



MULTISTATE INCOME/FRANCHISE TAX

New Jersey announces Transfer Pricing Initiative Tax Alert

Overview

On June 16, 2022, the New Jersey Division of Taxation (the “Division”) announced the New Jersey [Transfer Pricing Initiative](#) (the “Initiative”), which invites eligible corporate income taxpayers to participate in a voluntary program aimed at resolving intercompany transfer pricing issues. The Initiative is intended to create an efficient resolution for transfer pricing audits. The Initiative began on June 15, 2022, and will continue through March 2, 2023; however, requests to participate must be received by September 15, 2022. Furthermore, New Jersey is a member of the [Abusive Tax Avoidance Transactions Partnership](#) with the Internal Revenue Service and other state taxing agencies. As a result of New Jersey’s membership in the partnership, the state is required to share leads and audit results with the other agencies regarding abusive tax avoidance transactions.

Note that New Jersey is the fourth state in the last two years to announce a transfer pricing initiative. For a discussion of other state transfer pricing initiatives, please see our previous Tax Alerts for [Indiana](#), [Louisiana](#), and [North Carolina](#).

This Tax Alert summarizes some of the Initiative’s eligibility requirements and procedures.

New Jersey Transfer Pricing Initiative

Eligibility and scope

New Jersey implemented mandatory combined reporting for taxable years beginning on or after July 31, 2019. The Initiative applies to all filed corporate income tax returns within the statute of limitations (“SOL”) that have intercompany transactions that may be subject to adjustment. As further discussed below, due to the pandemic, New Jersey has extended the SOL for assessments by an additional 90 days but the extension for refund claims has expired. Therefore, open years include tax year 2016 and forward.

The Initiative does not apply to matters in any stage of litigation. Eligible taxpayers include:

- Taxpayers currently under audit;
- Taxpayers notified of upcoming audit;
- Taxpayers with a case pending before the Division's Conference and Appeals Branch; and
- Unidentified taxpayers with related party intercompany pricing.

The election to participate in the Initiative is nonbinding. The taxpayer retains the right to opt out of the Initiative at any time prior to signing the Closing Agreement. The Division retains the right to disqualify any taxpayer that fails to cooperate, provide the documents or information as requested, disclose all transactions, or fulfill any of the terms of the Initiative.

For taxpayers that do not elect to participate in the Initiative by September 15, 2022, or do not successfully complete the Initiative, the Division will assess all applicable penalties, not waive any penalties, audit according to the regular audit schedule, and not agree to a methodology or settlement for any unaudited open tax years.

Procedures

Eligible taxpayers interested in participating in the Initiative must agree in writing to participate in the Initiative by completing and emailing an [Election to Participate](#) form to the Division at the email address provided before September 15, 2022.

To successfully complete participation, the taxpayer must:

- Provide all required transfer pricing, tax, and financial information and documentation to the Division by October 31, 2022;
- Cooperate fully in the Initiative;
- Accept the Division's proposal within 30 days. The taxpayer may offer modifications or adjustments to the proposal, but an agreement must be reached by the end of 30 days. Extensions to the deadline will be allowed on a case-by-case basis at the Division's sole discretion;
- Sign a [Closing Agreement](#) no later than 30 days after the Division proposes a settlement amount;
- Pay all New Jersey tax and interest as determined under the Closing Agreement; and
- Waive all rights to review or refund any amounts paid for the period covered under the Initiative except for refunds due as a result of federal corrections.

For taxpayers successfully completing the Initiative, the Department agrees to:

- Propose a settlement amount and methodology based on information provided and principles in the regulations under IRC section 482 and N.J.A.C. 18:7-5.10 within 90 days of receipt of all information described on the Election to Participate form;
- The settlement amount and methodology may be applied, at the mutual agreement of the parties, to all open tax years, including years currently under audit;
- Attempt to settle any corporate tax issues for the tax periods covered by the Initiative;
- Waive all applicable penalties; and
- Waive all rights to assess any additional tax, interest, or penalties except for adjustments relating to federal corrections for all settled tax types.

Statute of limitations

Due to the pandemic, New Jersey extended the SOL for assessments pursuant to N.J. Stat. Ann. sections 54:49-6 and 54A:9-4 by an additional 90 days after the State of Emergency has ended. Therefore, if either the original assessment period or the consent period ends on or after April 14, 2020, the Division can make an assessment on or before the expiration of the extended assessment period. As the State of Emergency has not been lifted, the extension remains in effect. In addition, [Executive Order 275](#) extended the statutory deadlines for filing a refund claim until April 1, 2022. Please note that under the Executive Order, the SOL for refund claims is no longer suspended.

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