

NEW JERSEY TAXATION UPDATE ACE SEMINARS INC.

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Estate Tax – Inheritance Tax

- As the ball dropped back in January 2018 the NJ Estate Tax was officially phased out
- The inheritance tax was not changed
- Due 8 months after death vs estate tax due 9 months after death
- Class A beneficiaries are exempt
- Class C & D are taxable at varying rates
- Class E is for charitable beneficiaries

Estate Tax – Inheritance Tax (Continued)

- **Class C:** brother or sister of decedent; the husband, wife, or widow/widower of a child of decedent (i.e., the son-in-law or the daughter-in-law of decedent); and half-brothers or half-sisters of the decedent. (Note that the terms “half-brother & half sister” refer to a sibling with whom the decedent shares one common biological parent. “Step-brothers and step-sisters” of the decedent are Class D beneficiaries.)

Estate Tax – Inheritance Tax (Continued)

- **Class C beneficiaries** are taxed at rates of 11%–16%, with the first \$25,000 exempt from taxation. Here is the progressive rate table for Class C beneficiaries:
- | | |
|-------------------|--------------------------|
| • First \$ 25,000 | Exempt |
| • Next 1,075,000 | 11% inheritance tax rate |
| • Next 300,000 | 13% |
| • Next 300,000 | 14% |
| • Over 1,700,000 | 16% |

Estate Tax – Inheritance Tax (Continued)

- **Class D: stepbrother or stepsister of the decedent, niece, nephew, cousin, other “distant” relatives such as 2nd cousins, and everyone else without a family relation to decedent (i.e., friends of decedent.)** Class D beneficiaries pay no inheritance tax if their gift is less than \$500. If in excess of \$500, they are taxed at a rate of 15% on the entire amount of their gift up to \$700,000, and at 16% on any amount over the first \$700,000. Thus, the classic “million-dollar inheritance” from one’s long-lost uncle is in New Jersey a net, after-tax gift of only \$847,000.

Estate Tax – Inheritance Tax (Continued)

- **Class E- Gifts to charitable organizations, churches etc.- all gifts to charities and entities below are 100% exempt from NJ Inheritance Tax:**
- Gifts to The State of New Jersey or any political subdivision thereof, or any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of or in trust for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation; provided, that the exemption does not extend to transfers of property to such educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal, and like exemption on transfers of property for the benefit of such institutions and organizations of this State.

Individual Income Tax

- New Jersey does not consistently follow federal rules
- New Jersey uses the bucket system of taxation
- The statutes currently include 16 buckets
- If income does not fit into one of the buckets or “classes” then it is not taxable; ex. Straight Debt Relief with no asset transfer
- Contrast this with debt relief with deed transfer is taxable regardless of IRC §108
- Losses in one bucket cannot be used against income in another bucket
- Very limited NOL provision which is forward only and no carrybacks

Individual Income Tax (Continued)

- Salaries and wages defined as remuneration for services rendered
 - This is the type of income we associate with a W-2
 - Also include taxable distributions from HSA
- Exclude moving expenses included in your W-2 but deductible as of 12/31/2017
- IRC Sec 125 Cafeteria plan amounts are taxable in NJ
- Only IRC Sec 401(K) plan deductions reduce wages

Individual Income Tax (Continued)

- Interest income
 - Earning on debt and debt instruments See GIT-5 for a nonexclusive list of taxable and exempt interest income
 - Exclusion for NJ Municipal interest income
 - Exclusion also includes Port Authority bonds and USTY
 - Other State's municipal bond interest is taxable
 - Muni money market rule
- Dividend income
 - Exclusion for USTY & municipal dividends

Individual Income Tax (Continued)

- Net profits from business
 - This is income we associate with Schedule "C"
 - NJ does not follow the 50% meal limitation so for a NJ schedule "C" all meals are deductible
 - Similarly, the 50% deduction on entertainment still applies
 - Taxes based on income are an addback
 - Filing fees are not, example IT-204-LL fee or Delaware annual report fee
 - See TB-80 taxes that are addbacks or excludable

Individual Income Tax (Continued)

- Net gains from sale, exchange or dispositions of property
 - This is income we associate with Schedule “D”
 - This would also include gains we associate with Form 4797 for a sole proprietor
 - Includes the sale of real estate such as from a schedule “E” page 1
 - Excludes income excluded for federal purposes like exchanges in reorganizations (mergers and acquisitions) or IRC §1031 exchanges or IRC §121 (sale of personal residence)
 - An exchange exempt under IRC §351 will be excluded as well
 - Special rule for basis adjustment for sales of real estate, real estate partnerships (Koch rule)
 - Special basis increase for S Corporations stock for losses not previously utilized (Smith Case)

