

Week of February 13, 2017

HEADLINES

STATE LAWMAKERS JOIN IN LEGAL BATTLE OVER PHILADELPHIA SODA TAX

A bipartisan group of state lawmakers recently filed an amicus brief in Commonwealth Court arguing against the legality of Philadelphia soda tax. The group of 36 members from the state House of Representatives and state Senate hailing from 28 counties, encompassing nearly every corner of Pennsylvania say they are directly impacted by the implementation of the tax "because the tax is not Constitutional, violates the law, and will result in lost sales tax revenue collection into the Commonwealth's general fund, directly impacting the budget and jeopardizing the ability to pass a timely budget and the funding of important services." The first payment of the beverage tax is due February 20, 2017. Monday, the State Supreme Court declined to take jurisdiction away from Commonwealth Court and hear the case directly. In December, the Philadelphia Court of Common Pleas dismissed the challenge to the tax, leading to the current appeal. The legal argument being put forward by the state lawmakers in their brief says the so-called soda tax is an impermissible sales tax "no matter how it is couched" and violates numerous clauses of the Pennsylvania Constitution including the uniformity clause, the Sterling Act—a law prohibiting Philadelphia from taxing any area already taxed by the Commonwealth—as well as public policy. While the city has argued that the tax is not violative of current Pennsylvania law since it taxes the distribution of the sweetened beverages, the amicus brief argues that is a distinction without a practical difference. Arguing the tax violates the uniformity clause, the lawmakers posit the amount of the tax is not levied on products equally since it is imposed on the volume and not the value of the beverages, leaving the tax so it can be at a rate as high as 78 percent in one case and as low as six percent in another case. Finally, arguing the tax violates public policy, the lawmakers say that the tax impinges on the ability of the General Assembly to pass a budget by June 30 every year. The case is expected to be argued in April, when the Commonwealth Court is expected to be in Pittsburgh.

COMPREHENSIVE TAX POLICY RESOLUTION

Representative Jason Ortity introduced co-sponsorship memorandum for a resolution which would direct the Joint State Government Committee to study the growing tax burden at the local level. After 12 months the committee would issue a report to the General Assembly on how the state can work to reduce the local tax burden on Pennsylvanians while improving local funding.

AUDITOR GENERAL DEPASQUALE COMMENDS DCED FOR FOLLOWING AUDIT RECOMMENDATIONS TO RECOUP JOB CREATION FUNDS

Auditor General Eugene DePasquale praised the Department of Community and Economic Development (DCED) for implementing audit recommendations to improve the recovery of grant funding from businesses that fail to meet job creation commitments. "When the state uses tax dollars to spur economic development and job creation, we need to ensure that the investment benefits Pennsylvanians," DePasquale said. "That's why I audited DCED's oversight of the hundreds of millions of dollars in taxpayer-funded job creation programs. "I am pleased to see that some of my recommendations to impose penalties and recoup the taxpayer investment when a business fails to meet its contractual obligations are being integrated into DCED's operations as outlined in the 2017-18 state budget proposal."

A CLOSER LOOK: GOV. WOLF PROPOSES 6.5 PERCENT SEVERANCE TAX IN BUDGET PROPOSAL

As part of his \$32.3 billion spending plan for FY 2017-2018, Gov. Tom Wolf is counting on nearly \$294 million from a 6.5 severance tax on natural gas extracts, less an impact fee credit. According to budget briefing material, the impact fee credit can be taken for "the amount paid in unconventional gas well impact fee." Essentially, allowing natural gas producers the ability to still pay the Act 13 local impact fee without penalty, but having to pay any additional revenue from the severing of natural gas at the 6.5 rate. In the out years, the reliance on the severance tax as a revenue generator grows, with estimates of return coming in the amount of \$441 million in FY 2018-2019, \$528 million in FY 2019-2020, \$596 million in FY 2020-2021, and \$703.4 million in FY 2021-2022. According to Budget Sec. Randy Albright, while the details of the plan need to be worked out with legislators, they are hoping to craft a plan that is fair to both the industry and the taxpayers in a way that will provide budget relief so that other revenues can go to fund things like education.

