

## **COVID-19: Pennsylvania and Philadelphia's Actions To Aid Taxpayers**

by Jennifer Weidler Karpchuk

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In this installment of Pennsylvania's SALT Shaker, Karpchuk discusses the larger state and local tax responses by Pennsylvania and Philadelphia to aid the business community that is struggling because of COVID-19.

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The impact of COVID-19 is being felt throughout every industry and the state and local tax world is not immune. On the SALT front, governmental bodies are responding to the healthcare crisis in varying ways. There have been numerous attempts to address the challenges brought about by the pandemic. This article discusses the larger SALT responses taken by Pennsylvania and Philadelphia to aid the struggling business community.

#### Pennsylvania

Pennsylvania's governor, the Pennsylvania Department of Revenue, and the Boards responsible for taxpayer appeals all responded quickly to the pandemic, issuing legislation, guidance and notices to taxpayers — as discussed in detail below.

#### Procedure

Numerous procedural adjustments have been made to assist businesses, including extending filing and appeal deadlines. Gov. Tom Wolf (D) signed Act 10 of 2020, which — consistent with the federal extension — extends the due date for personal income tax returns and payments to July 15. The extension also applies to trusts and estates, partnerships, and S corporations. Typically, corporate returns and payments are due May 15; however, the DOR extended that deadline to August 14.

Tax appeal deadlines have also been extended in some instances. In Pennsylvania the Board of Appeals (BOA) handles the first level of review of appeals of assessments or requests for refunds of numerous commonwealth-level taxes. The BOA announced that the deadline for filing petitions is extended; a petition for refund or reassessment will be accepted as timely filed if it is filed by the later of (1) 30 days after the reopening of the BOA's offices; or (2) the original appeal deadline. To be eligible for the extended deadline, the appeal deadline must fall on or after March 16. Further, the BOA will accept any submission of requested documentation if it is received within 30 days after its offices reopen.

The Board of Finance and Revenue (BFR) serves as the second level of review and hears appeals of BOA decisions. While the BFR did not extend its deadline for filing appeals, it did indicate that requests would be liberally granted to accept appeals filed late because of disruptions caused by COVID-19.

The extension at the BOA and liberal granting of appeals at the BFR will greatly help taxpayers who are having difficulty with timely reviewing assessments or files and preparing and filing appeals or requests for refunds. Because the BFR

did not issue an actual extension, taxpayers should still file their appeals in as timely a manner as circumstances permit. These extensions and policies are important moves to preserve taxpayers' rights amid the pandemic.

### Nexus

There has been a considerable amount of concern among SALT practitioners regarding the nexus ramifications of employees working from home during the crisis. The DOR has taken steps to ease some minds, stating that because COVID-19 is causing people to temporarily work from home as a matter of safety and public health, for the duration of the public health emergency it will not seek to impose nexus for purposes of the corporate net income tax (CNIT) or sales and use tax (SUT) based solely on the basis of an out-of-state business's temporary remote workforce. However, out-of-state businesses should be mindful that if they continue to allow workers to work remotely post-pandemic, such activities may create nexus for purposes of the CNIT and SUT.

### Sales Tax

In Pennsylvania, businesses whose actual tax liability is more than \$25,000 during the third quarter of the preceding year are required to make monthly sales tax prepayments. To help businesses affected by COVID-19, the commonwealth announced that it was waiving the prepayment requirement for April, May, and June. Therefore, businesses must simply remit the sales tax that was actually collected during the prior month.

Notably, it is essential that collected sales tax be remitted. In a cash-strapped economy, it may be tempting to keep the cash to pay bills and support the business — however, doing so could result in both civil and criminal liability. The sales tax is a trust fund tax and the liability extends to the owners of a business. Small businesses in particular should be aware of this to ensure they do not end up in tax trouble post-pandemic.

#### Philadelphia

The Philadelphia Department of Revenue quickly issued guidance and notices to taxpayers

for various city-level taxes in an attempt to implement policies and procedures to aid taxpayers in the financial difficulties associated with the public health crisis. The highlights are below.