Individual Income Tax (Continued)

- Gambling winnings (net of gambling losses)
- Estate and Trust income
 - Note NJ reduces all income to one number
- Income in respect of a decedent
- Distributions from a pension trust which were excluded when contributed
 - This is income we associate with IRAs and 401(k) plans
 - IRAs exclusion equal to the ratio of contributions over current value
 - Same rule applies for 401(k) contributions before 1983

Individual Income Tax (Continued)

- Partnership income
 - This is income we associate with a form 1065 K-1
 - Like trusts NJ reduces all income to one number
 - NJ Include only the income items and ignores expenses
 - Look to lines 1 to lines 11 of the K-1 form
 - Limited number of deductions are allowed
 - Contributions related to the business
 - 50% federal disallowance of meals
 - IRC SEC 754 Deduction
 - If you do not receive a NJ-K-1 you need to recreate it yourself
 - Don't forget to compute adjustments, such as, a depreciation adjustment or tax addbacks

Individual Income Tax (Continued)

- Prizes and awards
 - Lottery winnings exclusion was repealed in 2009
- Rental value of a residence furnished by the employer
 - This is what we would associate with a super's apartment
- Alimony received under a divorce decree not including child support
- NJ does not follow the TCJA change to alimony for divorces after 2018

Individual Income Tax (Continued)

- S Corporation income
 - This is income we associate with form 1120S-K-1
 - Like trusts NJ reduces all income to one number
 - State income tax addback – TB-80
 - Depreciation adjustments
 - Be mindful that there may be a different AAA for NJ
 - Ability to offset inside gain with outside loss if liquidation occurs in year of sale
- Income, gain, or profit derived from acts or omissions defined as crimes or offenses under the Laws of this State or any other jurisdiction
 - This include the usual suspects like embezzlement

Individual Income Tax – Exclusions/Exemptions

- Social Security Income
- Death benefits
- Gifts and inheritances
- Compensation for illness or disability
- What we would exclude under IRC §114
- Unemployment insurance benefits
- Commuter transportation benefits
- Municipal bond interest
- Distributions from state tuition program
- Distributions from ABLE used for disability expenses
- Distributions from HSA (conversions are taxable)
- For 2021 military pay is now exempt from tax

Individual Income Tax – Deductions (not)

- NJ does not allow for NOL carryforward or carryback
- NJ does not allow for a capital loss carryforward
- NJ does not allow for passive loss carryforwards
- NJ does allow Alternative Business Calculation Adjustment
- Use forms NJ-BUS-1 and NJ-BUS-2
- You add up the losses from “C”, “E”, Partnerships and S Corporations
- It is now fully phased in at 50% of the business increment for 2016 and after
- See Koch rule discussed above

Individual Income Tax - Deductions

- Medical expense in excess of 2% of NJ income
- Self employed health insurance
- Personal exemption
- Real estate taxes
 - Limited to \$10,000 for years before 2018
 - Limited to \$15,000 for 2019 and thereafter
 - Deduction generally limited to amount on Green Card
- Alimony
- Contributions to HAS
- Bone marrow and organ donors can deduct up to \$10,000 of unreimbursed expenses (2020 budget)

Individual Income Tax – Deductions (Continued)

- Pension plan income exclusion of up to:
- For 2018 \$45,000 S \$60,000 MFJ, \$30,000 MFS
- For 2019 \$60,000 S \$80,000 MFJ, \$40,000 MFS
- For 2020 and beyond \$75,000 S \$100,000 MFJ, \$50,000 MFS
- Requirements are for income \$100,000 or less (cliff for loss of benefit)
- At least age 62, blind or disabled

Individual Income Tax – Deductions (Continued)

- For 2021 the exclusion/exemption is based on income
- If total income is \$100,000 or less
- Then the exclusion maximum is: \$75,000 S \$100,000 MFJ, \$50,000 MFS
- If total income is \$100,001 - \$125,000
- Then the exclusion maximum is: 37.5 % S 50% MFJ 25% MFS of taxable pension income
- If total income is \$125,001 - \$150,000
- Then the exclusion maximum is: 18.75 % S 50% MFJ 12.5% MFS of taxable pension income

Individual Income Tax – Deductions (Continued)

- Other Retirement Exclusion
 - Over 62 at year end
 - Gross income of \$100,000 or less (makes high exemption useless)
 - Earned income from wages, “C”, partnership or S Corps is less than \$3,000
 - Did use up the entire allowable exclusion for your filing status
 - See examples 4 & 5
- Special exclusion
 - You do not qualify for Social Security (less than 40 quarters)
 - Over 62 at year end
 - Can be applied to any income class
 - Limited to \$6,000 MFJ or \$3,000 for S & HOH

