

C O R P O R A T E

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A L E R T

THE PENNSYLVANIA CAPITAL STOCK TAX IS NO MORE— NOW WHAT?

By H. Lee Schwartzberg, Jr.

With the April 15 deadline for calendar year Pennsylvania Corporate Tax Report (RCT-101) filers right around the corner, it is worth remembering that the Pennsylvania Capital Stock/Foreign Franchise Tax (“CS/FFT”) has finally been allowed to expire for tax years beginning after December 31, 2015.

Since the 1840’s, most business entities organized in Pennsylvania were subject to the Capital Stock Tax while foreign entities were subject to the Foreign Franchise Tax on capital stock value attributed to Pennsylvania. This included corporations and, more recently, LLC’s. The CS/FFT was in addition to the corporate net income tax and the liability was calculated using a formula that included owners’ equity and a five-year average of income. Legislation passed in 2000 would have phased out the CS/FFT by the end of the previous decade, but a series of amendments postponed their demise as Pennsylvania wrestled with budget woes.

Partnerships were not subject to the CS/FFT, so the limited partnership structure was sometimes chosen for projects in Pennsylvania. A corporation or LLC serving as general partner in a typical limited partnership would still be subject to the CS/FFT, but was frequently allocated only a small percentage of the limited partnership’s total income limiting the impact of the tax.

With the elimination of the CS/FFT, clients may benefit from a reconsideration of the choice of entity question, and are encouraged to contact us regarding the use of the LLC structure rather than the limited partnership, particularly if a new venture is contemplated.

For calendar year filers, the final CS/FFT tax filing year is the tax year ending December 31, 2015. The final tax year for fiscal filers includes those tax years beginning in 2015 and ending in 2016. The Pennsylvania Department of Revenue has posted information on filing a final CS/FFT Report on its website.

Entities that file the Pennsylvania Corporate Tax Report (RCT-101) solely to report the CS/FFT (i.e. those not paying the Corporate Net Income Tax), including single member LLC’s, multiple member LLC’s taxed as partnerships or S Corporation, S Corporations, as well as others, will no longer be required to file the RCT-101. These entities should identify their 2015 return as their “final report” by checking the indicator box on page 5 of the return under Section E “Corporate Status Changes” and include an accompanying statement that the entity is no longer subject to the Capital Stock/Foreign Franchise Tax. If the entity filing is a Pennsylvania S Corporation with Built-In-Gains, the S Corporation should still file a final RCT-101, with the understanding that if Built-In-Gains are triggered in any subsequent tax year, the S Corporation will

again need to file the RCT-101 marked as both “First Report” and “Final Report.” If no Built-In-Gain is recognized in a subsequent year, there is no RCT-101 filing requirement for that year. ◆

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