

Massachusetts Governor's Tax Proposals for Businesses

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The proposed 2014 Massachusetts budget submitted by Governor Deval Patrick includes not only provisions that eliminate many individual tax exemptions and increase the individual income tax rate from 5.25% to 6.25%, but also significant changes to the tax laws affecting businesses. Those significant changes include:

- Expanding the sales tax to cover “computer and data processing services,” which are defined to include:
 - “services that include but are not limited to programming, code writing, modification or testing of existing programs, feasibility studies and design and installation of computer systems that integrate computer hardware, software, and communication technologies, whether or not such services are rendered in connection with the development, creation or production of standardized or custom software, provision of access to software or the storage of data on the seller’s or a third party’s server including disaster recovery services...”
- Subjecting custom software to sales tax, in addition to the existing tax on prewritten software. Custom software is software prepared to the special order of a customer that is not standardized software. This is consistent with taxing computer and data processing services.
- Reducing the sales tax rate from 6.25% to 4.5%.
- Taxing security corporations and utility corporations like other business corporations, thereby eliminating the special treatment afforded those entities. Security corporations have been a popular device used by companies to reduce their tax on the net worth measure of the corporate excise by placing their liquid assets in a subsidiary qualified as a security corporation. Security corporations are not subject to the net worth measure or the income measure of the corporate excise and instead pay a tax at a rate of 1.32% on gross receipts. Such security corporations are frequently used by companies to hold the assets resulting from a public offering or a financing, thereby removing them from the net worth measure of the excise.
- Changing the sourcing of sales (other than sales of tangible personal property) in the

sales factor for the apportionment of income by replacing the cost of performance method with a market-based sourcing method. As a result, sales from services would be apportioned among states based upon the locations of the service consumers. Under the cost of performance method, service income is allocated to that state where a plurality of the costs of performance are incurred.

- Repealing the FAS 109 deduction. A FAS 109 deduction was approved for certain publicly held companies as part of a Massachusetts tax law change that, among other things, adopted combined reporting for tax years beginning on or after January 1, 2009. In general, if the enactment of combined reporting requirements for unitary businesses resulted in an increase to a combined group's net deferred tax liability, the combined group was eligible to claim a FAS 109 deduction. The Fiscal 2013 Budget delayed the implementation of this deduction until 2014. The proposed 2014 budget repeals this deduction.

Certification of Corporate Status

On an unrelated note, the Massachusetts Department of Revenue has extended to April 12, 2013 the deadline for business entities to certify their corporate status through an online application on Web File for Business. The annual "Corporations Book" is used by local assessors to determine whether businesses qualify for various property tax exemptions. To ensure eligibility for such property tax exemptions, entities that claim corporate status, particularly those entities that are not in corporate form (such as LLCs), should certify that status by April 12 in order to be included in the annual "Corporations Book."

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