Individual Income Tax – Deductions (Continued)

- Veteran’s exemption for veterans honorably discharged or released from active duty
- For 2021 extended to include peacetime veterans
- Exemption was \$3,000 in 2017 and \$6,000 for 2018 and thereafter
- Both spouses can get it if they both qualify
- Available to residents and nonresidents
- Must provide documentation including DD-214, WD AGO 53, WD AGO 53-98, WD AGO 55, NAVCG 553, NAVMC 78PD, NAVPERS 553
- Use Veterans Exemption Submission Form as cover sheet
- Full list on NJ Division of Taxation Website
- Best to upload documents before filing to expedite processing

Individual Income Tax - Pension Examples 1

- Lisa is 65 years old. Lisa is single. She has gross income of \$25,000 which includes \$10,000 of pension income.
- Since she earns less than \$100,000 and is over 62 at year end
- Linda qualifies for the pension exclusion of \$10,000

Individual Income Tax - Pension Examples 2

- Mork & Mindy are both 65 years old and file MFJ. Mork earns pension income of \$15,000. They have gross income of \$150,500.
- They are over 62 at 12/31
- They earn more than \$150,000
- They do not qualify for the pension exclusion

Individual Income Tax - Pension Examples 3

- Mork & Mindy file MFJ. Mork is 65 years old and earns pension income of \$15,000. Mindy is 61 and earns a pension of \$20,000. They have gross income of \$85,000.
- He is over 62 at 12/31 while she is not
- They earn less than \$100,000
- He qualifies while she does not qualify for the pension exclusion
- The exclusion is limited to \$15,000.

Individual Income Tax - Pension Examples 4

- Bob & Carol are over 65 and file MFJ. Their income is \$29,000 consisting of interest & dividends \$25,000 and each earns a pension of \$2,000. They do not earn any wages, "C", partnership or S Corp. income.
- They are both over 62
- They earn less than \$100,000
- Regular pension exclusion is \$4,000
- Allowed an ORIE of \$25,000

Individual Income Tax - Pension Examples 5

- Ted & Alice are over 65 and file MFJ. Their income is \$59,000 consisting of interest & dividends \$50,000 and each earns a pension of \$2,000. They do not earn any wages, “C”, partnership or S Corp. income.
- They are both over 62
- They earn less than \$100,000
- Regular pension exclusion is \$4,000
- Allowed an ORIE of \$55,000

Individual Income Tax - Pension Examples 6

- Ted & Alice are over 65 and file MFJ. Their income is \$59,000 consisting of interest & dividends \$50,000 and each earns a pension of \$2,000. Ted earns a salary of \$5,000 working 1 day a week at the local Walmart.
- They are both over 62
- They earn less than \$100,000
- Regular pension exclusion is \$4,000
- They cannot qualify for an ORIE since Ted earns a salary greater than \$3,000

Individual Income Tax – Just off The Press

- Bone marrow and organ donors are granted paid leave for their donation – 30 days for organ donation – 5 days for marrow donation
- NJ BAIT regime is operative - credit provided for BAIT paid
- Credit available for other states – list is in development
- Beginning in 2020 there is a tax rebate of \$500 or the amount of tax
 - for income not more than \$150,000 if MFJ/HOH or \$75,000 for MFS/S
 - Residents of NJ
 - Have a dependent child
 - Have a “balance of tax” of \$1 or more (line 44)

Individual Income Tax – Just off The Press

- New education deduction for 2021 for taxpayers making up to \$200,000
- Contributions to NJBEST – New Jersey’s 529 plan
- Up to \$10,000 of NJ in-state tuition
- Up to \$2,500 of NJ college loan (NJCLASS) payments
- Taxpayers with gross income < \$75,000 will get a one time grant of up to \$750 to a NJBEST plan as an incentive to save for higher education
- Attorney fees for False Claim Action included in taxable income (can’t report just the net award) – Depace v. NJ Division of Taxation

Individual Income Tax – Covid-19 Relief

- 2019 returns and Q1 & Q 2 Estimates were due 7/15/2020
- 2020 returns were due 5/15/2021
- **Did not include Q1 estimates**
- No nexus for WFH (work from home) through 10/1/2021
- This also applies to withholding tax
- PPP loan debt forgiveness is not income and all expenses are deductible
- NJ does *not* follow the rule of repaying IRA withdrawals over 3 years
- 60 day rule applies

