

PUBLICATION

Spotlight on Tennessee: 2014 Tax and Related Legislation

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During the 108th General Assembly 2014 Session, the Tennessee Legislature considered several tax and related initiatives before adjourning in late April. Although the number of proposed tax and related initiatives this session was not as large as in prior sessions, several important initiatives were enacted. The following is a general summary of just some of the more notable initiatives that were enacted during 2014.

State Tax Procedures Amended

Procedures for contesting taxes that are collected or administered by the Tennessee Department of Revenue (Department) are generally found in Chapter 1, Title 67, Tennessee Code Annotated. Starting with the 2013 Session, the Department prepared legislation focused on updating and clarifying various state tax procedures, and circulated that draft to the Tennessee Chamber of Commerce & Industry and other business and professional organizations for comments. Thereafter, the Tennessee Chamber as well as other organizations worked closely with the Department in an effort to expand taxpayer rights and protections. These efforts resulted in 2014 Public Chapter No. 854, effective January 1, 2015, which includes (among others) the following provisions:

A. Potential for Compromising Tax Liabilities. The Department's Commissioner is authorized to compromise tax liabilities in the interest of the State, provided that the Comptroller of the Treasury or the Attorney General can require that such compromise be subject to prior review and written approval from those offices.

B. Concept of "Proposed Assessment." The current procedures are amended so that in most situations the Department will issue a notice of proposed assessment (the finality of which can be contested by the taxpayer) as compared to the current law under which the Department issues a notice of assessment (which is contestable to reverse the finality of the assessment). At least one intent of this change is to allow taxpayers to have the opportunity to contest the Department's position prior to the finality of an assessment, thereby hopefully avoiding the possible adverse consequences that a current notice of assessment may have on a taxpayer's business affairs.

C. Requesting Informal Conference. The taxpayer can contest a proposed assessment either by timely requesting an informal conference or timely filing suit in the appropriate chancery court. As to the informal conference, current law is unchanged in that the taxpayer must make written request for such conference within 30 days. Under current law the 30 days begins from the date of the notice of assessment, whereas this new law starts such timing after the date of the notice of proposed assessment. Further, under this new law the taxpayer can request the conference not only to discuss the proposed assessment but also, at the Department's discretion, may discuss a final assessment or discuss the denial or deemed denial of a claim for refund. The informal conference does not, however, toll any period of limitation applicable to a final assessment or refund claim.

D. Interest on Deficiency. Under the new law, no interest shall accrue on any deficiency during the period beginning on the 11th day after the conclusion of the informal conference and ending upon issuance of the decision relative to said conference.

E. Informal Conference Characteristics. There are a number of characteristics that have been statutorily enacted by this new law regarding the conduct of the conference itself, just some of which include that:

1. personnel conducting the conference shall exercise independent judgment with the objective of resolving the dispute without litigation;
2. informal conference personnel shall not engage in ex parte communications with the Department's audit division but may ask ministerial, administrative or procedural questions of said divisions that do not address substantive issues in the audit;
3. informal conference decisions shall not be considered as precedent; and
4. informal conference personnel may recommend a compromise of the proposed assessment to the commissioner.

F. Published Guidance Authorized. The Department is authorized to publish or otherwise publicize guidance to taxpayers with respect to conference decisions. However, such conference decisions cannot be considered as precedent in any instance, nor as guidance unless published pursuant to this authorization granted to the Department; and, in any event, such publication cannot be construed as authorizing the disclosure of confidential return or tax information.

G. Filing Lawsuit. Current law requires a calculation of various time periods in order to determine the deadline for filing suit in chancery court in the event that a taxpayer has requested an informal conference but disagrees with the conference decision. This new law revises that calculation process and simply directs that the Department shall advise the taxpayer of the right to file suit in the appropriate chancery court to challenge the final assessment and collection of the tax "within ninety (90) days from the date such assessment becomes final." The purpose of that particular revision is to provide clarity in determining the lawsuit deadline date.

Sales and Use Taxes

A. Transportation Fuel Equity Act. A federal district judge ruled in 2013 that the sales tax imposed upon dyed diesel fuel used by railroads to power locomotives violated 49 U.S.C. § 11501, federal statute that prohibits states from discriminatorily taxing railroads. While the state has appealed that decision to the Sixth Circuit Court of Appeals, the legislature during the 2014 Session sought to resolve the controversy through legislation which provides a sales tax exemption for such fuel but at the same time imposes a new cents per gallon tax on dyed diesel fuel used in Tennessee by certain commercial carriers to produce power for a means of transportation. As the result of amendments to the initial legislation, the new tax is only imposed upon railroads. This new tax is administered by the Department and the monies collected are to be deposited by the Department in a separate account currently known as the Transportation Equity fund. It is uncertain as to whether the final version of the foregoing legislation, Public Chapter No. 908, with its particular effective date provisions, will in fact effectuate a resolution of these disputes.

