



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
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DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 97-4

October 21, 1997

SUBJECT: Tax Laws Enacted during the 1997 Regular Session of the Delaware General Assembly.

PERSONAL INCOME TAX

Expansion of Pension Exclusion. Senate Bill No. 219; ch. 131, Vol. 71, Laws of Delaware, expands the \$3,000 "pension" exclusion available to persons age 60 or older to include distributions from all qualified retirement plans as defined in § 4974 of the Internal Revenue Code, § 401(k) plans, or § 457 plans; dividends; interest; and net rental income. This provision is effective for tax year 1997 and thereafter.

BUSINESS AND OCCUPATIONAL GROSS RECEIPTS TAX

Clarification Regarding Exchanges. Senate Bill No. 38; ch. 39, Vol. 71, Laws of Delaware, clarifies the application of the gross receipts tax to exchanges by wholesalers of fungible goods and codifies Delaware's current administrative exemption of goods certified to be delivered in Delaware for immediate transportation out-of-state.

Specifically, it makes clear that the gross receipts tax does not apply to an exchange of fungible goods between or among wholesalers when the goods are received by the wholesaler for the purpose of resale. Sales by an exchange partner direct to a customer of the other party to an exchange remain taxable as heretofore. The exemption is effective for exchanges occurring after December 31, 1996.

Qualification for Economic Development Credits Relaxed. See description of House Bill No. 257 under "MISCELLANEOUS" below.

GIFT TAX

Gift Tax Repealed. House Bill No. 402; ch. 130, Vol. 71, Laws of Delaware, repeals the gift tax effective for gifts made on or after January 1, 1998.

PUBLIC UTILITY TAX

Public Utility Tax Imposed on Use of Natural Gas not Purchased from "Distributor;" Rate of Tax on Natural Gas Equalized With Rate on Electricity. House Bill No. 320, ch. 170, Vol. 71, Laws of Delaware, imposes a tax on the use of natural gas when such gas is not purchased from a "distributor" as defined. The Act also reduces the rate of tax to 2% with regard to natural gas distributed to, or used by, manufacturers and agri-business. The Act is effective for deliveries and distributions made after December 31, 1997.

INHERITANCE TAX

Inheritance Tax Exclusion Raised and Certain Inheritances of Small Business Property Excluded House Bill No. 403; ch. 129, Vol. 71, Laws of Delaware, increases the threshold for inheritance taxes as follows: Class A (spouses – in most cases not required to pay inheritance taxes) from \$70,000 to \$140,000; Class B (parents, grandparents and lineal descendants of the decedent) from \$25,000 to \$100,000; Class C (all other related persons up to 5 degrees of consanguinity) from \$5,000 to \$10,000; and Class D (all other inheritances) from \$1,000 to \$2,000.

This Act also allows in the case of Class A or Class B beneficiaries an inheritance tax deduction for transfers of the value of interests in closely held businesses (those, in general, with 15 or fewer owners).

This Act is effective for decedents dying after December 31, 1997.

TAXES PERTAINING TO TRUSTS

Qualified Settlement Funds Exempt. House Bill No. 143; ch. 189, Vol. 71, Laws of Delaware, exempts from income tax qualified settlement funds as defined in § 468B of the Internal Revenue Code.

Real Estate Investment Trusts Exempt. See description of House Bill No. 257 under "MISCELLANEOUS" below.

CORPORATION INCOME TAX

Technical Amendments See Description of House Bill No. 257 under "MISCELLANEOUS" below.

ALCOHOLIC BEVERAGE TAX

Tax Imposed on Farm Wineries, Microbreweries and Brewery-Pubs. House Bill No. 132; ch. 211, Vol. 71, Laws of Delaware, imposes the alcoholic beverage tax on farm wineries, microbreweries, and brewery-pubs equal in amount to the tax imposed on importers with regard to the same beverage to the extent the beverage is sold to consumers within Delaware. If sold to an importer, the tax is imposed on the importer. If sold to a distributor for resale in another state, the beverage is not subject to the alcoholic beverage tax. Sales of beverages by a farm winery, microbrewery, or brewery-pub are not subject to the wholesale gross receipts tax.

MISCELLANEOUS

Rounding on Returns. Senate Bill No. 33; ch. 14, Vol. 71, Laws of Delaware, allows the Division of Revenue to require rounding to whole dollars on any line or set of lines on tax returns.

Miscellaneous Technical Amendments. House Bill No. 257, ch. 217, Vol. 71, Laws of Delaware, contains the following provisions: (1) Clarification that real estate investment trusts (REIT's) are exempt from personal income tax; (2) Clarification that foreign dividends, interest income, and royalties are exempt from corporation income tax only to the extent the tax is paid, accrued or deemed paid; (3) Elimination of a requirement for filing tentative corporation income tax returns and paying tentative corporation income tax for short periods; (4) Clarification that taxpayers who receive relief from business license fees on account of investment in new employment and new qualified facilities are not exempt from the payment of the tax levied pursuant to the Hazardous Substance Cleanup Act, (5) Clarification that REIT'S and other taxpayers licensable as commercial lessors are subject to the occupation license tax only on rents received on commercial units located in Delaware; (6) Clarification that various kinds of gains and losses for purposes of the corporation income tax allocation provisions are reduced by applicable or related expenses; (7) Conforms estimated tax penalties under the bank franchise tax to similar provisions with regard to the corporation/income tax -- specifically, the "safe harbor" with regard to 100% of prior year liabilities for banks with \$200,000 or more in liability for any of the three preceding tax years; (8) Eliminates the requirement that, in order to qualify for economic development tax credits, the taxpayer must make qualified investment and employ the requisite number of employees during the same taxable year and instead requires that the two events occur during the same consecutive twelve months; and (9) Changes, from the last day of the taxpayer's taxable year in which the facility is placed in service to a date one year after it is placed in service, the date used to determine the number of employees eligible for consideration in calculating economic development credits and, in addition, allows an alternative measure based on a date one year after the taxpayer first employs five qualified employees.

Assessment and Collection of Taxes in Case of Bankruptcy. Senate Bill No 201; ch.144, Vol. 71, Laws of Delaware ensures that the period of time for collection and assessment of taxes outside bankruptcy will not expire during the period assessment and collection is stayed pursuant to an order of the United States Bankruptcy Court under Title 11 of the United States Code. The Act will allow an additional 60 days after the lifting of the stay to make an assessment and 6 months to commence collection proceedings, which is the same suspension period provided by the Internal Revenue Code, Section 6503(h).

These bills may be accessed on the State's World Wide Web site:

<http://www.state.de.us/research/dor/lis.htm>

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