Individual Income Tax – Hurricane Ida Relief

- All returns due after August 26, 2021 and before January 3, 2022 are now due 1/3/2022
- Federal guidance followed
- Includes tax payments and estimates
- Includes Corporate Combined Returns

Individual Income Tax - TCJA

- IRC § 965 repatriation is taxable without a IRC § 965 (c) deduction
- NJ treats it like a special dividend (otherwise it would be nontaxable – remember – the bucket system)
- There is no special tax rate
- There is no option for an 8 year payout of the 965 tax

Individual Income Tax - TCJA

- GILTI is not taxable to individuals
- GILTI taxable on distribution as a dividend
- GILTI is a corporate income concept
- IRC Sec 163(j) interest expense limitation does not apply to individuals
- Excess losses do not apply as loss in one bucket (category of income) do not offset income in another
- Likewise NOL limitations do not apply as NJ does not allow for NOL carryforwards or carrybacks (except for the limited BUS-1/2 deduction)
- Itemized deduction limitations also do not apply
- 2018 Legislation permitting the creation of municipal charity has gone nowhere

NJ TAX Rates

Single Tax Brackets	2019	2020/2021
• \$0 - \$19,999.99	1.4%	1.4%
• \$20,000 - \$34,999	1.75%	1.75%
• \$35,000 - \$39,999	3.5%	3.5%
• \$40,000 - \$74,999	5.53%	5.583%
• \$75,000 - 499,999	6.37%	6.37%
• \$500,000 - \$999,999	8.97%	8.97%
• \$1,000,000 - \$4,999,999	8.97%	10.75%
• \$5,000,000 +	10.75%	10.75%

NJ TAX Rates

MFJ	2019	2020/2021
• \$0 - \$19,999.99	1.4%	1.4%
• \$20,000 - \$49,999	1.75%	1.75%
• \$50,000 - \$69,999	2.45%	2.45%
• \$70,000 - \$79,999	3.5%	3.5%
• \$80,000 - \$149,999	5.525%	5.525%
• \$150,000 - 499,999	6.37%	6.37%
• \$500,000 - \$,999,999	8.97%	8.97%
• \$1,000,000 - \$4,999,999	8.97%	10.75%
• \$5,000,000 +	10.75%	10.75%

Corporation Business Tax Rates

- C Corporations
- Higher of computed tax or fixed dollar minimum
- Fixed dollar minimum \$500 for income < \$100,000
- Fixed dollar minimum \$750 for income \$100,000<> \$250,000
- Fixed dollar minimum \$ 1,000 for income \$250,000<> \$500,000
- Fixed dollar minimum \$ 1,500 for income \$500,000<> \$1,000,000
- Fixed dollar minimum \$2,000 for income > \$1,000,000

Corporation Business Tax Rates

- S Corporations
- Fixed dollar minimum based on revenue
- Fixed dollar minimum \$375 for receipts < \$100,000
- Fixed dollar minimum \$562 for receipts \$100,000<> \$250,000
- Fixed dollar minimum \$ 750 for receipts \$250,000<> \$500,000
- Fixed dollar minimum \$ 1,125 for receipts \$500,000<> \$1,000,000
- Fixed dollar minimum \$1,500 for receipts > \$1,000,000

Corporation Business Tax Rates - Surcharge

- Tax rate is 6.5% for income of \$50,000 or less
- Tax rate is 7.5% for income greater than \$50,000 but equal to or less than \$100,000
- Tax rate is 9% for income over \$100,000
- Corporate Surcharge applies to income in excess of \$1 million
- Corporate rate surcharge was 2.5% for 2018 & 2019
- Corporate rate surcharge was supposed to go down to 1.5% for 2020 & 2021 but was extended at 2.5% through December 31, 2023
- **New rates apply as a cliff**
- S Corporation income included in a combined return is not subject to the surtax

CBT General Provisions

- NJ does not have economic nexus but
- NJ generally applies a physical presence nexus standard
- NJ follows a definition similar to NYS
- Doing business is defined
 - Deriving receipts from the state
 - Employing capital or property in the state
 - Maintaining an office in the state
- Like NYS registration alone creates nexus
- NJ follows PL 86-272 but requires filing a return and paying the minimum tax – Pomco Graphics
- Watch out for Telecommuters – Telebright Corp. vs. Director (2012)

CBT – Income Calculation

- Starting point is federal taxable income before NOL and special deduction – line 28
- State Adjustments include:
 - Addback of state income taxes – NJ and other
 - OHIO CAT and Washington B&O are addbacks – see TB-80
 - Related party interest expense – before application of IRC §163(j)
 - Pre 2018 exemption for payment to related foreign entity
 - Addback for related party intangible expense (royalty) unless
 - Similar terms used with unrelated entities
 - Related entity has nexus with NJ (when separate entity filing applies)

