FLASTER GREENBERG
Attorneys at Law | A Professional Corporation

Pennsylvania Approves Law Allowing Employers to Keep State Taxes for Newly Created Jobs

Legal Alert

December 12, 2012

Employers planning to add 250 or more new jobs in Pennsylvania over the next five years are eligible to pocket a tax refund of nearly 3 percent of new employee wages for up to 10 years under a new state law. The law, however, limits the benefit to a total of $5 million per year statewide, and therefore qualified companies are advised to apply promptly before the annual allotment is exhausted. Published reports of interest by prospective beneficiaries are such that we anticipate the full allotment will likely be exhausted quickly.

The Promoting Employment Across Pennsylvania Act (the "Act") allows qualified and approved employers to retain up to 95 percent of the personal income tax they withhold from the paychecks of workers in new jobs in Pennsylvania, as defined in the Act. The tax benefit lasts for up to five years for corporations with workers in new jobs who earn at least 100 percent of the average wage in the county in which the employee works, and for up to 10 years for new workers who are paid at 140 percent or more of the average wage.

In order to be eligible for the tax benefit, the law requires the following:

- At least 250 new jobs must be created by the for-profit entity in the Commonwealth in the next five years, with at least 100 of those new jobs being created in the first two years after entering the program.
- The company must provide health benefits to new full-time workers and pay at least 50 percent of the health insurance premium.
- Companies that are delinquent in federal, state or local taxes, or who have filed for bankruptcy are not eligible for the program.
- A company must apply for the program, be approved by the state Department of Community and Economic Development, enter into an agreement with the state on the planned participation, and submit required reports on new jobs and taxes retained each quarter.
- The following industries are not eligible for the benefit: gambling, retail, educational organizations and service providers, public administration organizations, food service and drinking establishments.

The program reportedly was created in order to lure software giant Oracle to relocate high-paying jobs into central Pennsylvania, but the funding could cover dozens of other expanding employers.

Given that Pennsylvania's personal income tax rate is currently a flat 3.07 percent, and is withheld from employee pay at the same rate, employers that are allowed to retain 95 percent of those withholdings will receive a benefit of over $1,450 per year for the typical job paying $50,000 a year, according to the state, and tax benefits of over $2,900 per year for jobs paying $100,000 a year. Thus, a large employer adding 250 jobs paying an average of $100,000 per year could receive a payroll tax benefit of over $725,000 per year over the possible 10 years of subsidy, with the employer retaining a total of $7.25 million in cash otherwise

payable to the Commonwealth. Penalties and repayment obligations apply for companies that do not honor their commitments on job creation, or that relocate the jobs within five years of receiving benefits.

Qualified employers may apply now for the tax benefit, through the state Department of Community and Economic Development. The state is required to review the application and determine if the applicant is qualified within 30 days. The Department is given the authority in the Act to approve or deny any application. In current form, the program will continue for at least five years, and up to 10, with January 1, 2018 being the deadline to enter into any agreement under the Act. Due to the limited funding, interested and qualified companies should apply as soon as possible.

Flaster Greenberg, P.C. has lawyers in its Corporate Tax, Government Relations and Labor & Employment groups available to assist clients in applying for PEP Act benefits, and learning more about the program.