



NAVJEET K. BAL  
COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
*Office of the Commissioner*  
*P.O. Box 9550*  
*Boston, MA 02114-9550*

September 23, 2009

The Honorable Charles A. Murphy, Chair  
House Committee on Ways and Means  
State House  
Room 243  
Boston, MA 02133

The Honorable Steven C. Panagiotakos, Chair  
Senate Committee on Ways and Means  
State House  
Room 212  
Boston, MA 02133

The Honorable Jay R. Kaufman, House Chair  
Joint Committee on Revenue  
State House  
Room 34  
Boston, MA 02133

The Honorable Benjamin B. Downing, Senate Chair  
Joint Committee on Revenue  
State House  
Room 413F  
Boston, MA 02133

Honorable Chairmen of the Ways and Means Committees and Honorable Chairmen of the Joint Committee on Revenue:

Pursuant to section 95 of chapter 173 of the Acts of 2008 ("An Act Relative to Tax Fairness and Business Competitiveness"), attached is the Department of Revenue's report on "FAS 109" deductions.

If you have any questions concerning this report, please contact me (at 626-2201) or Howard Merkwowitz, Director of the Office of Tax Policy Analysis (at 626-2100).

Sincerely,

A handwritten signature in black ink that reads "Navjeet K. Bal".

Navjeet K. Bal  
Commissioner

Attachment

Cc: Leslie A. Kirwan, Secretary of Administration and Finance  
Representative Robert A. DeLeo, House Speaker  
Senator Therese Murray, Senate President  
Representative Bradley H. Jones, Jr., House Minority Leader  
Senator Richard R. Tisei, Senate Minority Leader  
Representative Viriato Manuel deMacedo, House Committee on Ways and Means  
Senator Michael R. Knapik, Senate Committee on Ways and Means

## **Massachusetts Department of Revenue Report on FAS 109 Tax Deductions**

For tax years beginning on or after January 1, 2009, Massachusetts adopted a combined reporting regime for purposes of calculating the corporate excise of corporations that are engaged with affiliated corporations in a unitary business. See St. 2008, c. 173, An Act Relative to Tax Fairness and Business Competitiveness (the Act). Section 95 of the Act created a new tax deduction which was designed to limit the impact of combined reporting in Massachusetts on certain publicly traded corporations' financial statements. The deduction is generally referred to as the "FAS 109" deduction, in reference to the Statement of Financial Accounting Standards (FAS) No. 109, Accounting for Income Taxes. See: DOR Technical Information Release 09-8, Claiming the FAS 109 Deduction for Publicly Traded Companies.

FAS 109 establishes basic principles that apply when accounting for income taxes for the purpose of preparing a corporation's financial statements. FAS 109 requires that the effects of income taxes resulting from transactions occurring in the current and preceding years be reported on a corporation's financial statements for current and future years. This includes accounting for certain deferred tax liabilities and assets to reflect the future tax consequences of events that have been recognized in a corporation's financial statements or tax returns. Corporations regularly determine and update their deferred tax accounts for financial statement purposes, based on their projections of applicable future effective tax rates. In the case of deferred state tax liabilities, the effective tax rate anticipated by a corporation would be based on its expected income and apportionment percentages in the states where it is taxable. In general, tax law changes that increase the effective tax rate applicable to a corporation's income will increase its deferred tax liabilities.

Under section 95 of the Act, if the enactment of combined reporting results in an increase to a combined group's net deferred tax liability, the combined group may be entitled to a FAS 109 deduction on its Massachusetts tax return, provided that the group meets specified requirements. The FAS 109 deduction provided for in the Act reduces an eligible corporation's Massachusetts tax liability by an amount that fully or partially offsets its increased deferred tax liability, based on such corporation's Massachusetts apportionment percentage and statutory tax rate. By creating this new tax deduction as an offset to the impact of combined reporting on deferred tax liabilities, the general effect of section 95 of the Act is to limit or preclude the need for an affected taxpayer to adjust its financial statements pursuant to FAS 109. If applicable, the tax deduction is prorated over the 7-year period beginning with the combined group's taxable year that begins in 2012. The deduction is available only to publicly traded corporations and will have the effect of reducing Massachusetts corporate tax collections.

Section 95 of the Act requires any taxpayer intending to claim a FAS 109 deduction to file a statement with the Commissioner on or before July 1, 2009 specifying the total amount of the deduction that may be claimed. The Act further requires the Commissioner to report the aggregate sum of the deductions reported on such statements

by all taxpayers to the Chairs of the Joint Committee on Revenue and the Chairs of the House and Senate Committees on Ways and Means no later than October 1, 2009. This report, which shows totals of FAS 109 deductions claimed by corporations, based on their income and apportionment projections, is being issued in satisfaction of this statutory requirement.

The Department of Revenue received 133 FAS 109 deduction statements by the July 1, 2009 filing deadline, although 5 of these statements are incomplete and DOR is in process of verifying the information contained in them. The table on page 3 of this report shows the number of corporations that intend to claim the deduction, the amount of deductions they intend to claim, and the corporate tax revenue reduction that corresponds to those deductions.

As the table shows, the 128 public corporations for which data are complete indicate that they intend to claim FAS 109 deductions of \$178.1 billion, which would result in corporate tax savings of \$535.0 million at the applicable tax rates in the years in which the deductions will be claimed. Of the \$535 million in corporate tax savings, approximately \$472 million (or 88% of the total) is attributable to 14 corporations, with \$441 million (or 83%) accounted for by 9 corporations, and \$281 million (or 52%) accounted for by 3 corporations. (Due to taxpayer confidentiality restrictions, DOR is not permitted to provide information on groups with fewer than 3 filers.) In addition, the 5 filers for which DOR is still awaiting information are likely to claim deductions of \$1.0-\$1.5 billion, resulting in additional corporate tax savings of \$10-\$20 million. Given that the Act requires corporations to claim deductions over a seven-year period starting in tax year 2012, these deductions will result in corporate tax savings (and corresponding Massachusetts corporate tax revenue reductions) of \$76-\$79 million annually for tax years 2012 through 2018 inclusive.