CBT – Income Calculation

- Addition or subtraction for depreciation
- Addback for DMD (199 deduction) if not a manufacturer
- No subtraction for USTY (subtraction applies only to individuals)

CBT – IRS Conformity

- New Jersey does **not** consistently follow federal rules
- NJ follows IRC §1031 (like kind exchange) and IRC §1033 (involuntary conversions)
- NJ conforms to IRC §465 and IRC §469 insofar as the starting point is federal taxable income. However, NJ does not have a concept of passive loss c/f
- NJ follows IRC §965 but does not allow the §965(c) participation deduction
- NJ includes GILTI as taxable income

CBT Trivia

- Alternative Minimum Assessment is repealed for years beginning after 1/1/2018
- PL 86-272 preempts the AMA – June 2019 ruling the NJ Tax Court - Stainslaus Food Products Co
- Appealed and final ruling 4/22/2021
- Procacci Brothers – Pick up of rejected produce in own trucks exceeds PL 86-272 protection

NJ CBT - Interest Expense

- As a result of Business Tax Reform in 2002 related party interest expense between NJ companies has been limited
- Prior to IRC 163(j) related party interest expense had to meet all 3 criteria to be deductible
 - A principal purpose of the transaction giving rise to the payment of the interest was not to avoid tax otherwise due
 - The interest is paid pursuant to arm's length contracts at an arm's length rate of interest
 - The recipient related member was subject to NJ or another State's income tax at a rate that is within 3 percentage points of the tax rate imposed on the NJ payer entity

NJ CBT - Interest Expense (Continued)

- Exceptions to Related party addback include
- Both parties are included in a combined return
- Unreasonable Exception – Kraft Foods Global Inc & Beneficial New Jersey Inc vs Director, Division of Taxation
- In Beneficial there were back to back loans but not guaranteed to the parent
- Subsidiary guarantees debt – very difficult to meet since subsidiary rarely named as a debtor

NJ CBT - Interest Expense Addback Exemptions

- New for 2019 and beyond requires interest payments to related foreign entity are exempt from addback if:
 - That there be a treaty in place with the foreign country
 - The related member is subject to tax
 - The related member paid tax with the 3% rule above
- For 2018 and forward – FDII or GILTI exception – to the extent that CFC income is included in combined taxable income

NJ CBT - Interest Expense (Continued)

- IRC 163(j) is layered on top of this limitation
- Since NJ CBT starts with federal taxable income – line 28 NJ effectively conforms to the new limitation
- NJ applies the 163(j) limitation pro-rata between related and unrelated parties (regardless of whether the interest is already subject to the existing limitation)
- Company A has \$100 of interest expense. This includes \$20 accrued to a related party. IRC 163(j) limits the federal deduction to \$75. Therefore, the addback for NJ purposes is \$15.
- FDII or GILTI exception – to the extent that recipient income is included in taxable income no double addback

CBT & TCJA

- IRC §965(a) deemed repatriation is included in taxable income as a special dividend
- IRC §965(c) participation deduction is not allowed
- No gross up of dividend and no FTC to offset the income
- No 8 year spread of and payout of tax
- Previously DRD was 100%
- Effective 1/1/2017 DRD reduced to 95% if ownership at least 80%
- Therefore 5% of repatriation is subject to NJ tax for 2017 calendar year filers
- This 5% is apportioned at either the lesser of average apportionment over 2015 – 2017 or at 3.5%

CBT & TCJA (Continued)

- A 50% DRD is provided for dividends from entities owned at least 50% but less than 80%
- The includable part (if at 50%) is subject to the normal apportionment for 2017 (can't use the average or 3.5%)
- GILTI is included in taxable income unless a combined return is filed
- IRC §250 deduction is allowed
- Same for FDII
- IRC §163(j) is also effectively applied

CBT - Sourcing

- Market based sourcing for service revenue effective for years after 12/31/2018
- Does not apply to unincorporated entities (since in CBT section)
- Services Sourced to where benefit is received
- Special rule for Airlines and Trucking companies
- Special rule for broadcasters
- Special Rule for securities brokers & dealers
 - Receipts from asset management services are sourced to NJ if the customer is in NJ
- If it is not clear where the benefit is received then the following tiered rules apply:
 - For services provided to individuals look to billing address
 - For services provided to businesses look to where the service was ordered, if not, then to business billing address

