



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

State of Delaware
Division of Revenue

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TECHNICAL INFORMATION MEMORANDUM- 83-3

Tax Legislative Changes Enacted by the 1983 Session of the Delaware General Assembly are Described and Explained Below.

1. House Bill No. 49, Ch. 6, Vol. 64, Laws of Del., approved in February, amended the Delaware income tax withholding requirements to speed-up the reporting and payment dates of withheld Delaware taxes by larger corporations. Under the amendment, employers who withhold more than \$5,000 in Delaware tax in any month are required to file returns and remit taxes withheld within 3 working days following the close of any of 8 monthly periods in which the tax withheld accumulatively exceeds \$5,000. Prior to this amendment, which became effective April 1, 1983, all employers large and small were required to file returns and remit withheld taxes only on a monthly basis.

2. House Bill No. 172, Ch. 94, Vol. 64, Laws of Del., amended the provision of the Delaware income tax law, relating to the penalty imposed for underpayment of estimated corporation income taxes, to eliminate the exception (or "escape hatch") previously provided where the corporation's estimated tax payments during the current year exceeded the corporation's final tax liability for the preceding taxable year. H.B. 172 eliminates the prior year tax liability exception with respect to "large" corporations, which are defined as any corporation that had Delaware taxable income of \$200,000 or more in any of its three immediately preceding taxable years. The amendment applies to taxable years beginning after December 31, 1983. The provision that precludes imposition of the penalty if the corporations estimated tax payments exceed 80% of its current years' tax liability is retained.

3. House Bill No. 218, Ch. 153, Vol. 64, Laws of Del., amended the personal income tax provisions, relating to declarations and payment of estimated Delaware income tax by individuals, to require the filing of estimated tax returns by any resident or non-resident individual if his estimated tax liability can reasonably be expected to exceed \$100. Formerly, residents were only required to file a declaration if they were required to file for Federal purposes and non-residents were required to file if their liability exceeded \$40.00. The Act applies to taxable years beginning after December 31, 1983.

4. House Bill No. 129, Ch. 182, Vol. 64, Laws of Del., amended §5401 (1) (n), 30 Del. C., relating to the exemption from the realty transfer tax for conveyances of real estate to or from a corporation or a partnership where the grantor or grantee owns stock of the corporation, or an interest in the partnership in the same proportion as his interest in or ownership of the real estate being conveyed. Under the law the exemption from tax does not apply to a distribution in liquidation of a corporation unless the stock of the

corporation being liquidated had been held for 3 years. H.B. 129, extends this 3 year holding period requirement to partnerships, as well as to partial corporate liquidations.

In addition, this Act also amended §5401 (4) to close a loophole in the law relating to the assignment of long-term leases of residential real estate, so as to make such sales or assignments subject to the realty transfer tax. This amendment reverses the result reached in Director of Revenue v. Barry, 391 A. 2nd 216 (1978) for transfers occurring after July 1, 1983.

5. House Bill No. 149, Ch. 151, Vol. 64, Laws of Del., created a special fund to provide funds to the State Department of Natural Resources for the purpose of protecting, preserving and managing Delaware Non-Game Wildlife, endangered species and unique natural areas. The Bill provides for modification of the personal income tax form to enable any taxpayer entitled to a refund for the taxable year to elect to contribute a portion of such refund to this special preservation fund.

6. Senate Bill No. 143, Ch. 105, Vol. 64, Laws of Del., authorizes the Division of Revenue to set-off income tax refunds against delinquent indebtedness owed to the State Department of Health & Social Services. Regulations will be promulgated by the Division of Revenue to establish procedures for prior notification of the proposed set-off and an opportunity for an administrative hearing before the claimant agency .

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