

New Jersey modifies provisions applicable to certain tax credit transfers

Overview

On January 16, 2018, Governor Christie signed Senate Bill 3305 ("S3305"),¹ modifying New Jersey's tax credit transfer provisions under the Grow New Jersey Assistance Act and the Public Infrastructure Tax Credit Program as follows:

- Gain or income derived from the sale or assignment of certain tax credit transfer certificates is excluded from New Jersey income.
- The period for transferees to use the credit is extended from three years to twenty years.
- The sale or assignment of a tax credit transfer certificate to an affiliate is exempted from the 75 percent measure of consideration.

The changes provided by S3305 relate only to tax credit transfer certificates received pursuant to the Grow New Jersey Assistance Act and the Public Infrastructure Tax Credit Program.

This tax alert summarizes these law changes, which are effective January 16, 2018.

Exclusion of gain from sale of tax credit

S3305 adds provisions excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate from entire net income and gross income, thus exempting such gain from New Jersey taxation for C corporations, S corporations and partnerships.²

Extension of time to use tax credit

Prior to S3305, taxpayers to whom credits had been transferred were required to use the transferred tax credit amount only in the period for which it was transferred or in any of the next three successive tax periods.³ Pursuant to S3305, the transferred tax credit amount can be used in the period for which it was issued or in any of the next twenty successive tax periods, making the period for utilization identical to the period permitted for the original tax credit certificate holder.⁴

Exemption for sale or assignment of the tax credit to affiliates

Prior to S3305, the sale or assignment of any amount of a tax credit transfer certificate could not be for less than 75 percent of the transferred credit amount.⁵ S3305 exempts the sale or assignment of tax credit transfer certificates to affiliates from this requirement.⁶ The bill effectively permits transfer to any affiliate for an amount less than 75 percent of the transferred credit amount regardless of whether that affiliate was party to the original incentive agreement.⁷

Considerations

The enactment of S3305 provides taxpayers with additional flexibility in monetizing benefits provided under certain of New Jersey's economic development incentive programs. Eligible taxpayers participating in either the Grow New Jersey Assistance Act or the Public Infrastructure Tax Credit Program should consult with their tax advisers if they are considering transferring or receiving such tax credits.

¹ Laws 2017, S3305, P.L., c.313. A copy of the adopted law is accessible [here](#).

² S3305, Page 19, Lines 3-6; Page 22, Lines 28-32; Page 25, Lines 1-4, 16-20.

³ NJ Stat. Ann. § 34:1B-247(c) and § 34:1B-251(d)(2).

⁴ S3305, Page 3, Lines 22-23.

⁵ NJ Stat. Ann. § 34:1B-248 and § 34:1B-251(d)(2).

⁶ S3305, Page 6, Lines 29-33; Page 8, Lines 38-41.

⁷ S3305, Page 6, Lines 29-33; Page 8, Lines 38-41.

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