TAX UPDATES FROM CONNECTICUT, NEW JERSEY AND NEW YORK CITY

Hodgson Russ Tristate Tax Alert
July 26, 2021

After a bit of a hiatus, we're back! The good news is that we are joined by our new colleague, Open Weaver Banks, who will help us bring you the tristate news more regularly, particularly with respect to the tax news from New Jersey. And we have quite a few bits of news to share with you.

Update from Connecticut

In late June, Governor Lamont signed into law Senate Bill 1202 (H.B. 6689), implementing the revenue provisions of the budget for the July 1, 2021 - June 30, 2023 biennium. The new legislation contained several notable measures, many of which are designed as revenue-raising measures to offset budgetary provisions intended to mitigate the impacts of the pandemic. The revenue-raisers include:

- The Department of Revenue is directed to enact an amnesty program to run from November 1, 2021 to January 31, 2022. It will include any undisclosed liabilities through tax year ending 12/31/2020 and will abate all civil and criminal penalties as well as 75% of the interest. Unlike Connecticut's voluntary disclosure program, however, there will be no limited lookback. Eligible taxpayers must pay all of the disclosed tax liabilities. Certain taxpayers, including those who are parties to a closing agreement, an offer in compromise agreement or managed audit agreements with the DOR, will not be eligible to apply for amnesty. Stay tuned as the DOR comes out with more details about the program and how to apply.
- The phase-out of the capital tax has been delayed. It was originally due to begin this year and end in 2024. Under the new legislation, it will begin in 2024 and continue until 2028.
- The 10% corporate surtax was extended for two more years, through the 2022 tax year.
- Interest on underpayments of estimated tax have been waived for the 2021 tax year if the underpayment is due to corporation business tax changes effective in 2021.

Attorneys

Paul Baldovin Jr.
Open Weaver Banks
Richard Campbell
Katherine Cauley
Thomas Collura
Paul Comeau
William Comiskey
Ariele Doolittle
Christopher Doyle
Catherine Eberl
Joseph Endres
Debra Herman
Daniel Kelly
Joshua Lawrence
Timothy Noonan
Elizabeth Pascal
K. Craig Reilly
Emma Savino

Practices & Industries

State & Local Tax

- The limitation on the property tax credit against personal income tax in Connecticut to individuals who are over 65 years of age or have at least one dependent on their federal tax return at the end of the year, has been extended through the 2022 tax year. It had already been extended through 2020 in the last biennial budget, so another two year extension is not surprising.
- A highway use fee will be imposed beginning in 2023 on certain multi-unit motor vehicles on public roads in Connecticut based on the vehicle's weight and mileage in the state.

Other tax measures enacted include:

- Beginning July 1, 2021, the admissions tax will only apply to movie theaters.
- A bottle deposit surcharge of 5 cents will be imposed on the sale of 50 milliliter bottles, apparently called "nips," as of October 1, 2021. As of January 1, 2023, it will apply to a wider range of bottled beverages, and increase to 10 cents in 2024 (other than for nips).

Update from New Jersey

New Jersey Nexus Initiative

Last month the New Jersey Division of Taxation notified taxpayers via its website that it has begun a new nexus initiative based upon the combined corporation business tax (CBT) returns filed by taxpayers for the 2020 tax year.

2020 was the first year that New Jersey required combined returns for corporations. On the new combined return, CBT-100U, taxpayers were required to identify each member of the combined group and state whether each member had nexus with New Jersey in 2020.

Now that the Division is reviewing the 2020 returns, it is focusing on taxpayers' nexus reporting to see if it will lead to the discovery of any companies that had nexus in years prior to 2020, but failed to file a separate CBT return. According to the Division's website, "The Division is in the process of identifying companies that have been included as part of a combined group filing (CBT-100U return) and indicated that they have nexus with New Jersey but have not filed as a separate entity for periods prior to 2019."

At the same time, the Division is giving taxpayers with this nexus issue a head start to come forward, in a manner similar to a voluntary disclosure, and comply with CBT filing requirements for years prior to 2020. Beginning June 15, 2021, and running through October 15, 2021, companies that had nexus with New Jersey prior to filing as part of a combined 2020 CBT return have the opportunity to come forward and voluntarily comply with pre-2020 CBT filing requirements.

Who is eligible to participate in the New Jersey nexus initiative? The Division's notice to taxpayers explains that if the required information is provided, the Division "will consider entering into a Closing Agreement with approved companies" based on the following:

- The applicant must not have been incorporated in New Jersey, authorized to do business in New Jersey, or registered for CBT prior to being included as part of the combined return;

- The applicant must provide the New Jersey registration number of the managerial member identified on the combined return;
- The lookback period will be limited to the periods ending after June 30, 2016, or the date nexus was established with New Jersey, whichever is later. Returns for prior periods will not be required;
- The applicant must file all required returns and remit payment of the reported tax liability in full within 45 days of execution of the agreement;
- The Division will waive all penalties;
- The applicant must remit payment of interest within 30 days of assessment; and
- All returns will be subject to routine audits.