In July 2008, the Department of Revenue estimated that the enactment of unitary combined reporting would result in additional corporate tax revenue of \$263.5 million in tax year 2012 after accounting for the reduction in the corporate tax rate from 9.5% to 8.0% that was also part of the enacted legislation. Due to the recent recession, DOR has reduced its estimate of increased annual revenue from the enacted law by approximately 20%, or to \$210.8 million in tax year 2012 if corporate profits remain at that lower estimated level. Based on these estimates, the \$76 million annual tax reductions resulting from the verified FAS 109 deductions would reduce the estimated combined reporting tax revenue by 29% to 36%, and by 30% to 37% after including the estimated impact of the 5 additional corporations for which DOR is still collecting information.

It should be noted that the actual amount of FAS 109 deductions will be subject to audit by DOR when those deductions are claimed on tax returns starting in tax year 2012.

**Statement of Financial Accounting Standards (FAS 109) Report: Total Number of Filers, Amount of Deductions, and Amount of Estimated Tax Reductions\***

| Range of Tax Reduction**                | Number of Filers | Percent of Total Filers | Tax Deductions (\$ Millions) |                                 |                              |                      | Tax Reductions (\$ Millions) |                                |                              |                      |
|---|------------------|-------------------------|------------------------------|---------------------------------|------------------------------|----------------------|------------------------------|--------------------------------|------------------------------|----------------------|
|   |                  |                         | Amount of Tax Deductions     | Percent of Total Tax Deductions | Average (Mean) Tax Deduction | Median Tax Deduction | Amount of Tax Reduction      | Percent of Total Tax Reduction | Average (Mean) Tax Reduction | Median Tax Reduction |
| Below \$10,000                          | 10               | 7.8%                    | \$254.5                      | 0.1%                            | \$25                         | \$0.2                | \$0.02                       | 0.005%                         | \$0.002                      | \$0.002              |
| \$10,000 - \$49,999                     | 16               | 12.5%                   | \$619.3                      | 0.3%                            | \$38.7                       | \$9.8                | \$0.4                        | 0.1%                           | \$0.02                       | \$0.02               |
| \$50,000 - \$99,999                     | 17               | 13.3%                   | \$1,048.9                    | 0.6%                            | \$61.7                       | \$55.2               | \$1                          | 0.2%                           | \$0.1                        | \$0.1                |
| \$100,000 - \$499,999                   | 34               | 26.6%                   | \$5,007.2                    | 2.8%                            | \$147.3                      | \$98.8               | \$8                          | 1.4%                           | \$0.2                        | \$0.2                |
| \$500,000 but less than \$1 Million     | 14               | 10.9%                   | \$8,709.1                    | 4.9%                            | \$622.1                      | \$385.7              | \$9                          | 1.7%                           | \$0.6                        | \$0.6                |
| \$1 million but less than \$5 Million   | 23               | 18.0%                   | \$55,976.5                   | 31.4%                           | \$2,433.8                    | \$903.3              | \$45                         | 8.3%                           | \$1.9                        | \$1.6                |
| \$5 million but less than \$10 Million  | 5                | 3.9%                    | \$6,253.9                    | 3.5%                            | \$1,250.8                    | \$394.1              | \$31                         | 5.8%                           | \$6.2                        | \$5.9                |
| \$10 million but less than \$50 Million | 6                | 4.7%                    | \$59,872.4                   | 33.6%                           | \$9,978.7                    | \$7,961.1            | \$161                        | 30.1%                          | \$26.8                       | \$25.1               |
| \$50 Million and Above                  | 3                | 2.3%                    | \$40,405.0                   | 22.7%                           | \$13,468.3                   | \$11,106.5           | \$281                        | 52.4%                          | \$93.5                       | \$101.0              |
| <b>Total</b>                            | <b>128</b>       | <b>100.0%</b>           | <b>\$178,146.8</b>           | <b>100.0%</b>                   | <b>\$1,391.8</b>             | <b>\$137.3</b>       | <b>\$535.0</b>               | <b>100.0%</b>                  | <b>\$4.2</b>                 | <b>\$0.2</b>         |

|  |                   |               |
|--|-------------------|---------------|
| <b>Annual Tax Deductions/Tax Reductions, 2012-2018</b> | <b>\$25,449.5</b> | <b>\$76.4</b> |
|--|-------------------|---------------|

|  | Tax Year 2012 Original Combined Reporting Estimate | Tax Year 2012 Revised Combined Reporting Estimate Accounting for Recession |
|--|--|--|
| <b>Estimates of New Tax Revenue From Enactment of Unitary Combined Reporting</b> | <b>\$263.5</b>                                     | <b>\$210.8</b>   |

|  |              |              |
|--|--------------|--------------|
| <b>FAS 109 Tax Reductions as % of New Tax Revenue from Enactment of Unitary Combined Reporting</b> | <b>29.0%</b> | <b>36.3%</b> |
|--|--------------|--------------|

\*Deductions and calculation of tax reductions are based on filings of the corporations and are subject to audit by the Department of Revenue (DOR)

\*\*DOR is in contact with five additional companies in order to verify the figures reported in their filed FAS 109 submissions. Including these five companies, the total number of filers is 133. Based on their unverified figures, these five companies would potentially qualify for \$1 to \$1.5 billion in deductions and potential tax reductions of \$10 to \$20 million. The table above does not reflect these estimates.