Corporate Business Tax - NOLs

- Like NYS NJ has adopted the PYNOLC scheme to convert prior year NOLs from pre-apportionment to post apportionment
- Unlike NY a pool is not created
- Historical NOLs retain their age in the 20 year carryover term
- Pre-unitary NOLs can only be used by the entity generating the NOL
- Applicable to periods ending after July 31, 2019 (AS 4495 9/24/2018)
- For the conversion use the apportionment percentage for 2018 (calendar filers) or the last filing period ending before July 31, 2019 (the year before the year of the conversion)

CBT – Credits

- The recent legislation added 2 new credits
- Business Employment Incentive Program – form 324
- Public Infrastructure Program – form 325
- Angel Investor Credit Revised retroactive to 2012 to 10% of the qualified investment
- Angel Investor Credit increases to 20% of the qualified investment for years beginning on or after January 1, 2020
 - Corporations get to carryforward the credit for the lesser 15 years or until used
 - Individuals have no carryforward provision – use it or lose it

CBT Combined Reporting

- Mandatory requirement for combined reporting for unitary business
- Ownership of more than 50% directly or indirectly vs. federal requirement of 80%
- Unitary defined as one economic unit of a group of business entities under common ownership that are sufficiently integrated, interdependent and interrelated through their activities to provide synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts
- All you need is one member to be subject to CBT to bring in the group
- NJ is applying the “Interdependence of Functions Test or Unity of Operations & Use Test

CBT Combined Reporting

- NJ has looked to these cases for guidance
 - Butler Brothers v McColgan, 315 US 501 (1942)
 - Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980)
 - Container Corp. of America v. Franchise Tax Board, 463 U.S. 159 (1983)
 - Allied-Signal Inc. v. Director Division of Taxation, 504 U.S. 768 (1992)
 - Barclays Bank PLC v. Franchise Tax Board of California, 512 U.S. 298 (1994)
 - MeadWestvaco Corp. v. Illinois Dept. of Revenue, 553 U.S. 16 (2008)

CBT Combined Reporting

- Effective for tax years beginning after 12/31/2018 deferred to years after 7/31/2019 by AS 4495 (9/24/2018), therefore, 12/31/19 first year
- Water's Edge is the default rule
- Election to report on Worldwide basis
- Election to report on Affiliated basis
- Election to include S Corporations
- Joyce rule is applied to revenue factor of the apportionment (include in numerator only receipts of taxable entity – members that have nexus with NJ)

CBT Combined Reporting

- Includable entities to water's edge or worldwide include:
- US domestic Corporations
- 80/20 Corporations
- Foreign Corporations (WW election)
- Federal S Corporations
- NJ electing S Corporations
- Captives are included and exempt from the insurance premium tax
- Insurance companies are excluded
- Includes non-unitary entities if ownership is met
- Professional Corporations

CBT Combined Reporting

- Affiliate Election is limited to only US domestic corporations commonly owned
- Foreign organized companies are excluded by definition
- Apportionment uses Finnigan method – include all NJ receipts regardless of whether the member is a taxable member of the group

CBT Combined Reporting

- Olive Branch provided by the Division for SEC filers
- In the Fifth year into the combined reporting regime a new deduction is available
- 10% of the increase in deferred tax liability generated from the application of combined reporting (54:10A-4k(16)(E))

CBT Combined Reporting – New

- For 2022 a new form is in development – Standardized Form
 - Will require attachment of the federal return
 - Will rely on federal return
 - Will start with federal consolidated income
 - Adjustments will be made to this amount
 - Still considering how to handle a NJ group which has different members than the federal consolidated return group – ex., foreign subsidiaries

CBT Combined Reporting – New

- The Division has either issued new TBs or revised previously issued TBs effective for privilege periods after 7/31/2020
 - To clarify that the combined group is treated as one taxpayer for limitations, such as,
 - Interest Expense
 - Contributions
 - Dividend received deduction
 - For eliminations
 - Qualification of PL 86-272 protection
 - Credit limitations

CBT Combined Reporting – New & Almost New

- For 2019 -2021 form CBT-100U is used to effect the combined reporting mandate
- The assigned managerial member of the group needs to be assigned an ID number to help with tracking
- This member then identifies the other members of the group
- Default is Waters Edge
- Election locked in for 6 years

CBT – Covid-19 Relief

- CBT, PTR, 1040 returns due April 15, 2020 deferred to July 15, 2020
- CBT returns due 10/15/20 provided additional Covid-19 relief making them due 11/15/2020
- Link to NJ page listing returns and extended due date
- <https://www.state.nj.us/treasury/taxation/duedates.shtml>