Note that the Division does not guarantee that it will enter into a closing agreement with an applicant, but promises to "consider" entering into a closing agreement. In addition, the application requires disclosure of the identity of the applicant and is not submitted on an anonymous basis.

According to the Division's notice, failure to take advantage of this initiative will result in the lookback period going beyond return periods ending after June 30, 2016 and all applicable penalties and interest being assessed.

Eligible companies that first reported having nexus with New Jersey in 2020 should give consideration to participating in the nexus initiative since the Division now has a simple method for identifying these companies based on the filed 2020 CBT returns. The most likely companies to come within the scope of the nexus initiative are out-of-state sellers of tangible goods that believed they were protected from income taxation by P.L. 86-272. The Division has long held the view that even if P.L. 86-272 companies are not subject to income taxation they must still file NJ CBT returns and pay the minimum tax if they have nexus. In addition, the Division has been outspoken about its position that such companies must be included in the combined CBT return. According to Tech. Bull. TB-89(R) (Jan. 13, 2021):

- If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection since the combined group is a taxpayer pursuant to N.J.S.A. 54:10A-4(h).

Thus, even if P.L. 86-272 companies did not check the nexus box on the combined CBT return, we expect the Division to be on the lookout for those companies to determine if minimum tax returns should have been filed in years prior to 2020 or whether the companies exceeded permitted solicitation activities in New Jersey and are responsible for paying CBT on their entire net income.

Other options for compliance in New Jersey. Taxpayers who are interested in resolving prior years for other types of taxes should be aware that New Jersey also has a voluntary disclosure program available for resident and nonresident gross income taxes, partnership withholding, sales and use, CBT and other New Jersey taxes. The voluntary disclosure program has the benefit of allowing taxpayers to remain anonymous until reaching an agreement with the Division.

New Jersey COVID-19 Extensions

See our recent State and Local Tax alert for an update on guidance from the Division on important tax deadlines extended by COVID-19 and the impact of the end of New Jersey's public health emergency.

Update from New York City

NYC's Convenience Rule. In June, the New York City Department of Finance issued a letter ruling to a business operating at an eligible Relocation and Employment Assistance Program ("REAP") premises that concluded that for purposes of the employment share calculation, the Taxpayer may include those employees who were working at the location but because of government mandated closures due to the COVID-19 emergency subsequently worked remotely, provided that the Taxpayer treats those employees as working at the eligible premises for all purposes related to taxes imposed by New York City.

The Relocation and Employment Assistance Program offers businesses tax credits for relocating jobs from outside of New York City or below 96th Street in Manhattan to designated locations above 96th Street in Manhattan or in one of the other four boroughs. The Taxpayer in the ruling in prior years claimed a REAP credit based on employees working at their Brooklyn office. However, due to the COVID-19 emergency employees of the Taxpayer that would work at the Brooklyn office during the taxable year, and were included in the employment share calculation, were mandated to telework for the remainder of the Taxpayer's taxable year, which ended August 31, 2020. The Finance Department ruled that the Taxpayer was eligible for a REAP credit against its Unincorporated Business Tax from the date of the government closure through August 30, 2021, the end of the Taxpayer's next fiscal taxable year.

For those readers familiar with our writings, the "convenience of the employer rule" generally deems days a New York State (or City)-based employee works outside the State (or City) to be counted as New York State (or City) days for personal income tax purposes unless the employee is working outside the State (or City) because the employer has required the employee to do so. The City's ruling employs convenience-rule concepts to telecommuting during the pandemic to the extent of an employee-based credit, so that eligible businesses may not lose their eligibility for such credit. The City's condition "that the Taxpayer treats those employees as working at the eligible premises for all purposes related to taxes imposed by New York City," begs the question whether the City's law supports that approach.

Extension of Tax Breaks for NYC Co-op and Condo Owners

On June 29, 2021, Governor Andrew Cuomo signed into law S.B. 7031 that extends the property tax abatement program for qualifying home owners in housing cooperatives and condominiums in New York City for two years through 2022. The abatement program provides for a 28.1% partial property tax abatement for cooperative and condominium units assessed at $50,000 or less, a 25.2% partial abatement for units assessed at more than $50,000 but less than or equal to $55,000, a 22.5% partial abatement for units assessed at more than $55,000 but less than or equal to $60,000, and a 17.5% partial abatement for units assessed at more than $60,000. As many readers may recall, in 2013, the New York State Legislature began to phase out the property tax abatement for condominium and co-op owners whose New York City condo or co-op is not their primary residence. (We wrote about those changes in a recent State and Local Tax alert). Beware if you are a New York City condo or co-op owner who is currently receiving the tax abatement, and you are claiming a change of domicile from New York City to another state or to the burbs in New York State, you will want to address the tax abatement. (We can help!)

Contact Open Weaver Banks (646.218.7524), 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.