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## *Massachusetts Governor signs fiscal year 2012 budget bill*

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Enacted Massachusetts legislation postpones for one year the commencement of the ASC 740/FAS 109 deduction related to the 2008 enactment of combined reporting, reduces the rate of interest that may be imposed on tax assessments attributable to certain audits that take longer than 18 months to complete, and revises certain statute of limitation provisions related to tax assessments and abatements, among other changes. The provisions of the budget bill took effect on July 1, 2011, unless otherwise specified. [[H. 3581](#), signed 7/11/11]

### **Postponement of ASC 740/FAS 109 deduction**

In 2008, Massachusetts approved a tax overhaul package that, among other changes, adopted combined reporting for tax years beginning on or after January 1, 2009. The 2008 package established a deduction for any combined group that experienced an increase in the group's net deferred tax liability as a result of the combined reporting requirements of unitary businesses. The deduction, which will be claimed over a seven-year period, was to take effect for tax years beginning in 2012. The legislation postpones the implementation of the deduction for one year, by allowing deductions to first be claimed in 2013. (Section 136)

### **Incentive to complete audits within 18 months**

The legislation provides for a reduced rate of interest on deficiency assessments if a taxpayer complies, with substantial promptness and completeness, with all information requests made during the course of an audit, but the Massachusetts Department of Revenue takes longer than 18 months to complete the audit.



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For this purpose, the period of the audit is measured from the date of the Department's opening conference with a taxpayer (in the case of a field audit) to the date that the Department issues a notice of intent to assess. When applicable, the statutory interest rate imposed on the amount of any deficiency will be reduced by two percentage points if the audit takes longer than 18 months to complete or by 2.5 percentage points if the audit takes longer than 36 months to complete. However, the period for which the reduced rate of interest will be applied runs from the expiration of the 18 or 36 month period, respectively, until the date the notice of intent to assess is issued. (Section 66)

This provision is effective for interest accruing on deficiency assessments where the audit resulting in the assessment is commenced after July 1, 2011. (Section 208)

## Change in the filing deadline for abatement/refund claims

The legislation sets as one of the triggers for determining the statute of limitations deadline for abatement/refund claims to three years from the date of the filing of the return, if a return was timely filed, or three years from the due date of the return (taking in account any extensions), if a return was not timely filed. (Sections 67 and 68)

This provision is effective for applications for abatement filed on or after July 1, 2011, except that such change will not apply to tax periods where the statute of limitations for abatement has already expired. (Section 209)

## Other changes

Among other changes, the legislation provides -

- A refundable jobs credit to the extent authorized by the life sciences tax incentive program for certain taxpayers, effective for tax years beginning on or after January 1, 2011. To qualify for the credit, a taxpayer must create at least 50 new permanent full-time jobs in Massachusetts. (Sections 65, 70 and 211)
- A requirement that the Department post quarterly online reports on tax policy issues under development on which public guidance is anticipated within a year. (Section 23)
- The establishment of a tax expenditure commission to review and evaluate the administration and fiscal impact of tax expenditures, which will include tax credits and economic incentive programs. (Section 160)
- An allowance to a person, or his designated representative, who submitted certain information with respect to property tax assessments, to inspect or obtain a copy of such information upon request (Secs. 59 to 61)

## *PwC observes*

"Under prior law, the statute of limitations for an abatement application ran three years from the due date of the return, determined without regard to extensions, two years from the date the tax was assessed or deemed to be assessed, or one year from the date the tax was paid, whichever was later," David Sheehan, Managing Director

with PwC in Boston explains. "In contrast, also under prior law, the statute of limitations for assessment ran three years from the later of the date of filing or the extended due date of the return. In other words, Massachusetts law contained a trap for the unwary in that while the federal statute of limitations for both abatements and assessments ran three years from the date of filing the return, the Massachusetts statute of limitations for abatement, when an extension had been filed, ran at least six months sooner than the statute of limitations for assessment. As a result, some taxpayers filed late Massachusetts abatement applications in the belief that the federal and Massachusetts statute of limitations for abatement were concurrent."

"To remedy this disparity, the "three year" portion of the Massachusetts statute of limitations for abatement was revised by starting the three year period on the date that the return is filed," says Sheehan. "As a result, there is congruity between the three year portion of the federal and Massachusetts statute of limitations for abatements."

"The Massachusetts Department of Revenue will be issuing a Technical Information Release that explains the statutory change to its abatement rules," Sheehan suggests.

"Interestingly, Massachusetts did not amend its statute of limitations to assess," Sheehan says.

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