

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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► SUBJECT

THE NEW JERSEY DIVISION OF TAXATION REVISED ITS INTANGIBLE ASSET NEXUS INITIATIVE AND RELEASED A NEW PARTNERSHIP TAX AND PARTNER FEES INITIATIVE AS PART OF ITS VOLUNTARY DISCLOSURE PROGRAM

► SUMMARY

On February 20, 2014, the New Jersey Division of Taxation issued a revised Intangible Asset Nexus Initiative and a new Partnership Tax and Partner Fees Initiative as part of its voluntary disclosure program.¹ Each initiative runs from March 15, 2014, through May 15, 2014, and may offer tax and penalty benefits beyond what New Jersey typically offers as part of its standard voluntary disclosure program.

► DETAILS

BACKGROUND

Similar to most states, the Division historically allowed a taxpayer to voluntarily come forward to report and pay taxes due. In return, the Division has typically waived all penalties and limited the number of years for which the taxpayer was required to report and pay tax to the current year and three previous taxable years (*i.e.*, a four-year look-back period).² However, depending on the taxpayer's reasons for not filing and paying, the Division could impose a longer look-back period. A taxpayer that has previously been contacted by the Division, is registered for the tax at issue, or is under criminal investigation is not eligible to participate in the voluntary disclosure program.

One exception to the standard four-year look-back period has been applied to intangible asset holding companies, where the Division would apply look-back to 1996 except where a taxpayer had come forward under some other special voluntary disclosure or amnesty initiative. For example, and most recently, for



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¹ See www.state.nj.us/treasury/taxation/IntangibleAsset.shtml and www.state.nj.us/treasury/taxation/Partnership.shtml.

² See www.state.nj.us/treasury/taxation/voldisc.shtml.

taxpayers that came forward during the period September 15, 2012, through January 15, 2013, the look-back was limited to taxable years beginning after December 31, 2003.³ Notwithstanding its general penalty waiver policy, New Jersey has applied a five-percent penalty to taxable years beginning before February 1, 2009, with respect to amnesty-eligible tax liabilities pursuant to a tax amnesty that ended on June 15, 2009.⁴

INTANGIBLE HOLDING COMPANY INITIATIVE

Under the revised Intangible Asset Nexus Initiative, which generally applies to an intangible holding company that has a licensing arrangement with an affiliated operating company using an intangible in the state, New Jersey limits the look-back period on an intangible asset holding company that voluntarily comes forward and reports and pays the Corporation Business Tax to periods beginning after July 1, 2010 (equates to a three-year look-back period with respect to calendar-year corporations). In addition, New Jersey will waive all penalties. However, the taxpayer must file all required returns and pay the tax due within 45 days of executing a voluntary disclosure agreement. The related operating company may claim an add-back exception for the taxable years open under the statute of limitations and thus, claim a deduction⁵ for the intangible expenses, including related interest expenses, paid to the intangible asset holding company.

PARTNERSHIP TAX AND PARTNER FEES INITIATIVE

Under the new Partnership Tax and Partner Fees Initiative, New Jersey limits the look-back period to taxable years beginning on or after January 1, 2010 (which also equates to a four-year look-back period) with respect to a partnership that voluntarily comes forward and reports and pays the nonresident partner tax and the \$150 per partner fee.⁶ In addition, New Jersey will waive all penalties. Similar to the Intangible Asset Nexus Initiative, the taxpayer must file all required returns and pay the tax due within 45 days of executing a voluntary disclosure agreement. Partners that have not satisfied their New Jersey reporting and payment requirements may also come forward under this program.

► BDO INSIGHTS

An intangible holding company that complies with the revised Intangible Asset Nexus Initiative may take advantage of significant benefits. First, the look-back period under the revised program is approximately seven years shorter than under the previous program and over fifteen years shorter than the standard look-back period. Moreover, the look-back period generally corresponds to the four-year refund statute. Therefore, if the operating company amends its returns, it could receive the benefit of the intangible expense and related interest expense deductions for all of the taxable years for which the holding company paid the tax. A taxpayer could not previously realize this benefit because the look-back period was usually much longer than the refund statute. Lastly, because the look-back period excludes taxable years beginning on or before July 1, 2010, there are no throw-out issues and a corporation may avoid the five-percent amnesty penalty entirely.⁷ Accordingly, New Jersey is offering significant incentives for taxpayers to take part in this voluntary disclosure program.

With respect to the new Partnership Tax and Partner Fees Initiative, the taxpayer has the benefit of a fixed four-year look-back period without the risk that the Division could look back to additional taxable years. In addition, if the partners are non-filers as well, they may get the same benefit as the partnership obtains under this program. A partner that has filed, but perhaps not reported the partnership income, may be able to take advantage of penalty abatement.

³ State Tax News, Vol. 41, No. 3, New Jersey Division of Taxation (Fall 2012).

⁴ State Tax News, Vol. 38, No. 1, New Jersey Division of Taxation (Spring 2009).

⁵ See also N.J.S.A. § 54:10A-4(k)(2)(I); N.J.A.C. § 18:7-5.18(a)(1).

⁶ See N.J.S.A. §§ 54:10A-15.11(a)(1) and 54A:8-6(b).

⁷ The throw-out rule is eliminated for taxable years beginning after July 1, 2010. N.J.A.C. § 18:7-8.7(d).

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