

New Jersey law establishes a tax amnesty program

Overview

On July 1, 2018, Governor Murphy signed Assembly Bill No. 3438¹ (A3438) which includes the following modifications to New Jersey law:

- Establishes an amnesty period not to exceed 90 days.
- Creates a non-abatable 5% penalty for eligible taxpayers who fail to pay during the amnesty period.

This tax alert summarizes the parameters of this pending New Jersey tax amnesty, applicable to any state tax due on or after February 1, 2009 and prior to September 1, 2017.

Amnesty period and eligibility

A3438 establishes a tax amnesty period “not to exceed 90 days” and to end “no later than January 15, 2019.” The amnesty will apply to New Jersey tax liabilities for tax returns that are due on or after February 1, 2009 and prior to September 1, 2017 and permits eligible taxpayers who previously failed to pay any state tax to pay the tax due and half of the interest due as of November 1, 2018. Eligible taxpayers will not be required to pay the other half of the interest due as of November 1, 2018, as well as recovery fees, delinquency fees, and related penalties due to late payment. However, criminal and civil fraud penalties will not be waived. In order to qualify for amnesty, the taxpayer must file a return for the tax due on or before the last day of the amnesty period. Taxes paid under amnesty are final and not subject to refund, review or appeal.²

On July 17, 2018, the New Jersey Division of Taxation posted a notice, available [here](#), indicating that the amnesty will not begin until after November 1, 2018 and will end by January 15, 2019.

Taxpayers under criminal investigation at the time of payment are not eligible.

Five percent penalty for eligible taxpayers who fail to pay during the amnesty period

A3438 also provides that New Jersey tax liabilities eligible to be satisfied during the amnesty period that are not satisfied by the end of the amnesty period are subject to a 5% penalty. This penalty cannot be waived and is in addition to the tax owed, all other penalties, interest, and collection costs.

Considerations

Eligible taxpayers should review existing exposures for relevant New Jersey tax types and periods, including whether New Jersey tax exposures exist relative to tax types other than sales and use tax that may have been impacted by the US Supreme Court decision in *South Dakota v. Wayfair, Inc., et al.*³ (holding that a sales-based nexus statute did not violate the “substantial nexus” element of the dormant Commerce Clause,) and consult with their tax advisors regarding participation in this pending New Jersey tax amnesty.

Contacts:

¹ NJ A.N. 3438 (July 1, 2018). A copy of the adopted law is accessible [here](#).

² *Id.*

³ *South Dakota v. Wayfair, Inc., et al.*, No. 17-494 (June 21, 2018) 585 U.S. _____. For additional information on the potential nexus implications of *Wayfair* for state income tax purposes, see our June 28, 2018 MTS alert, available [here](#). For additional discussion of economic presence nexus considerations as they may exist relative to New Jersey Corporate Business Tax, please see the New Jersey Division of Taxation, TAM 2011-6 (January 10, 2011), available [here](#).

External Multistate Tax Alert

If you have questions regarding A3438 or other New Jersey tax matters, please contact any of the following Deloitte professionals:

Norman Lobins

Managing Director

Deloitte Tax LLP, Parsippany

+1 973 602 5373

nlobins@deloitte.com

Michael Bryan

Managing Director

Deloitte Tax LLP, Philadelphia

+1 215 977 7564

mibryan@deloitte.com

Kevin Friedhoff

Manager

Deloitte Tax LLP, Parsippany

+1 973 602 4216

kfriedhoff@deloitte.com

The authors of this alert would like to acknowledge the contributions of Mary Beth Munera to the drafting process. Mary Beth Munera is a Tax Consultant working in the Philadelphia Multistate Tax practice of Deloitte Tax LLP.

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