

TAX UPDATES FROM CONNECTICUT, NEW JERSEY AND NEW YORK CITY - JANUARY 2022

Hodgson Russ Tristate Tax Alert
January 18, 2022

Happy New Year everyone. In the first installment of the Tristate Tax Alert for 2022 we have updates on Connecticut's tax amnesty program, New Jersey's extended assessment and refund deadlines and a recent New York City decision on the real property transfer tax.

Update from Connecticut

Connecticut Amnesty Program Continuing Through January 31

The Connecticut Department of Revenue has been actively contacting taxpayers, and those it thinks might be taxpayers, to encourage them to participate in the state's amnesty program, which runs through January 31, 2022. As discussed in our Tristate Tax Alert [here](#), the program allows participating taxpayers with undisclosed tax liabilities or assessed liabilities to avoid penalties and 75 percent of the interest. Taxpayers must pay the taxes due in full at the time they apply for amnesty. According to a press release in early December, the program generated approximately \$12 million and had 3,600 participants in its first few weeks. The full court press by the Department of Revenue suggests that the state is hoping for the program to generate significantly more revenue before the January 31 deadline.

Update from New Jersey

Refund Deadlines Extended

Individual taxpayers in New Jersey have been surprised to hear that the Division of Taxation ("Division") is starting audits of their 2016 Gross Income Tax ("GIT") returns. Under normal circumstances, a 2016 GIT return would have been filed between April and October of 2017 and the statute of limitations on assessment would have closed three years later in 2020.

But these are not normal circumstances. The statute of limitations on assessments is being held open as a result of legislation passed in 2020 in response to COVID-19. P. L. 2020, c.19. If either the original assessment period or the consent period ends on or after April 14, 2020, the statute of limitations is extended by an additional 90 days after the State of Emergency declared by Governor Murphy in 2020 has ended.

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As of the writing of this alert, New Jersey's State of Emergency related to COVID-19 has not been lifted. Instead, quite the opposite has happened. On January 11, 2022, Governor Murphy issued Executive Order 280, which provides that the original Statement of Emergency "remains in full force and effect." As a result, the Division is permitted to begin GIT audits of an individual's 2016 tax year at this late date. For business taxpayers the open-ended statute of limitations is even worse because the corporation business tax and other business taxes are subject to a longer, four-year statute of limitations. So 2015 is still fair game for business taxpayers.

While not perfect *quid quo pro*, refund claim deadlines have also been extended. Previously the extended refund deadline was set to expire on January 1, 2022. But that deadline was recently extended to April 1, 2022 by executive order of Governor Murphy. If the statutory deadline for filing a claim for a refund or credit was on or after March 9, 2020, and before April 1, 2022, that claim can still be filed by April 1, 2022. For individuals, a refund claim must be filed within the later of: (i) three years from the time the return was filed or (ii) two years from the time the tax was paid. N.J.S.A. 54A:9-8. So, for example, a GIT filer that filed a 2016 return on October 1, 2017 has until April 1, 2022 to file a refund claim with respect to the 2016 return.

Stay tuned as we will provide updates if there are further revisions to the New Jersey statute of limitations on tax assessments and refund claims.

Update from New York City

Recent New York City Real Property Transfer Tax ALJ Case

In this issue, we highlight a recent determination by an Administrative Law Judge ("ALJ") of the New York City Tax Appeals Tribunal, Administrative Law Judge Division. In *Matter of Park Central Hotel*, TAT(H)15-33(RP) (Oct. 29, 2021), the ALJ ruled that the measure of consideration upon which the New York City Real Property Transfer Tax ("RPTT") on a qualified real estate investment trust ("REIT") transfer is based on the estimated market value ("EMV") as determined by the Commissioner of Finance for real property tax purposes as reflected on the most recent notice of assessment issued by the Commissioner of Finance. The ALJ rejected the Commissioner of Finance's argument that the consideration for the transfer should be on the actual total consideration.

