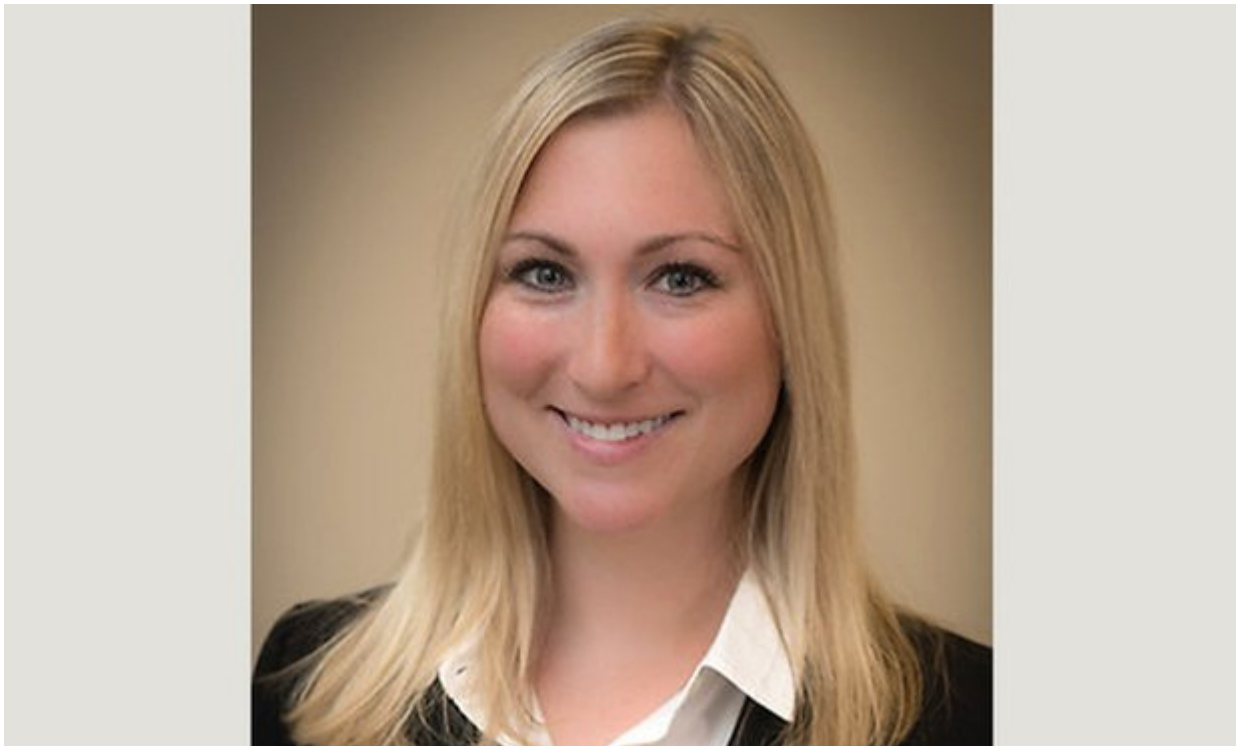


## Top 4 Pa. Tax Changes of 2019 and What to Expect in 2020

Pennsylvania's budget bill, Act 13 of 2019 (H.B. 262), signed by Gov. Tom Wolf June 28, made a number of significant changes to Pennsylvania's tax laws—some of which are already effective and others that do not take effect until 2020.

By **Jennifer Weidler Karpchuk** | October 16, 2019



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Pennsylvania's budget bill, Act 13 of 2019 (H.B. 262), signed by Gov. Tom Wolf June 28, made a number of significant changes to Pennsylvania's tax laws—some of which are already effective and others that do not take effect until 2020. This article will discuss the top four changes impacting taxpayers.

