

NEW JERSEY CBT TECHNICAL CORRECTIONS MADE FINAL AND NJ TAX COURT DECIDES CASE INVOLVING COVID-19 EXTENSION OF APPEAL FILING DEADLINE

Hodgson Russ Tristate Tax Alert
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by Debra Herman and Elizabeth Pascal

While we like to report on exciting Tristate tax developments (or at least exciting for tax nerds like us) – new taxes like the NJ BAIT or CT PET; threats of reducing tax credits; interstate fights over revenue – sometimes it’s just as important to update our readers on the somewhat less thrilling amendments and corrections to existing legislation that hopefully help our tax laws to function more effectively. And so...

New Jersey Adopts Technical Corrections to the Corporation Business Tax

New Jersey Governor Phil Murphy signed a bill (A.4809/S. 3007) that makes technical changes to several provisions of the Corporation Business Tax (the “CBT”) that were amended in 2018 involving mandatory unitary combined reporting, net operating losses, the research and development credit and dividend received exclusion. This alert discusses some but not all of the corrections.

As explained in the legislative statement to S. 3007, to conform to U.S. Supreme Court jurisprudence on the unitary business principle and combined groups, “in addition to being taxed on the income from the combined group, the bill clarifies that the income from the separate activities will only be taxed if the member independently has nexus with New Jersey.” The bill also clarifies that the tax rate shall be applied “to taxable net income plus the portion thereof as is specifically assigned to this State as provided in section 5 of P.L. 1993, c.173 (C.54:10A-6.1),” which per the legislative statement means “taxable net income plus the non-operational income specifically assigned by statute to New Jersey.”

The bill also makes clear that the joint net operating loss carryover transfer program (the “Program”) for new or expanding technology and biotechnology companies continues, by changing the citation in the law to reference prior net operating loss conversion carryover as well as net operating loss carryover. Furthermore, the bill permits as a part of the Program, the sale of prior net operating loss conversion carryovers between members of a combined group at an arm’s length price.

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For privilege periods ending on and after July 31, 2020, the bill treats a combined group as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group, which per the legislative statement is to “simplify and make the application of the dividend exclusion more consistent.” For privilege periods ending on and after July 31, 2019, the bill addresses what has been deemed as the “trapped dividend exclusion,” whereby if a combined group has a member with a zero allocation factor, that member’s dividend exclusion was not being subtracted from post-allocated income on Form CBT-100 U for 2019. See N.J. Division of Revenue, Notice: CBT-100U, Schedule R, posted on November 5, 2020, which explains that “a series of legislative amendments were made and recently signed into legislation that rectify the statutory ambiguity for privilege periods ending on and after July 31, 2019” and notes that managerial members may amend the group’s 2019 Form CBT-100 U and Schedule R in accordance with the legislative changes.

Finally, the bill requires the Director of the Division of Taxation to create a standardized return for combined groups, banking corporations, financial business corporations, and separate return filers, but maintains the New Jersey S Corporation return for New Jersey S Corporations that file separate returns. In addition, the bill requires the due date of the New Jersey CBT return to be 30 days after the original due date for filing the taxpayer’s federal corporate income tax return.

New Jersey Tax Court Agrees With Property Owner Regarding COVID-19 Extension of Appeal Filing Deadline

A New Jersey Tax Court Judge agreed that a Monmouth County property owner timely appealed a judgment by a local county board of taxation (Monmouth County Board of Taxation), as a result of COVID-19 extensions of filing deadlines. See *Erin B. O’Connell v. Township of Neptune*, Docket No. 009646-2020, September 23, 2020. The question in the case was whether a series of Orders issued by the Chief Justice of the New Jersey Supreme Court and the ensuing enactment of L. 2020, C. 35 (the “Law”) applied to local property tax appeals to the New Jersey Tax Court. These Orders provide that the deadlines for filing complaints for property tax appeals to the New Jersey Tax Court from judgements issued by the county board of taxation (including counties participating in the Assessment Demonstration Program “ADP”) and state tax appeals, to the extent those deadlines have not already passed, are extended to May 1, 2020 or 30 days following a determination that the State of Emergency declared under Executive Order 103 has ended, whichever is later. The Law then clarified that a finite date of July 1, 2020 would apply to appeal filing deadlines for local property tax matters pertaining to tax year 2020.

The Monmouth County Board of Taxation attempted to argue that the tolling provision in the Law did not apply to this property owner because the Law “specifically and explicitly excludes’ properties in an ADP-participant county such as Monmouth County where the Subject is located.” Judge Sundar disagreed, holding that the Law’s exclusion of ADP counties from the tolling of the filing deadlines is only to the initial petitions filed before the county board of taxation (i.e., an appeal from the local property tax assessment after a taxpayer’s receipt of the Notice of Assessment) not to appeals to the Tax Court from the county board of taxation’s judgment and, allowed plaintiff’s appeal to go forward.

We should note that the State of Emergency declared under Executive Order 103 has not yet ended and thus state tax controversies appeal deadlines remain tolled as of the date of this alert.

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Contact Debra Herman (646.218.7532) or Elizabeth Pascal (716.848.1622) if you have any questions about how these tax laws may impact you or your business.

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