



MULTISTATE INCOME/FRANCHISE TAX

## New Jersey revises elective pass-through entity business alternative income tax

### Tax Alert

### Overview

On January 18, 2022, the New Jersey governor signed [Senate Bill No. 4068](#) (“S4068”) into law. The law takes effect for tax years beginning on or after January 1, 2022. S4068 revises New Jersey’s elective pass-through entity business alternative income tax (“BAIT”) that allows pass-through entities (“PTEs”) to report and pay tax at the entity level. See [S3246 \(2020\)](#) and our previously issued [Tax Alert](#) for more details.

This Tax Alert summarizes some of the relevant provisions of S4068.

### Calculation of the BAIT

- The definition of “distributive proceeds” for partnerships is amended to separately define “distributive proceeds” for New Jersey resident individuals, trusts, and estates and all other partners.
  - “Distributive proceeds” for New Jersey resident individuals, trusts, and estates is the distributive share of partnership income derived from sources inside and outside New Jersey for partners as required to be reported under N.J. Stat. § 54A:5-4.
  - “Distributive proceeds” for all other partners is the distributive share of partnership income from sources inside New Jersey as required to be reported under N.J. Stat. § 54A:5-4 and determined under the allocation factors in N.J. Stat. § 54A:5-7 (allocations of income of nonresidents).
  - This change also effectively codifies previous administrative changes by the New Jersey Division of Tax that “distributive proceeds” mirrors the reporting of partnership income and S corporation income for New Jersey Gross Income Tax purposes.
- The definition of “distributive proceeds” for S corporations is the pro-rata share of S corporation income allocated to New Jersey as determined under N.J. Stat. § 54A:5-10, consistent with prior

application of the BAIT however using the allocation factors in N.J. Stat. § 54A:5-7 (allocations of income of nonresidents).

- The BAIT tax brackets have been updated as follows:
  - Distributive proceeds not over \$250,000 – 5.675% of the sum of distributive proceeds,
  - Distributive proceeds over \$250,000 but not over \$1,000,000: \$14,187.50 plus 6.52% of the excess distributive proceeds over \$250,000, and
  - Distributive proceeds over \$1,000,000: \$63,087.50 plus 10.9% of the excess distributive proceeds over \$1,000,000.

## BAIT Payments & Credit

- S4068 adds the definition of “direct share of the tax paid” as the portion of BAIT calculated on the sum of each member’s share of distributive proceeds attributable to the pass-through entity.
- The application and utilization of BAIT credits are updated for certain types of members as listed below:
  - BAIT credits are now refundable for partners that are corporations. Previously, corporate partners could only carryforward excess BAIT credit up to 20 privilege periods.
  - If the member is an S corporation, the refundable credit can be applied against either nonconsenting shareholder tax, or against the surcharge, franchise tax liability, payment requirements as a New Jersey S corporation, or BAIT.
  - If the member is a partnership for federal tax purposes, the refundable credit can be applied against either nonresident withholding, or against the partnership filing fee, or BAIT.
- Electing PTEs that overpay BAIT in a taxable year are now able to apply the overpayment of tax to the subsequent taxable year’s estimated BAIT payments.

## Nonresident Withholding

- An electing partnership that is not a qualified investment partnership, investment club, or publicly traded partnership is not required to remit nonresident withholding for any nonresident partner that would be overpaid by virtue of receiving both BAIT credit and nonresident withholding.

## Get in touch

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