CBT Combined Reporting – New & Almost New

- Technical Corrections legislation signed Nov 4, 2020
- Retroactive and applies to returns just filed 11/15/2020
- NOLS can be sold within the group (technology & biotech NOLS)
- Members leaving the group can take NOLs with them
- Dividend received Exemption is now to apportioned via the combined group's apportionment
- Affiliate groups may now include foreign affiliates that earned ECI
- Any member's AMA credit can be applied against combined group liability

Partnership

- The federal return reflects a number of items separately stated on Schedule K
- The NJ return is the flow through to the individual member/partner
- NJ does not allow individuals most deductions
- NJ adds Schedule K lines 1 – 11 as one total number
- NJ allows a limited number of deductions
 - Depreciation adjustment
 - IRC §754
 - Charity – if relate to business

Partnership (Continued)

- 2 sets of apportionment
- A 3 factor equally weighted formula is used to apportion income to the partners
- A single sales factor is used to compute nonresident withholding
- This can result in over withholding or under withholding
- Nonresident withholding mandatory with no floor

Partnership – SALT Limitation Workaround BAIT

- 2020 is first year this is available
- Election to pay a business level tax where the partners/members are given credit for the BET (Business Entity Tax) also known as BAIT - Business Alternative Income Tax
- Election is required every year
- Tax computed in 4 brackets ranging from 5.675% on the first \$250,000 up to 10.9% for income over \$5 million
- Fly in the ointment – still need to pay in nonresident withholding for nonresidents

Partnership – BAIT Update

- Legislation is in the works to correct problems with the BAIT
 - To allow flow up/down the tiers
 - To remove duplication of nonresident withholding
 - To remove the S Corporation trap
 - To tax only source income for nonresidents (similar to NYS PTET)
 - Other minor cleanup items

Partnership

- The Per Partner Fee is constitutional – Ferrellgas Partner LP
 - This is a publicly traded partnership
 - It paid the maximum fee of \$250,000
 - There were 67,019 partners (K-1s) issued in 2009
 - There were 66,8735 partners (K-1s) issued in 2010
 - There were 82,047 partners (K-1s) issued in 2011
 - One of the constitutional challenges was that fee was a flat tax and not apportioned

Sales Tax – General Rules

- Sales of tangible personal property is taxable unless a specific exemption applies
- Services are exempt unless specifically enumerated
- Bundled transaction require application of True Object test
- Where both taxable and exempt items are sold together the transaction is taxable
 - Example: Rent a hotel room and you are provided with shampoo, lotions, soaps and other personal grooming items.
 - The object is the hotel rental and not the receipt of the gifts
 - Therefore, there is no sale of the shampoo
 - Likewise, the hotel cannot purchase these items for resale
 - Adamar case 1997

Sales Tax – Taxable Services

- Information services
- Spectator sports and place of amusement
- Animal boarding and grooming
- Carpet cleaning
- Garbage removal not under 30 day contract
- Investigation & Detective service
- Locker rental
- Massage not under prescription

Sales Tax – Taxable Services (Continued)

- Pager and answering service
- Parking or storage
- Photography & videography
- Security
- Snow removal
- Telecommunications both landline and wireless
- Tips paid to employees are exempt

Sales Tax – Digital World

- Computers sold with software – the whole charge is taxable
- Software is taxable if in tangible form - a disc in a box
- Software purchased electronically used exclusively in business is exempt
- Custom software is exempt. Therefore, the base package of SAP is taxable but the fee to customize is exempt and needs to be separately stated
- Software for general consumption is taxable regardless of the means of delivery
- Services are exempt so a website creation and design is exempt
- Repairs are taxable as are all repairs to tangible personal property

Sales Tax - Exemptions

- Clothing
 - Clothing & footwear for human use is exempt
 - Yarn fabric & thread used to repair or make clothing is also **exempt**
 - Protective clothing such as, masks, goggles, ear protectors qualify for the exemption
 - Accessories are taxable
 - Backpacks, barrettes, wigs or watches
 - Yarn fabric & thread used to repair or make a drape is **taxable**
 - Needles, sewing machines, knitting needles are always taxable
 - Sports equipment is taxable
 - Helmets, gloves, skates, pads and the like

Sales Tax - Exemptions (Continued)

- Food and food ingredients for human consumption off premises are exempt
- Includes dietary supplements
- Excludes alcoholic beverages and tobacco
- Candy is taxable and is defined as a confection that does not include flour or require refrigeration
- Beverages that contain milk, soy or rice milk, > 50% vegetable or juice content are exempt
- Plain water is exempt
- Carbonated beverages, juice drinks and the like are taxable
- Disposable packaging is exempt but the silverware and napkins are taxable
- Prepared food is taxable – defined as food heated or provided with eating utensils

Sales Tax - Exemptions (Continued)

