NEW JERSEY ENACTS 10.75 PERCENT MILLIONAIRE'S TAX

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Tristate Tax Alert

What better topic than a tax increase to kick off our new Tristate Tax Alert! We (and our contributing writers) want to bring you the latest tax news and updates affecting New Jersey, Connecticut and the entire tristate area. With the ongoing impact of COVID-19 on everyone's daily lives and economic effects likely to be felt for years to come, this seemed like an auspicious time to start things off. We hope this will be a valuable source of information for those of you living and/or working in the Tristate area and for practitioners as well. We also want to provide some insight into how tax laws and policies in the three states (and NYC) interact. Are the taxing jurisdictions playing nice in the sandbox or will taxpayers get squeezed as these jurisdictions compete for tax revenue? Give either of us a shout: Elizabeth Pascal at epascal@hodgsonruss.com or Debra Herman at dherman@hodgsonruss.com, if you have a question or some tristate news to share!

New Jersey Enacts 10.75 Percent Millionaire's Tax (by K. Craig Reilly)

New Jersey Governor Phil Murphy will soon have a final budget bill on his desk that includes several new revenue-raising measures, including his previously-announced proposal to increase tax on the state's millionaires.

The bill, S. 2021, raises New Jersey's Gross Income Tax rate from 8.97 percent to 10.75 percent on New Jersey taxable income between $1 million and $5 million. The 10.75 percent rate previously applied only to income above $5 million. The tax increase is expected to generate $390 million in new revenue each year. The bill, however, also proposes providing a tax rebate of $500 to certain taxpayers with gross income of no more than $150,000 for married filers or $75,000 for individual filers. The budget bill passed both chambers on September 24 and is now headed to Governor Murphy, who is expected to sign it into law.

Whether the tax hike motivates wealthy residents to flee the state remains to be seen, but with remote work arrangements spiking in the wake of COVID-19, more and more individuals now appear willing to consider a change of residence. Compared to its neighbor on the opposite side of the Hudson, New Jersey has historically not aggressively targeted taxpayers trying to leave the state. But rumblings from Trenton and within the Division of Taxation suggest that may soon

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change. And anyone considering a move out of New Jersey should first familiarize themselves with the state's residency rules and guidelines.

Like, New York, New Jersey defines a "resident taxpayer" to include (1) anyone "domiciled" in the state and (2) anyone not domiciled in the state but who maintains a permanent place of abode in New Jersey and spends more than 183 days of the taxable year in the state.[1] A taxpayer can only have one "domicile," and changing your domicile generally requires clear and convincing evidence that you have both left your historic home and also landed in a new location with the intent to establish your permanent home there.

New York's formal guidance (there's an entire audit handbook on the issue: https://www.hodgsonruss.com/newsroom-publications-9081.html) and case law regarding changes of domicile is exceptionally robust. New Jersey…not so much. But that's not to say there aren't certain trail markers to follow on your way out of the state. The state's "Understanding Income Tax" publication for part-year residents and nonresidents, for example, references several factors for determining domicile, including:

- Your intent;
- Where you register to vote;
- Your driver's license and vehicle registration;
- Where you have family ties;
- Whether your federal tax return lists New Jersey as a home address;
- Location of bank accounts;
- Whether you claimed a Homestead Benefit, etc.[2]

Similarly, the New Jersey Tax Court has indicated that any disputes over domicile require "an evaluation of all the facts and circumstances of the case,"[3] and the court has looked to such factors as:

- A taxpayer's sworn testimony;
- The movement of furniture and personal belongings out of the state;
- The sale and purchase of homes both in and outside of New Jersey;
- Saying farewell to friends and family in New Jersey; and
- Enrolling children in school outside of New Jersey.[4]

The key issue in any domicile dispute is to determine an individual's intent — a very personal and subjective question. But planning and taking clear, objective steps when changing your residency can make the question a lot easier to answer (or prove) if and when an auditor comes knocking. And once Governor Murphy signs the state's new budget into law, it could also mean saving as much as 10.75 percent in additional gross income tax.

What Didn't Pass, At Least For Now in New Jersey – A Financial Transaction Tax! (by Debra Herman)

New Jersey had been considering enacting a financial transaction tax, but that proposal was abandoned shortly after the Wall Street Journal reported that several stock exchanges with data centers located in New Jersey were threatening to relocate their trading systems to another state if the proposal was adopted. The bill, A4402/S2902, would have imposed a financial transaction tax on persons or entities that process 10,000 or more financial transactions through electronic infrastructure located in New Jersey during the year. The tax would be imposed at $0.0025 (a quarter of a cent) for each transaction processed through electronic infrastructure located in New Jersey, with a transaction defined as any purchase or sale of a financial security, including but not limited to, a futures contract, options contract, futures option contract, swap contract, credit default swap contract, derivative, or share of stock in an entity. The Statement accompanying the bill provides that there are reportedly billons of financial transactions processed daily, and many of those are processed through electronic infrastructure located in New Jersey. Thus, "[t]his tax, which is on the processor but may be passed along to the purchaser or seller, can therefore potentially raise a significant amount of revenue for New Jersey." New York has likewise seen recent proposals to enact – or more accurately, resurrect – the state's stock transfer tax. (Currently, the tax remains on the books, but there is a 100% rebate of the tax!)

If you would like more information about any of the above tax issues, contact Debra Herman (646.218.7532), Elizabeth Pascal (716.848.1622) or K. Craig Reilly (716.848.1582).

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[1] N.J. Rev. Stat. § 54A:1-2(m).

[2] Part-Year Residents and Nonresident, Understanding Income Tax, GIT-6 (December 2019), *available at* https://www.state.nj.us/treasury/taxation/pdf/pubs/tgi-ee/git6.pdf.

[3] *Samuelsson v. Dir., New Jersey Div. of Taxation*, 22 N.J. Tax 243 (2005).

[4] *Id.*