

State Tax Matters

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Income/Franchise:

New York: Department of Taxation and Finance Issues Updated Guidance on Recently Enacted Corporate Tax Reforms

Corporate Tax Reform FAQs, N.Y. Dept. of Tax. & Fin. (10/22/14). The New York State Department of Taxation and Finance has issued updated guidance in the form of frequently asked questions (“FAQs”), addressing the various state corporate tax reforms enacted earlier this year under the 2014-15 New York State Budget [see previously published article by Russell Banigan, Kenneth Jewell and Mary Jo Brady of Deloitte Tax LLP for a discussion of the major changes coming to the State’s corporate franchise tax in 2015]. The FAQs explain that when a related corporation does not have the same tax year as the taxpayer designated as the agent, the related corporation’s income and activities for its tax year that ends within the agent’s tax year are included in the combined report. Additionally, the guidance states that the “commonly owned group” election is made on the original return of the combined group that is timely filed (including valid extensions of time for filing), and that there will be an indicator on the combined return for this election.

URL: http://www.tax.ny.gov/bus/ct/corp_tax_reform_faqs.htm

URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/multistate-tax-archive/9d61de8c4a916410VgnVCM3000003456f70aRCRD.htm?id=us:em:na:stm:eng:tax:141031

The FAQs also now address how the recent corporate tax reforms affect credit carryforwards from years prior to 2015. More specifically, the guidance explains that other than a carryforward of the minimum tax credit, which was not re-enacted in these recent corporate tax reforms, the credit carryforward provisions were not changed. Accordingly, any credit carried forward from a year prior to the corporate tax reforms generally may continue to be carried forward and used against the tax imposed in tax years 2015 and after, under the same rules that applied prior to the reforms. That is, “credits with carryforwards of unlimited duration can continue to be carried forward until used,” and “credits with carryforwards of a limited duration can be carried forward and used until their expiration.”

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Transfer:

Pennsylvania: Department of Revenue Explains 2013 Realty Transfer Tax Statutory Amendments Relating to Real Estate Companies and Real Estate Company Acquisitions

Information Notice: Realty Transfer Tax 2014-01, Penn. Dept. of Rev. (10/17/14). The Pennsylvania Department of Revenue has issued an information notice explaining realty transfer tax statutory amendments made pursuant to legislation enacted in 2013, which, effective January 1, 2014:

URL: http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Informational%20Notices/info_notice_rtt_2014-01.pdf

1. Expanded the definition of a “real estate company” to give effect to property held outside Pennsylvania and to include certain entities in a tiered structure, and
2. Provided that in determining whether a real estate company becomes “acquired,” a legally binding commitment or option to acquire additional ownership interests may be taken into account.

[See previously issued Multistate Tax Alert for more details on these 2013 law changes].

URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/6c84992b217ef310VgnVCM2000003356f70aRCRD.htm?id=us:em:na:stm:eng:tax:141031

More specifically, regarding the “gross receipts and asset tests,” the notice explains that these law changes clarified that a real estate company is determined by taking into consideration its real estate everywhere – not just real estate located in Pennsylvania. Regarding the expanded definition of a “real estate company,” the law now provides that a corporation or an association can be a real estate company even if it does not own real estate, as a corporation or association that is owned by 35 or fewer persons and which has assets 90% of the fair market value of which are interests in one or more real estate companies is considered a “real estate company.” Regarding binding commitments and options, the notice additionally explains that the law now provides that a legally binding commitment or option to transfer an interest in a real estate company, enforceable at a future date, is deemed a transfer of an interest in a real estate company at the time of the execution of the commitment or grant of the option.

Regarding real estate company acquisitions, the notice explains that realty transfer tax is imposed upon the value of a real estate company’s Pennsylvania real estate when the real estate company is acquired, and that an acquisition occurs when 90% or more of the ownership interest in the real estate company changes within a three year period. The notice also explains that the Pennsylvania Department of Revenue does *not* “look through” real estate companies (“tiers of ownership”) to determine if the company has been acquired, and that it only looks to direct changes in ownership of the real estate company itself. In this respect, “A corporation or association that owns an interest in a real estate company may itself be a real estate company that can become acquired, but the Department will not look to ownership changes in upper-tiered entities to determine if an acquisition of a lower-tiered real estate company has occurred.”

The notice provides a number of examples illustrating these various realty transfer tax law changes.

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Multistate Tax Alerts

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Archives: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/multistate-tax-archive/index.htm?id=us:em:na:stm:eng:tax

New Jersey Tax Court Permits Adjustments to Federal Basis, Holding that “Fictitious Income” from Sale of Property Cannot Be Taxed For CBT Purposes

The Tax Court of New Jersey recently rendered decisions in favor of taxpayers in two separate cases that addressed the question of whether a taxpayer may for New Jersey Corporation Business Tax (“CBT”) purposes adjust the federal basis in its property to account for depreciation deductions for which it received no CBT benefit. In *Toyota Motor Credit Corporation v. Director, Division of Taxation* and in *Ford Motor Credit Company v. Director, Division of Taxation*, the Tax Court ruled that when calculating the net gain from the sale of their respective capital assets, the taxpayers could increase the federal basis in the property they sold during the years at issue by the amount of depreciation that was unused for CBT purposes. Thus, the taxpayers were allowed to depart from the federal adjusted basis in calculating the gain to account for the combined effect of New Jersey’s federal bonus depreciation decoupling and temporary net operating loss suspension, resulting in reduced entire net income subject to the CBT. In rendering its decisions, the Tax Court reasoned that the New Jersey Division of Taxation (“Division”) cannot tax the “fictitious income” that was attributable to depreciation deductions taken by the taxpayers for federal income tax purposes but that provided no benefit for CBT purposes.

The Tax Court in *Toyota Motor Credit Corporation* also addressed two additional issues:

- Whether New Jersey’s 2002 federal bonus depreciation decoupling statute includes all assets acquired after September 10, 2001, rather than only assets that were acquired starting from the first taxable year beginning on or after January 1, 2002.
- Whether it was erroneous for the Division to remove (under New Jersey’s former “throwout rule”) the taxpayer’s receipts sourced to Nevada, South Dakota, and Wyoming from the denominator of the receipts fraction used to determine CBT liability.

Although the Division has not appealed either decision, the appeal period remains open. Accordingly, these cases are not yet final.

This Multistate Tax Alert summarizes the two Tax Court decisions and offers some taxpayer considerations.

[Issued: October 28, 2014]

URL: [http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-](http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/a758212677b59410VgnVCM100003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:141031)

[Tax/a758212677b59410VgnVCM100003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:141031](http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/a758212677b59410VgnVCM100003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:141031)

URL: [http://www.deloitte.com/assets/Dcom-](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_mts_alert_new_jersey_102914.pdf?id=us:em:na:stm:eng:tax:141031)

[UnitedStates/Local%20Assets/Documents/Tax/us_tax_mts_alert_new_jersey_102914.pdf?id=us:em:na:stm:eng:tax:141031](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_mts_alert_new_jersey_102914.pdf?id=us:em:na:stm:eng:tax:141031)

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