

Pennsylvania Eliminates Capital Stock and Foreign Franchise Tax

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Tax and Estates Alert
2.16.16

Pennsylvania has eliminated the Capital Stock and Foreign Franchise Tax for all taxpayers, effective for tax years beginning on or after January 1, 2016. The complete elimination of the tax, which had been delayed several times in the past, was finally confirmed by Pennsylvania Governor Tom Wolf on January 4, 2016.

The Capital Stock and Foreign Franchise Tax had been imposed on corporations, joint-stock associations, limited liability companies, business trusts, and other companies doing business within Pennsylvania. Companies located in the state were subject to the capital stock tax. Companies located outside Pennsylvania but doing business in Pennsylvania were subject to the foreign franchise tax. Both taxes were based on a company's total equity plus an average of the company's book income for up to five prior years.

In addition to the more obvious tax implications, the elimination of the Capital Stock and Foreign Franchise Tax also has implications in the commercial lending and financing arenas. Many, if not most, Pennsylvania single purpose borrower entities were formed as limited partnerships rather than limited liability companies specifically to avoid the imposition of the capital stock tax. Given the elimination of the capital stock tax, Pennsylvania limited liability companies are now on the same tax footing as Pennsylvania limited partnerships in that regard. We expect to see an increase in the number of Pennsylvania single purpose borrower entities formed as limited liability companies rather than limited partnerships.

If you would like to discuss how the elimination of the Capital Stock and Foreign Franchise Tax could impact your business tax planning, or if you have other tax or estate planning questions, please contact Suzanne Prybella (215.864.7188; prybellas@whiteandwilliams.com) or another member of our Tax and Estates Group.

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