



New Jersey Governor Enacts Business Friendly Tax Law Changes

MAY 2011

On April 28, 2011, as part of continued efforts to stimulate economic growth and create jobs in New Jersey, Governor Chris Christie signed into effect two key laws designed to provide tax relief for New Jersey based businesses and their owners in the upcoming years. This Alert will address the changes contained in these two bills and how they may affect you and your business.

Modification of the Corporate Business Tax Formula.

Under current law, a corporation doing business in New Jersey is required to apportion its income using a calculation averaging its property, payroll and sales in New Jersey. This calculation leads to a New Jersey based business paying a higher New Jersey corporate level tax than an out of state competitor due to the inclusion of New Jersey payroll and property. This new law, effective for privilege periods beginning on or after January 1, 2012, will phase in a single sales factor apportionment formula over a three year period which is designed to shift the tax burden away from New Jersey based corporations.

The single sales factor phase-in schedule is as follows:

- For privilege periods beginning on or after January 1, 2012, but before January 1, 2013, the sales fraction will

be 70% and the payroll and property fractions will be 15% each.

- For privilege periods beginning on or after January 1, 2013, but before January 1, 2014, the sales fraction will be 90% and the payroll and property fractions will be 5% each.
- For privilege periods beginning on or after January 1, 2014 the sales fraction will be 100%.

Gross Income Tax Law Changes.

Currently, using a gross income tax system, New Jersey limits an individual business owner's ability to deduct their business losses. There are currently two limitations, one business losses can only be netted against business income from the same type of entity. For example a business loss from a partnership can only be used to offset income generated from another partnership. Second, if a net loss results for a particular type of entity, the loss is disregarded and cannot be used to offset other categories of income or carried forward to future tax years. These limitations often lead to New Jersey business owners paying tax on a significantly higher level of income than they do on their Federal and other state tax returns.

The new provision establishes a calculation to allow for a partial netting of the gains and losses of one or more of the

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following business-related categories of gross income:

- Net profits from a sole proprietor business;
- Net gains or net income derived from or in the form of rents, royalties, patents and copyrights;
- Distributive share of partnership income; and
- Net pro rata share of S corporation income.

This calculation beginning in tax year 2012, will be phased in over a period of five years to eventually allow for a 50 percent netting of losses as follows:

- For 2012, 10% of the business losses can offset other business income
- For 2013, 20% of the business losses can offset other business income
- For 2014, 30% of the business losses can offset other business income
- For 2015, 40% of the business losses can offset other business income
- For 2016 and thereafter, 50% of the business losses can offset other business income

If the netting of all sources of business income and losses results in a net loss for

the year, this net loss can be carried forward for up to 20 years to offset future business income pursuant to the calculation described above.

Implications to you or your business.

The phase in of the single sales factor for apportionment will likely result in tax savings for New Jersey taxpayers with a significant physical presence in the state. Additionally, it could create opportunities for new tax planning regarding your corporation's current tax structure.

The business loss netting and carry forward provisions for individuals will allow for potential reduced taxable income and the preservation of certain business losses to be used for the benefit of future periods.

For additional information on how these new laws can benefit you, contact your Wilkin & Guttenplan tax advisor at 732-846-3000.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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