B. Importing Boat for Personal Use. Public Chapter No. 1012, which went into effect July 1, 2014, provides an exemption from the sales and use tax for any boat, motorboat or other vessel to be used or stored in Tennessee by any person who has been a bona fide resident of another state, has moved to and become a resident of Tennessee, and has caused that vessel to be imported into Tennessee - provided that certain conditions apply and that the vessel be used solely for personal use and has a fair market value of less than \$10,000 at the time that the vessel is imported.

Property Taxes

A. Delinquent Property Tax Procedures Revised. Public Chapter No. 883, effective July 1, 2014, makes numerous revisions in current Tennessee law dealing with delinquent property tax procedures, including:

5. revising the successor liability statutes under which a purchaser of a business may be personally liable for the payment of all personal property taxes, interest and penalties which are unpaid on account of the operation of the business by any former owner;
6. revising the characterization of penalties assessed on delinquent property taxes for bankruptcy purposes, and re-characterizes such penalties as the assessment of interest in such circumstances;
7. revising and expanding Tennessee law dealing with the enforcement of property tax liens through in rem proceedings;
8. declaring that the payment of a delinquent tax by a method such as a check which fails to clear, or similar circumstances, will not result in the dismissal of a delinquent property tax lawsuit, and that obtaining an official tax receipt by use of a method of payment which results in a failure of payment shall be prima facie evidence of intent to defraud and shall constitute criminal contempt of the court in which the delinquent property tax lawsuit is pending;
9. completely revising and restating Tennessee law with respect to a person's rights to redeem property sold at a tax sale (such right must be exercised within one year from the entry of the order confirming the sale), and the procedures and conditions for such a redemption;
10. revising Tennessee law with respect to the distribution of excess proceeds from a property tax sale so as to provide that a person claiming an ownership therein shall be required to record a document effecting such ownership to be considered in conjunction with the distribution of excess proceeds; and
11. declaring that, except as stated otherwise under specific sections of Tennessee law, no public official, governmental entity or court shall have the power or authority to waive, compromise, remit, prorate, apportion or release property taxes, penalty, interest or court costs nor the first lien securing the same.

B. Other Property Tax Revisions. There were several other tax-related laws enacted during the 2014 Session, including:

12. Public Chapter No. 738, effective April 22, 2014, which requires that the application for registration or renewal submitted by certain nonresident persons representing taxpayers before the state board of equalization, shall constitute appointment of the Tennessee Secretary of State as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any services performed by the applicant while a registrant within Tennessee;
13. Public Chapter No. 708, effective April 15, 2014, which authorizes the county trustee of certain counties to enter into an agreement with the clerk of the court where suit has been filed for the collection of delinquent taxes, such that the county trustee may continue to collect delinquent property taxes (including penalty, interest, fees and costs) on all property included on the delinquent property list delivered to the delinquent tax attorney appointed for filing suits until the time such properties are sold in a delinquent tax sale, provided that such collections are paid over to the court clerk to be allocated as if collected by the clerk; and
14. Public Chapter No. 599, effective July 1, 2014, which requires that with respect to notices to parties or others in a delinquent tax suit, and if there is any remainder after the proceeds of the sale have been distributed according to law, the notice provided to such parties shall also give notice of the amount of the division of such proceeds and the remainder.

Other Tax-Related Legislation

A. Small Estates for Inheritance Tax Purposes. Public Chapter No. 808, effective January 1, 2014, provides that the probate court may waive the filing of an inheritance tax return with respect to certain small estates under certain circumstances. Such waiver is available if the gross estate of the decedent dying in 2014 does

not exceed \$1,000,000, or \$2,000,000 if the decedent dies in 2015, subject to various conditions. (This new law does not impact existing filing requirements for decedents dying before January 1, 2014.)

B. Occupation Tax. Public Chapter No. 763, effective April 28, 2014, modifies the professional occupation tax such that at the time that the Department assesses the tax liability (including any penalty and interest), the Department shall notify the taxpayer in writing that the failure to cure a tax delinquency or deficiency prior to the renewal date of the license or registration may result in the appropriate licensing board of agency holding in abeyance the taxpayer's application for renewal of the license or registration.

C. Penalty for EFT Insufficiency. Public Chapter No. 764, effective April 28, 2014, amends current law so as to impose a penalty for insufficient funds not only by way of check or money order, but also where electronic transfers are used for payment of any amounts due to the Department and the payment is dishonored. Further, current law is amended so that returns and tax information may be disclosed by the Department to a local government for purposes of determining not only whether local taxes are being paid but also whether the state business tax is being paid.

Conclusion

Many of these new laws are obviously very complex. As a result, and before acting upon or in regard to any such new law, careful consideration is required in evaluating your particular fact situation..

Please do not hesitate to contact any one of the attorneys in the Firm's Tax Group should you have questions regarding these new Tennessee laws or wish to discuss any other state or local tax issues.