

TIR 15-12: Tax Changes in the Fiscal Year 2016 Budget

This Technical Information Release (TIR) explains provisions in the Fiscal Year 2016 Budget (the Act)^[1] relating to the personal income tax, G.L. c. 62; the corporate excise, G.L. c. 63; and tax administration, G.L. c. 62C.

The tax changes discussed in this TIR include:

- Earned Income Tax Credit increase
- Deferral of corporate excise FAS 109 deduction
- Creation of a multi-agency illegal tobacco task force
- Suspension of lottery licenses tied to revocation of cigar and tobacco licenses
- Tax amnesty program for non-filers

I. Personal Income Tax: Increase of the Massachusetts Earned Income Tax Credit

A refundable earned income credit is available to certain low-income individuals who have earned income and meet certain federal requirements for the federal earned income credit. Taxpayers must qualify for and claim the federal earned income credit allowed under I.R.C. § 32 as amended and in effect for the taxable year. Taxpayers may claim the credit even if they do not have a filing requirement. To receive the credit, taxpayers must file tax returns and claim the credit. The Act increases the Massachusetts refundable credit from 15% of the computed federal credit to 23% effective for tax years beginning on or after January 1, 2016.^[2]

II. Corporate Excise: Deferral of FAS 109 Deduction

The Act delays implementation of the corporate “FAS 109”^[3] deduction applicable to certain publicly held companies as part of a Massachusetts tax law change that, among other things, lowered the corporate tax rate in stages and adopted combined reporting for tax years beginning on or after January 1, 2009.^[4] In general, if the enactment of the combined reporting requirement for a unitary business resulted in an increase in the net deferred tax liability of certain combined groups for financial reporting purposes, such groups became eligible to claim a FAS 109 deduction.^[5] Under the Act implementation of the FAS-109 deduction will be delayed for five years (from FY 2016 to FY 2021) and the time over which a company can claim its overall deduction will be increased from seven to 30 years.

III. Creation of a Multi-Agency Illegal Tobacco Task force

The Act establishes a multi-agency illegal tobacco task force which is tasked with coordinating efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators. The task force is to be co-chaired by the Colonel of State Police and the Commissioner of Revenue or their designees and shall also consist of: the Secretary of Public Safety and Security, the State Treasurer, the Attorney General, and the Commissioner of Public Health or their respective designees.

The task force will seek to identify where illegal tobacco distribution is most prevalent and target its members' investigative and enforcement resources against those in violation of the provisions of chapter 64C. This goal is to be accomplished through the formation of joint investigative and enforcement teams and assessing existing investigative and enforcement methods in the Commonwealth and in other jurisdictions and developing and recommending strategies to improve those methods.

Confidentiality rules relating to tax information have been amended so that the disclosure to the task force of information contained in a return or document filed with the Commissioner of Revenue “for the purpose of investigating or prosecuting criminal offenses relative to contraband tobacco distribution or conducting other enforcement actions relative to contraband tobacco distribution” is not precluded by the provisions of G.L. c. 62C, § 21.^[6]

IV. Cigarette Excise: Suspension of Lottery Licenses tied to Revocation of Cigar and Tobacco Licenses

The Act requires the Commissioner to notify the Director of the State Lottery Commission upon the suspension or revocation of a cigar or tobacco license for a knowing violation of the provisions pertaining to collection and payment of the cigarette excise. The Director of the State Lottery shall then suspend any license to sell lottery tickets or shares issued to that retailer or cigar retailer for up to 60 days.^[7]

V. Non-Filer Tax Amnesty Program

The Act allows the Commissioner to establish a two month tax amnesty program within fiscal year 2016 for the failure to file or timely file a return, or timely pay a tax liability.^[8] The Department anticipates that the amnesty program will focus primarily on taxpayers who have failed to file returns. The Department will provide guidance on the amnesty program in a subsequent public written statement.

/s/Mark E. Nunnelly
Mark E. Nunnelly
Commissioner of Revenue

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[1] St. 2015, c. 46, An Act Making Appropriations for Fiscal Year 2106, signed (in part) by the Governor on July 17, 2015.

[2] St. 2015, c. 46, sec. 67 amending G.L. c. 62, § 6(h).

[3] The Statement of Financial Accounting Standards No. 109 ("FAS 109"), "Accounting for Income Taxes," requires that the effects of income taxes be reported on an entity's financial statements for current and future years.

[4] The FAS 109 deduction was originally enacted as section 95 of chapter 173 of the acts of 2008.

[5] In order to claim a FAS 109 deduction, a taxpayer must have met the statutory July 1, 2009 filing requirement stating the amount of the FAS 109 deduction to be claimed in future years. See TIR 09-8, TIR 11-6, TIR 12-10, and TIR 13-15.

[6] St. 2015, c. 46, sec. 68.

[7] St. 2015, c. 46, sec. 69.

[8] St. 2015, c. 46, sec. 151.