Petitioners, Park Central Hotel (DE) LLC and PCH TIC Owner LLC, collectively the Grantors, transferred in the aggregate 100% of the tenancy-in-common interests in a condominium unit to PC Festivus LLC, the Grantee, which is wholly owned by LaSalle Hotel Operating Partnership L.P. ("LaSalle"). LaSalle Hotel Properties was at the time of the transaction a real estate investment trust ("REIT") as defined in Internal Revenue Code section 856, and the general partner in LaSalle. On the date of the transfer, LaSalle issued Class A Partnership Units of ownership to the Grantors, who were admitted as limited partners of LaSalle. In exchange for the real property interests, the Grantors also received \$382,792,818 to pay off the balances of the remaining mortgage and mezzanine loans, plus \$13,441,833 for the equity in the property. The \$13,441,833 of equity consideration was the sum of \$8,000,100 from the Class A partnership units in LaSalle, plus \$5,441,733 in cash. Thus, more than 40% of the equity consideration received by the Grantors was in the form of an interest in an entity controlled by a REIT, which resulted in the transfer constituting a qualified REIT transfer under the RPTT, as stipulated by the parties.

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The RPTT returns filed by the Grantors reported the consideration for the transfer using the EMV of the property, which was \$105,808,170, based on the most recent Notice of Property Value issued by the Commissioner of Finance. The Commissioner of Finance issued two Notices of Proposed Tax Adjustments, which stated, “[a]lthough the requirements were met to qualify as a REIT transfer and the lower REIT tax rate of 1.3125% as per NYC Administrative Code Section 11-2102, the consideration for the REIT transfer was deemed to be based on the actual total consideration for the property as per the 12/29/11 Closing Statement and the 1/4/12 Purchase Price Allocation Report of \$396,234,651.” Petitioners filed petitions for redetermination of a deficiency of RPTT.

The ALJ began his discussion by stating that since the parties stipulated that the transaction qualified as a REIT transaction, the statutory scheme at issue is not complicated or difficult to construe. The ALJ explained that under the RPTT law, special rules apply for qualifying REIT transfers, including a reduced rate of tax (50% of the otherwise applicable rate) and the following statutory provision (Admin. Code §11-2102.e.(3)) governing consideration, which was at issue in the case:

For purposes of determining the consideration for a real estate investment trust transfer taxable under this subdivision e the value of the real property or interest therein shall be equal to the estimated market value as determined by the commissioner of finance for real property purposes as reflected on the most recent notice of assessment issued by such commissioner, or such other value as the taxpayer may establish to the satisfaction of such commissioner.

Rejecting the Commissioner of Finance’s argument, the ALJ made clear that “[t]he statutory scheme does not impose other prerequisites to using EMV as the measure of consideration for REIT transfers. Nothing in the statute indicates that EMV is to be used only in particular circumstances, such as when the value of the property cannot otherwise be established. No language exists limiting EMV to a fallback position when the general rules for computing consideration do not yield a result.” Finally, since the taxpayers did not attempt to establish a value other than EMV, the ALJ determined that EMV is the measure of consideration upon which the RPTT is computed.

This ALJ Determination highlights the specific statutory rules, and thus distinctions, set forth in New York City’s RPTT for particular types of transactions. Often the relevant transfer tax issues are whether there is a taxable conveyance, what is the applicable tax rate and how is consideration measured for the transfer. New York State, like New York City, also imposes a Real Estate Transfer Tax, which has the same complexities. Moreover, the State and City transfer tax treatment of a transaction may differ.

As a parting note, we’d like to remind everyone that New York State recently revised its statute to include responsible person liability provisions for the Real Estate Transfer Tax for conveyances occurring on or after July 1, 2021 (namely, by extending the definition of “person” to include any person who is an officer, employee, manager or member of a corporation, partnership, limited liability company, or individual proprietorship with a duty to act to comply with the transfer tax provisions, or who has acted.) This means that there can now be personal liability on a responsible person under the State’s Real Estate Transfer Tax. No corresponding changes were made to the City’s RPTT.

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 updates may impact you or your business.