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Proposed legislation in Pennsylvania would require addback for intangible expenses, single sales factor apportionment

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Proposed Pennsylvania legislation would require taxpayers to add back intangible expenses paid to affiliated entities, implement a single sales factor apportionment formula, modify provisions relating to net operating losses, and decrease the corporate income tax rate. [[H.B. 2150](#), introduced 1/25/12].

Addback for intangible expense

For tax years beginning after December 31, 2012, taxpayers would be required to add back intangible expense or cost paid, accrued or incurred in connection with one or more transactions with an affiliated entity. "Intangible expense or cost" would mean "royalties, licenses or fees paid for the acquisition, use, maintenance, management, ownership, sale, exchange or other disposition of patents, patent applications, trade names, trademarks, service marks, copyrights, mask works or other similar expenses or costs."

The proposed legislation would provide exceptions to the addback requirement, including transactions directly related to a "valid business purpose." Additionally, taxpayers making intangible expense or cost payments to an affiliated entity would



receive a credit against Pennsylvania taxes due where the affiliated entity was subject to tax in a state or possession of the United States on a tax base that included the intangible expense or cost. The credit would be equal to the tax paid by the affiliated entity with respect to the portion of its income representing the intangible expense paid and multiplied by the taxpayer's Pennsylvania apportionment factor.

Single sales factor apportionment

Currently, Pennsylvania utilizes a three factor formula, based on property, payroll and sales, with the sales factor accounting for 90 percent of the formula. For taxable years beginning after December 31, 2012, the proposed legislation would require that all business income be apportioned to Pennsylvania using a single sales factor.

Phase-out of net operating loss limitations

The proposed legislation includes a phase-out of the net operating loss deduction and carryforward limitations.

Under current law, the net operating loss deduction is limited to the greater of 20 percent of taxable income or \$3 million dollars. The proposed legislation would provide a phased-in incremental increase in the net operating loss deduction and would allow taxpayers to deduct losses up to taxable income for taxable years beginning after December 31, 2021.

Similarly, the net operating loss carryforward that may be utilized in any year is currently limited to the greater of 20 percent of taxable income or \$3 million dollars. The proposed legislation includes a phased-in incremental increase in the net operating loss carryforward that may be used and provides taxpayers with the opportunity to use net operating loss carryforwards to the extent of taxable income for taxable years beginning after December 31, 2021.

Decrease in corporate income tax rate

The legislation would provide a gradual reduction in the corporate income tax rate, from 9.99 percent for taxable years through December 31, 2013, to 6.99 percent for taxable years beginning on or after January 1, 2019.

PwC Observes

"Similar legislative proposals have been made in years past," notes Bill Kellogg, PwC Managing Director in Philadelphia, PA. "While earlier proposals failed to be enacted, this legislation has over sixty co-sponsors and bipartisan support. This bill certainly bears watching as the Pennsylvania budgetary process proceeds."

For more information on PricewaterhouseCoopers' state legislative tracking service, [click here](#).

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