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Arizona tax changes include NOL carryover extension and tax credit creation and expansion

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On May 11, 2012 Governor Jan Brewer signed H.B. 2815, which includes the following tax changes:

- Extends Arizona's NOL carryover from 5 to 20 years;
- Adopts new qualified facility income tax credit;
- Expands the new jobs and renewable energy tax credits; and
- Adopts bonus depreciation and a phase-in partial deduction for long-term capital gain income for individual income tax purposes.

The changes were lauded by the governor as "accelerating Arizona's economic turnaround" by encouraging investment in small businesses, aiding start-up companies, incentivizing Arizona corporate headquarters location, and generally spurring job growth.

The governor also signed Executive Order 2012-01, which establishes a Transaction Privilege Tax Simplification Task Force. The Task Force is required to identify ways to simplify the transaction privilege tax and report its findings by December 31, 2012.

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Net operating loss carryover extended to 20 years

For net operating losses arising in taxable periods through December 31, 2011, taxpayers may carry over such losses for five years. For net operating losses arising in taxable periods beginning from and after December 31, 2011, the carryover period is twenty years.

New qualified facility income tax credit

For taxable years beginning from and after December 31, 2012 through December 31, 2019,[1] a taxpayer must apply to and be certified by the Arizona Commerce Authority. Among the requirements to qualify for the credit, a taxpayer must:

- Devote at least 80% of its property and payroll to qualified manufacturing, qualified headquarters, or qualified research;
- Agree to continue in business at the qualified facility for five full calendar years after credit "postapproval;"
- Make a new capital investment in a taxable year beginning from and after December 31, 2012;
- Pay at least 51% of its net new full-time employees at the qualified facility a wage equal to or exceeding 125% of Arizona's median annual wage; and
- Pay at least 80% of the premium or membership cost of health insurance coverage for all net new full-time employees at the qualified facility.

Changes for the new jobs tax credit

Applicable to taxable years beginning from and after December 31, 2012, H.B. 2815 amended Arizona's new employment tax credit, which is applicable to the corporate income tax and the insurance premiums tax. The changes include:

- Requiring preapproval by the Arizona Commerce Authority;
- Eliminating the annual cap of 400 eligible new employees per taxpayer; and
- Adding equipment to the definition of a qualified capital investment.

Renewable energy tax incentives changes

H.B. 2815 extended the sunset date for the renewable energy tax credit application deadline from December 31, 2014 to December 31, 2019.

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[1] New Ariz. § 41-1512 provides that the credit is applicable for taxable years "beginning from and after December 31, 2012" pursuant to new Ariz. §§ 43-1083.03 and 43-1164.04. Both §§ 43-1083.03 and 43-1164.04 provide that the credit is allowed for "taxable years beginning from and after December 31, 2011 through December 31, 2019."

Prior to December 31, 2011, credits approved by the state under the renewable energy credit could not exceed $70 million. If, at the end of a year, less than $70 million had been awarded, the unallocated credits were carried forward to the following tax year.

For years after 2011, the $70 million cap applies to the aggregate amount awarded under both the renewable energy credit and the qualified facilities credit. Any remaining unused balance accruing in 2012 and thereafter lapses and cannot be carried forward.

Bonus depreciation adopted for individuals

For purposes of Arizona's individual income tax, H.B. 2815 provides for a modified bonus depreciation subtraction for property placed in service in taxable years beginning from and after December 31, 2012.

For corporate income tax purposes, Arizona's existing treatment, which disallows a subtraction related to federal bonus depreciation, remains applicable law.

Capital gain subtraction for individuals

H.B. 2815 provides an individual income tax subtraction for the amount of net long-term capital gain included in federal gross income that is derived from an investment in an asset acquired after December 31, 2011. The subtraction is equal to the following percentages of the net long-term capital gain included in federal gross income:

- 10% for taxable years beginning from and after December 31, 2012 through December 31, 2013;
- 20% for taxable years beginning from and after December 31, 2013 through December 31, 2014; and
- 25% for taxable years beginning from and after December 31, 2014.

Transaction tax simplification task force

On May 11, 2012, Governor Brewer signed Executive Order 2012-01. The Order established the Transaction Privilege Tax Simplification Task Force. Noting that the transaction privilege tax ("TPT") is one of the most complex in the country, the Task Force is charged with reviewing, identifying, or developing proposals that would simplify the TPT in order to "alleviate taxpayer frustration, improve compliance, and avoid redundancies." The findings of the Task Force are due December 31, 2012.

PwC Observes

Robert Garvey, State and Local Tax Principal with PwC in San Diego, provides the following observation.

As with the larger Jobs Bill (H.B. 2001) signed into law last year, H.B. 2518 is intended to make Arizona more competitive in attracting, retaining, and expanding businesses in key industries. Taxpayers that may be eligible for benefits under one or more of the programs enacted as part of these two bills should be aware that several of the major programs are subject to funding caps from which credits/incentives will be awarded on a first come, first served basis. This creates the possibility that the demand for funding under one or more programs may exceed supply and provides taxpayers with an incentive to file for approval or pre-approval as early as is reasonably practical.

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