

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

BDO KNOWS:

SALT



► SUBJECT

MASSACHUSETTS ECONOMIC DEVELOPMENT REORGANIZATION ACT

► SUMMARY

On August 5, 2010, Massachusetts Governor Deval Patrick signed into law Senate Bill No. 2582, the Economic Development Reorganization Act (the "Act"). This Tax Alert describes certain provisions of the Act that will affect Massachusetts taxpayers.

► NET OPERATING LOSS

The Act permits a carryforward of up to 20 years for net operating losses ("NOLs") arising in taxable years beginning on or after January 1, 2010. NOLs from prior taxable years may be carried forward for up to five years. Massachusetts does not permit NOLs to be carried back, regardless of when they were incurred.

Massachusetts NOLs are determined and carried forward based on the apportionment percentage for the taxable year when the loss is incurred. A business corporation that incurs NOLs before the corporation becomes subject to tax in Massachusetts is not allowed to carry those losses forward.

CONTACT:

West:

ROCKY CUMMINGS, Tax Partner
408-278-0220 / rcummings@bdo.com

PAUL MCGOVERN, Tax Director
714-913-2592 / pmcgovern@bdo.com

Northeast:

NICK NESI, Tax Partner
212-885-8420 / nnesi@bdo.com

Southeast:

MARK SIEGEL, Tax Senior Manager
404-979-7188 / msiegel@bdo.com

Central:

RICHARD SPENGLER, Tax Senior Director
616-776-3687 / rspengler@bdo.com

NICK BOEGEL, Tax Senior Manager
414-615-6773 / nboegel@bdo.com

JOE CARR, Tax Partner
312-616-3946 / jcarr@bdo.com

Southwest:

GENE HEATLY, Tax Senior Director
214-665-0716 / gheatly@bdo.com

► [Read more](#)

▶ CAPITAL GAINS TAX RATE FOR INVESTMENTS IN START-UP BUSINESSES

For certain investments in start-up businesses, the Act lowers the capital gains tax rate for individuals from 5.3% to 3%, for taxable years beginning on or after January 1, 2011. The requirements for the lower tax rate are as follows:

- The stock in the corporation must satisfy the requirements for treatment under section 1202(c) of the Internal Revenue Code as “qualified small business stock” without regard to the requirement that the corporation be a C corporation.
- The corporation must have less than \$50 million in assets at the time of the investment.
- The investment must be made within five years from the date of incorporation.
- The investment must be held for at least three years.

▶ WATER’S EDGE COMBINED REPORTING

The Act amends the Massachusetts water’s edge provisions for a Massachusetts combined group to harmonize such provisions with federal income tax law regarding foreign corporations that are included in a Massachusetts water’s edge combined group.

With respect to any item of a foreign corporation’s income that is exempt from United States taxation due to a federal income tax treaty, the Act excludes such item from the taxable income of a Massachusetts combined group that reports on a water’s edge basis.

Conversely, any item of income of a foreign corporation that is not exempt under a federal income tax treaty should be included in the Massachusetts water’s edge group’s combined taxable income, along with the expenses and apportionment factors associated with such non-exempt income.

▶ [Read more](#)

The Tax Practice at BDO is among the largest tax advisory practices in the United States. With 39 offices and more than 400 independent alliance firm locations in the United States, BDO has the bench strength and coverage to serve you.

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. As an independent Member Firm of BDO International Limited, BDO serves multinational clients through a global network of 1,138 offices in 115 countries.

BDO USA, LLP, a New York limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information please visit: www.bdo.com.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs. Copyright © 2010 BDO USA, LLP www.bdo.com

▶ EXPANSION OF PROPERTY TAX EXEMPTION FOR MANUFACTURING AND R&D COMPANIES

The Act extends the property tax exemption, currently available to corporations engaged in manufacturing and research and development, to single-member limited liability companies, for taxable years beginning on or after January 1, 2011.

In general, corporations that qualify as a manufacturing corporation or a research and development corporation are provided a property tax exemption for all property, with the exception of real estate, poles and underground conduits, wires, and pipes. The Act expands this exemption to include single-member limited liability companies, provided such entities have their usual place of business in Massachusetts, are engaged in manufacturing or research and development in Massachusetts, and have as their sole member a manufacturing or research and development corporation.

▶ ESTABLISHMENT OF VARIOUS ECONOMIC DEVELOPMENT CREDITS

The Act also creates various tax credits and incentives to encourage business growth, job creation, and housing in the state's "gateway municipalities." The gateway municipalities include 11 cities that have been designated as such based on population size, a median household income below the state average, and other factors.

The various credits and incentives created by the Act include the following:

- Tax credits for manufacturers located in the gateway municipalities that agree to create at least 25 full-time manufacturing jobs or retain 50 such jobs for a minimum of five years;
- Tax credits for developers that develop market-rate housing in the gateway municipalities; and
- Creation of a grant program with a \$50 million allocation for commercial and residential transportation and infrastructure development in the state's 20 designated Growth Districts, the majority of which are located in gateway municipalities.