

Bulletin



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09-1

2009 Changes in the Sales and Use Tax Law and Admissions and Amusement Tax Law

The 2009 Maryland General Assembly enacted the following changes in the Sales and Use Tax Law and the Admissions and Amusement Tax Law, which are effective July 1, 2009 (unless noted).

SB 44 – Sales and Use Tax – Exemption – Veterans’ Organizations: This Act extends by three years the termination date for the sales and use tax exemption for sales to certain veterans’ organizations, from June 30, 2009 to June 30, 2012. The sales and use tax does not apply to a sale to a bona fide nationally organized and recognized organization of veterans of the armed forces of the United States or an auxiliary of the organization or one of its units, if the organization is qualified as tax exempt under §501(c)(19) of the Internal Revenue Code. This Act is effective June 1, 2009.

SB 621 – Sales and Use and Property Tax – Exemptions – Solar Energy Equipment and Property: This Act amends Tax-General §11-230 to extend the definition of “solar energy equipment” to include that the sales and use tax does not apply to solar energy equipment that uses solar energy to generate electricity supplied to the electric grid.

HB 1171 – Alternative Energy Tax Incentive Act of 2009: This Act amends Tax-General §11-230 to provide that the sales and use tax does not apply to a sale of residential wind energy equipment that is installed on residential property and uses wind energy to generate electricity for use in a residential structure on the property.

HB 193 – Gaming – Bingo: This Act affects Maryland admissions and amusement tax. This Act increases the State admissions and amusement tax imposed on electronic bingo or electronic tip jars from 20 percent to 30 percent of the net proceeds subject to the tax. Net proceeds are defined as the total receipts from the operation of an electronic bingo machine or electronic tip jar machine less the amount of money winnings or prizes paid out to players. If the proceeds subject to tax are also subject to a county or municipal corporation tax, then the tax rate when combined must not exceed 35 percent.

This Act also provides that a county or municipal corporation may not impose an admissions and amusement tax rate on electronic bingo machines or electronic tip jars higher than the rate the county or municipal corporation imposed as of January 1, 2009.

This Act also extends the termination date for the authority for the operating of certain instant bingo games using electronic machines from July 1, 2009 to July 1, 2012 provided that the machines have been in operation for a one-year period ending December 31, 2007 or that the machines were in operation under a commercial bingo license as of December 31, 2007. This Act takes effect June 1, 2009.

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SB 552 – Tax Amnesty Program: This Act requires the Comptroller to declare an amnesty period from September 1, 2009 to October 30, 2009, during which the Comptroller shall waive all civil penalties (except previously assessed fraud penalties) and one-half interest that would have been imposed on certain delinquent taxpayers for nonreporting of tax liability, underreporting of tax liability, and nonpayment of tax liability.

This program allows individuals and businesses with outstanding tax liabilities to be eligible as well as individuals and businesses with undisclosed liabilities to be eligible.

The waiver of civil penalties and interest under this amnesty program generally applies to a delinquent taxpayer who:

- on or before December 31, 2008, failed to file a return required or pay the tax imposed for individual income tax, corporate income tax, withholding tax, sales and use tax, or admissions and amusement tax; and
- during the tax amnesty period:
 1. files a delinquent return and pays the tax, including one-half of any interest due, under the return;
 2. pays the tax, plus one-half of any interest, due on a previously filed return; or
 3. with respect to delinquent tax due under a return filed during the amnesty period or under a previously filed return, enters into an agreement with the Comptroller to pay the tax, including one-half of any interest, in accordance with the terms and schedules established in the agreement.

The Comptroller has the discretion as to whether or not to enter into an agreement with a taxpayer. The Comptroller further has the full discretion as to the terms and schedule for payment set forth under the agreement, provided that the delinquent tax under the agreement shall be paid in full on or before December 31, 2010. The waiver of civil penalties and interest under the agreement does not apply to interest accrued for periods after October 30, 2009. If the taxpayer fails to comply with the terms and schedule for payment under the agreement, the waiver of civil penalties and interest is void.

This amnesty program does **not** apply to:

- any taxpayer that, as of September 1, 2009, has more than 500 employees in the United States or is a member of a corporate group that has more than 500 employees in the United States;
- any tax for which a taxpayer was granted amnesty under the 2001 Maryland tax amnesty program; or
- any taxpayer who was eligible for the July 1, 2004, through November 1, 2004, Settlement Period, as provided in Chapter 557 of the Acts of 2004, regardless whether or not the taxpayer participated in the Settlement Period. This Act applied to corporate income tax only under certain conditions.

Chapter 557 of the Acts of 2004 was applicable to the Maryland corporate income tax assessed by the Comptroller based on issues that the Court of Appeals decided in *Comptroller of the Treasury v. SYL, Inc.* and *Comptroller of the Treasury v. Crown Cork & Seal Company (Delaware), Inc.*, 375 Md. 78 (2003). Based on this decision, the Act provided for a settlement period for corporate income tax assessed by the Comptroller on wholly owned trademark-holding Delaware subsidiaries, otherwise known as Delaware holding companies. Chapter 557 of the Acts of 2004 allowed these Delaware holding companies to pay Maryland income tax due plus partial interest and provided that the Comptroller would waive penalties if the amounts were paid during the settlement period.

Any company that was eligible for this settlement period, regardless of whether the taxpayer participated in the settlement period, is not eligible for the 2009 Amnesty period.

A taxpayer will not be charged with a criminal tax offense arising out of any return filed and tax paid during the amnesty period, except for any criminal charges pending in the court of the State; or any criminal charges under investigation by an office with the constitutional authority to prosecute a person for violation of criminal laws. This Act will take effect June 1, 2009, but the amnesty period does not begin until September 1, 2009.