ Donor</i> | \$0.0 |
| <i>Wild Resource Conservation</i> | \$0.0 |
| <i>Military Family Relief</i> | \$0.0 |
| <i>Red Cross</i> | \$0.0 |
| <i>Children's Trust Fund</i> | \$0.0 |
| <i>Korean War Memorial (REPEAL)</i> | \$0.0 |
| <i>CNIT - Qualified Manufacturing Reinvestment Deduction</i> | \$0.0 |
| <i>Realty Transfer Tax - Veterans' Service Organizations</i> | \$0.0 |
| <i>Inheritance Tax Clarification - family farm</i> | (\$0.1) |
| <i>PIT - ABLE Exemption</i> | (\$0.5) |
| <i>Concert Rehearsal Tax Credit Recodification</i> | \$0.0 |
| <i>CRIZ / NIZ Updates</i> | \$0.0 |
| <i>KOZ - Additional KOZ</i> | |
| <i>Vehicle Rental Fee - Car Sharing</i> | \$0.0 |

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

| | |
|---|------------------|
| | |
| <i>SUT - Reusable Containers (Keg) - minimal revenue loss</i> | \$0.0 |
| | |
| <i>SUT - Technical Support Services for Software</i> | \$0.0 |
| | |
| <i>SUT - Remote Sales Study</i> | \$0.0 |
| | |
| <i>Net Operating Loss - no fiscal impact assumed - judicial trigger</i> | \$0.0 |
| | |
| <i>Subtotal Revenue</i> | \$571.5 |
| | |
| | |
| <i>Tobacco Revenue Bonds</i> | \$1,225.0 |
| | |
| <i>New Revenue Package</i> | \$571.5 |
| | |
| <i>Grand Total</i> | \$1,796.5 |