- Medicine and health related products for human consumption or use are exempt
- Include prescription drugs
- Includes over the counter drugs like aspirin
- Knee braces and other prosthetic devices
- Exemption does not apply to supplies used by a doctor in the execution of medical services, such as, tongue depressors or needles and syringes
- Exemption does not apply to medicine or food for pets

Sales Tax - Exemptions (Continued)

- Equipment used predominantly in manufacturing is exempt from sales tax
- Assembling or refining also qualify
- Energy, short lived parts and autos do not qualify
- Manufacturing begins with raw materials and ends with a finished product.
- Controversy on packaging if separate from the flow of the production line.
- Catalyst and chemicals qualify even if not included in the finished product, such as , chemicals to process film
- QC does not qualify

Sales Tax - Exemptions (Continued)

- Resale exemption
- Must collect resale certificates (more complicated since Wayfair)
 - Good faith rule applies
- R&D Equipment and supplies if used exclusively for R&D
 - Here energy does not qualify as well
- Recycling equipment

Sales Tax - Exemptions (Continued)

- Repairs to or construction to real property – Labor is exempt. The purchaser of the materials pays tax.
- Capital improvement defined as increasing the value or lengthening the life of the structure
 - Contrast this with federal definition/requirement for capital improvement
- Repairs qualify if the work becomes part of the real property
- Repairs to personal property are always taxable
- Supplies purchased by a repairer may be bought tax exempt
- Landscaping is taxable as is carpet installation and snow plowing
- Installing shrubs is exempt

Sales Tax – New

- How not to trade-in a vehicle – Andrew & Laura Botwin

Sales Tax – Almost New

- Beginning with July 1, 2020 the sales tax of 6.625% on medical marijuana is being phased out as follows:
 - 4% Between 7/1/2020 & 6/30/2021
 - 2% Between 7/1/2021 & 6/30/2022
 - 0% for sales after 7/1/2022
- Municipalities with a population over 100,000 may now charge a parking tax of 3.5% on nonresidents (mostly at commuter lots)

Sales Tax (Almost New)

- A4261 passed both houses 6/30/2018
- Provision includes requirement of marketplace facilitators like Amazon or Etsy to collect sales tax if seller is not registered
- Effective Oct. 15, 2018
 - A surcharge on E-Cigarettes and tobacco
 - Surcharge of \$4.50 per ride for rideshare that begin and end in NJ. This affects UBER, LYFT, etc...
 - Short-Term housing through market facilitators now subject to sales tax. This is targeting Airbnb and similar websites.
 - This last provision was partially repealed Aug. 9, 2019

Sales Tax - Miscellaneous

- Like delivery charges Covid-19 surcharges are taxable if the product or service is taxable

Potpourri

- New Jersey provided a month extension to file corporate returns due 10/15/2020. They were due 11/15/2020. Remember this in case a notice arrives
- Mandatory electronic filing of W-2 series and 1099s forms
- On October 1, 2021 the motor fuel tax on gasoline was scheduled to decreased by 9.3 cents. Ironically, since then, the price of gas has skyrocketed
- NJ townships are looking to narrow the exemption from real estate taxes for NFP organizations

QUESTIONS?



EDUCATION
Pace University - MS Taxation
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Chaim Kofinas has over 40 years experience in accounting and taxation specializing in state and local taxation issues. He has spent the last 35 years advising clients on income tax and sales tax matters as well as representing clients before the IRS and State on exams and on appeals. Chaim has also advised clients in the construction field as well as Not-For-Profit clients.

Chaim is a frequent lecturer for this and other conference in the past and has written articles on a variety of tax issues.

At Goldstein Lieberman & CO LLC Chaim is a Tax Director who advises high net worth clients as well a working small business clients regarding U. S. and state and local taxation. Chaim also works with the tax group to set tax policy for the firm.

Prior to joining Goldstein Lieberman & CO LLC Chaim was a senior tax manager at WithumSmith+Brown PC, and later at Beacon CPA PC, where he advised multistate businesses and individual clients on federal and state and local tax matters including representation before the IRS and other taxing agencies. Chaim has also worked with foreign individual sand businesses making inbound investments into the US .

Chaim is currently the immediate Past Chair of the New York State Society CPA New York, Multistate & Local Taxation Committee as well as being active with the New York State Society CPA International Committee. During his tenure as Chair Chaim initiated a dialogue with the NYS Commissioners office and lead a delegation to meet the Commissioner in Albany.

AFFILIATIONS

American Institute of CPAs Tax Section
American Institute of CPAs – Personal Financial Specialist Section
New York State Society CPA New York, Multistate & Local Taxation
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