## **Personal Income Tax Benefits for Investors**

Those taxpayers who were excited to learn of the income tax advantages associated with investments related to the federal Qualified Opportunity Zone (federal QOZ) program will be equally happy to hear of Act 13's change to the personal income tax (PIT). Unlike many other states, Pennsylvania's PIT base does not start with federal taxable income, but instead is imposed upon seven specified categories of income. Therefore, prior to Act 13, PIT taxpayers taking advantage of the QOZ program would have been subject to PIT on their gains that are deferred and excluded for federal income tax purposes. Thankfully, Act 13 alters the law to address this issue. Effective for tax years beginning after Dec. 31, 2019, Act 13 grants taxpayers QOZ benefits for PIT purposes by clarifying that "net gains," "net losses" and "dividends" do not include any amounts of gain, loss or income that are excluded from federal taxation pursuant to the federal QOZ rules. Thus, taxpayers will receive all of the exclusions and deferrals offered for federal income tax purposes pursuant to the federal QOZ program.

For those taxpayers taking advantage of or considering taking advantage of the federal QOZ program, the legislature's recent decision to conform to the deferral of income represents an added benefit to investment in Pennsylvania and moves Pennsylvania in the right direction to help incentivize investors to invest in blighted areas in the commonwealth.

## **Sales and Use Tax Changes for Marketplaces and Vendors**

During March 2018, Pennsylvania enacted a collection or notice and reporting requirements on remote sellers, referrers and marketplaces with \$10,000 or more of sales annually into the commonwealth. Since June 2018, states have been making various substantive changes to their laws related to marketplace sellers in light of last year's monumental U.S. Supreme Court decision in *South Dakota v. Wayfair*, 585 U.S. \_\_\_ (2018), which held that physical presence in a state is not required for the state to impose sales and use tax (SUT) collection requirements. Jumping on the bandwagon, during January 2019, the Pennsylvania Department of Revenue announced its position that any person with \$100,000 or more of sales in Pennsylvania was immediately required to collect SUT following *Wayfair*.

Act 13 largely codifies the department's position, providing that all vendors and "marketplace facilitators" with \$100,000 or more of sales into Pennsylvania during 2018 are required to collect and remit SUT for the period from July 1, 2019, through March 31, 2020. Those vendors or marketplace facilitators who have \$100,000 or more of sales in Pennsylvania during 2019 or any subsequent calendar year must collect and remit SUT beginning April 1 of the following calendar year through March 31 of the subsequent calendar year. Further, Act 13 specifically eliminates the option to elect to report rather than collect for those meeting the \$100,000 economic nexus threshold. Thus, remote sellers, marketplace facilitators and vendors should take note of Pennsylvania's change in its law. Those marketplace facilitators and vendors with \$100,000 or more in Pennsylvania sales who initially chose to elect to abide by reporting requirements instead of collecting the tax may no longer do so.

Further, Act 13 shifts the onus of SUT collection from the seller to the marketplace facilitator. When a marketplace facilitator facilitates sales in Pennsylvania on behalf of an out-of-state marketplace seller, the SUT collection responsibility falls on the marketplace facilitator, not the marketplace seller unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to allow the marketplace facilitator to collect the tax. This is the case even if the marketplace seller makes sales of \$100,000 or more in Pennsylvania through the marketplace facilitator. Because the onus for collection is initially placed on the marketplace facilitator, those marketplace facilitators at or near the \$100,000 threshold should

ensure they are adequately tracking sales into Pennsylvania to ensure compliance. Meanwhile, remote sellers should ensure that they are providing the marketplace facilitator with the requisite information to allow the marketplace facilitator to collect the tax so that the onus—and liability for noncompliance—does not shift to the seller. Since the effective date requiring compliance has passed, it can be expected that the Department of Revenue will begin to step up enforcement efforts.