IRS EASES UP ON PLANS FOR OBAMACARE PENALTY ENFORCEMENT

The Internal Revenue Service has taken a step back from enforcing the Affordable Care Act's so-called "individual mandate" that penalizes people without health insurance. The penalty is usually deducted from a taxpayer's refund. The agency had been set to start rejecting returns if taxpayers failed to indicate whether they had coverage. Instead, it will now accept returns even if taxpayers don't provide that information. However, the agency said the penalty remains in effect and taxpayers are still legally obligated to comply with the mandate. In the absence of voluntary disclosure, it is unclear how the federal agency would determine a person's coverage status or charge a penalty. However, the IRS said "taxpayers may receive follow-up questions and correspondence at a future date."

HOTEL OCCUPANCY TAX REFORM FOR ONLINE TRAVEL COMPANIES

Senators Guy Reschenthaler and Lawrence Farnese circulated co-sponsorship memorandum for legislation which would update and clarify the collection of the hotel occupancy tax from online Travel Companies (OTCs). OTCs do not currently pay the hotel tax on the full retail rate they charge to their customers. OTCs collect and remit the hotel occupancy tax based on the room rental rate they negotiated with the hotel, not on the larger amount with their fees or service charges included. This legislation would also serve to facilitate modernization of the Pennsylvania Tax Code. When Part V of the Tax Reform Code of 1971 was written, imposing an excise tax (a.k.a. "occupancy" tax) of 6% on the rent charged for the occupancy of a hotel room, the internet and OTCs did not exist. This legislation seeks to reassert the original intent of the General Assembly by closing the unanticipated loophole in the Tax Code and restore an equitable application of the Code across the entire industry.

ESTABLISHING ADVISORY TAX COLLECTION COMMITTEES IN CERTAIN COUNTIES

Representative Mike Hanna circulated co-sponsorship memorandum for legislation which would amend the Local Tax Enabling Act of 1965 to provide for advisory tax collection committees. This legislation would allow for the creation of advisory tax collection committees in counties that, on July 1, 2008, only had one school district, and each municipality contracted with the same countywide office for the collection of earned income taxes. These counties would continue to collect their taxes through the countywide office and may form an advisory tax collection committee in lieu of the tax collection committee provided under current law. An advisory tax collection committee would meet at least once annually to review legal and audit matters, provide the countywide office with recommendations and concerns, and provide staff for the appeals board.

DEPARTMENT OF ENVIRONMENTAL PROTECTION GIVES FINAL APPROVAL TO PA PIPELINE PROJECT

The Department of Environmental Protection announced Monday that it has awarded final approval to the PA Pipeline Project/Mariner East 2 pipeline that will deliver natural gas from Pennsylvania's southwestern counties to a Sunoco refinery in Marcus Hook, Delaware County. The entire pipeline is a \$2.5 billion infrastructure project anticipated to support over 15,000 jobs annually over a two year-period and ultimately have \$150 million annual economic impact on the Pennsylvania economy once completed. The permits for the latter phase of the project, having been tendered a second time following their initial submission in 2015, underwent extensive review by environmental regulators. Hundreds of engineers are expected to be hired as a direct result of the approval. Phase one of the project was completed in 2016, and the second phase—expected to be finished this year—will add off take points in central and eastern Pennsylvania.

PENNSYLVANIA GENERAL ASSEMBLY SESSION SCHEDULE:

2017 SENATE SESSION SCHEDULE

March 20, 21, 22, 27, 28, 29

April 17, 18, 19, 24, 25, 26

May 8, 9, 10, 22, 23, 24

June 5, 6, 7, 12, 13, 14, 19, 20, 21, 22, 26, 27, 28, 29, 30

2017 HOUSE SESSION SCHEDULE

March 13, 14, 15, 20, 21, 22

April 3, 4, 5, 18, 19, 24, 25, 26

May 8, 9, 10, 22, 23, 24

June 5, 6, 7, 12, 13, 14, 19, 20, 21, 22, 26, 27, 28, 29, 30

DEPARTMENT OF REVENUE UPDATE

None

IRRC UPDATES

None