### Business Income and Receipts Tax and Net Profits Tax

The city is conforming to the federal government's extension of July 15 for filing and payment for purposes of its business income and receipts tax (BIRT) and the net profits tax. However, if a taxpayer is late on a payment after July 15, it will accrue interest and penalties back to the April 15 deadline. The July 15 extension includes estimated payments. Understanding that many taxpayers will not expect their 2020 liability to be as high as that in 2019, the city is permitting taxpayers to make an estimated 2020 payment that is lower than their 2019 BIRT liability. However, if when filing the 2020 return the estimate results in an underpayment, interest and penalty will accrue back to the April 15 deadline.

### School Income Tax

The city's school income tax (SIT) filing and payment deadline remained unchanged. SIT payments were due on April 15. Taxpayers unable to meet the deadline were instructed to file for an extension and submit a payment equal to last year's liability. Those taxpayers have until July 15 to file a return and pay any difference in tax owed but will not incur interest and penalty. However, if a payment is received after July 15, such taxpayers will accrue interest and penalty dating back to April 15.

### Wage Tax

Philadelphia's wage tax "relief" is really guidance on its standard policy related to the tax. Typically, the question of whether an employee is subject to the wage tax comes down to whether the employee is required to work outside the city, or whether the employee is working remotely for the convenience of the employer. The COVID-19 crisis presents a different situation because employees are required to work remotely. Under such circumstances, nonresident employees are not subject to the tax. However, the schedules to

withhold and remit remain the same — there have been no extensions. Thus, while employees will ultimately be entitled to a refund, for the time being the employer is required to continue to collect and remit. Nonresident employees will then be permitted to file refund claims during 2021.

### Use and Occupancy Tax

Effective March 17, Mayor Jim Kenney (D) ordered nonessential businesses to close to limit the spread of COVID-19. Under some circumstances, businesses that were ordered to close are not subject to use and occupancy (U&O) tax while access to their place of business is prohibited. Businesses deemed essential, those with continuing operations, those that have employees on-site, and those that maintain employee access to their place of business through the duration of the mayor's order should continue to file and pay the U&O tax as normal. Due dates to pay remain the same.

That policy has raised several questions about who still must pay the tax during the pandemic. For instance, a restaurant that typically offers sit-down service but has moved to takeout because of COVID-19 should remain subject to U&O tax because it is still carrying on business. However, a store that is closed but whose owner stops by to collect the mail and check on the facility should arguably be exempt from U&O tax during the closure since there is no substantive "use" and "occupancy" of the premises.

Further difficulty comes in applying the city's policy. Landlords who collect the tax as part of the rent must refund applicable portions of the tax to their tenants. However, in practice, it may be difficult for a landlord to determine or know whether its tenants fall within the parameters for relief. For instance, a landlord may not know whether a business is essential or whether its tenants are continuing operations, or if their operations are enough to subject them to U&O.

### Procedure

Philadelphia's Tax Review Board hears challenges to assessments and denials of refunds. Effective March 13, it has extended filing deadlines indefinitely until further notice, including initial appeal petitions and appeals

from hearing decisions. However, refund requests are first filed with the Philadelphia Department of Revenue, and the city has not extended the deadline for refund petitions. Therefore, taxpayers who may have refund petitions in danger of expiring because of the statute of limitations should file such petitions with the Philadelphia Department of Revenue to preserve their rights.

Finally, there are unanswered nexus questions for Philadelphia, including where to source receipts and payroll, and whether a resident required to work remotely because of COVID-19 creates nexus for an out-of-state company. Philadelphia has indicated that nexus guidance is forthcoming.

It goes without saying that the situation is quite fluid and Pennsylvania and Philadelphia's responses to the pandemic and guidance related to SALT issues are changing frequently. As such, it is imperative to keep a watchful eye on developments and deadlines to ensure continued compliance. ■