Finally, Act 13 alters a long-standing prohibition against vendors advertising that the SUT imposed on certain sales would be absorbed in the vendor's stated price. Pursuant to Act 13, effective immediately, vendors are permitted to advertise that the SUT will be absorbed by the vendor. However, in order to advertise as such, the vendor must: state on any receipt provided to the customer that the vendor will pay the tax and not imply that the transaction is exempt from SUT; separately state the amount of the SUT on any receipt provided to the customer; and keep books and records documenting the purchase price and the SUT absorbed and remitted to the state. Upon satisfying the three requirements, the law provides that the vendor "shall be solely responsible and liable for any SUT ... and shall not be entitled to a refund of such SUT." Notably, it is questionable whether an absolute prohibition on refunds of overpaid tax would be able to withstand constitutional scrutiny and it is unclear how the refund prohibition will apply in practice. For instance, would a vendor be prohibited from obtaining a refund on an erroneous overpayment of tax or tax incorrectly charged on exempt items? These are open questions that will need answers.

## **Important SUT Changes for Breweries**

Breweries will be happy (hoppy?) to hear of the recent change made by Act 13 to the malt beverage tax. The SUT treatment of malt beverages has traditionally differed from that of other tangible personal property because it is collected from the retailer by the manufacturer or the distributor of the beverages and not upon the retail sales to consumers. Therefore, the SUT tax base typically is the lower wholesale price paid by the retailer rather than the full retail price. However, recent changes to the liquor laws expanded the ability of breweries to sell directly to consumers, which resulted in the department issuing SUT Bulletin 2018-02 announcing that, effective

July 1, 2019, breweries would be required to collect SUT on the retail price paid for beer purchased directly in their taprooms. The department's position caused an uproar from the brewing community since it would have resulted in brewers paying SUT that was four to five times greater than the same beer sold in restaurants and grocery stores.

Act 13 supersedes SUT Bulletin 2018-02, providing partial relief to brew pubs by stating that the deemed retail price of sales directly to the ultimate consumer for consumption on or off premises is 25% of the retail price of the product sold. This treatment serves to more closely align the tax base to the wholesale price. Further, Act 13 delayed the implementation date to sales made after Sept. 30, 2019. Pennsylvania brew pub owners should take special note of the recent changes brought by Act 13 related to the appropriate retail price to use for sales tax purposes. Since the change is now effective, it is important that brew pubs ensure they are properly complying with the law.

## **Trusts and Estates Changes**

The final item to make this list relates to trusts and estates. Prior to the enactment of Act 13, there was a discrepancy in the amount of inheritance tax assessed when a parent died and a child inherited and vice versa. Since 2000, inheritance passing from a deceased child under age 21 to a parent, stepparent or adoptive parent has been taxed at 0%, while for the reverse scenario, for inheritance passing from a deceased parent, adoptive parent or stepparent to a child under age 21, inheritance tax was assessed at a rate of 4.5%. Act 13 aims to rectify this disparate treatment by amending 72 P.S. Section 9116 to add a new section (1.4) providing that the Pennsylvania inheritance tax rate for transfers "to or for the use of a child 21 years of age or younger from a natural parent, an adoptive parent or a stepparent of the child shall be at a rate of 0%." The new inheritance tax rate applies to property of a natural parent, adoptive parent or stepparent who dies after Dec. 31.

Additionally, Act 13 made changes to ease trust and estate's administrative burden. Pursuant to Internal Revenue Code (IRC) Section 645, a personal representative of an estate and a trustee of a trust were permitted to elect to treat the trust and the

estate as one for fiduciary income tax purposes. This results in streamlining the income tax return preparation for the two entities and permits the trust return, which is filed on an annual basis, to be filed on a fiscal year basis. Previously, Pennsylvania did not recognize the IRC Section 645 election to treat the estate and trust as one for tax purposes. As such, even if the federal returns were combined, the Pennsylvania returns were required to be filed separately and the trust had to remain on a calendar year. Act 13 amends the Pennsylvania tax code at 72 P.S. Section 7331 to recognize the IRC Section 645 election for tax years beginning after Dec. 31.

As the foregoing details, Act 13 made a number of changes applicable to many different taxpayers including individuals, companies, and trusts and estates. With some of these amendments immediately effective and others effective in the very near future, it is important that taxpayers take note of these changes, understand their potential impact and ensure proper compliance.

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