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State Tax Observations

What You Need to Know about NJ's Mandatory Combined Corporate Business Tax Reporting

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It was a hot summer day last year when New Jersey enacted sweeping, last-minute, budget balancing Corporate Business Tax (CBT) changes. The hot tax topic then was, and continues to be, the legislative centerpiece: The imposition of mandatory combined reporting where once there was separate entity reporting.

The legislature and, subsequently, the New Jersey Division of Taxation (NJ DOT) have tweaked and clarified the CBT combined reporting written tax authority. Corporations with tax years ending on or after July 31, 2019 will be required to file on a combined basis. This article summarizes the key combined return rules and changes.

Which Corporations are Impacted by New Jersey's Mandatory Combined Reporting?

Fourteen "entity types" are potentially included in a combined group. The list includes U.S., Foreign, Professional, Banking, and Finance corporations. Captive Insurance Companies that meet the definition of Combinable Captive Insurance Company are included.

Certain S Corporations and Qualified Subchapter S Subsidiaries (QSSS) are included, but not New Jersey S Corporations and QSSS that do not elect inclusion. REITS, RICs and Investment Companies are not included, but report on a separate entity basis.

A "combined group" is defined as all companies with common ownership that are engaged in a unitary business, where at least one company is subject to the CBT. For this purpose, common ownership exists where more than 50% of the voting control of each member is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group.

For New Jersey combined group purposes, a unitary business is a single economic business group with entities that are so integrated as to provide a mutual benefit resulting in a significant flow of value among the separate members of the group.

What is a managerial member and what are its responsibilities?

The NJ DOT released rules regarding mandatory registration of a combined group by a managerial member. The managerial member is the agent for the combined group and must address all group tax matters including filings, payments, and notices. To report as a combined group, the managerial member must register with the New Jersey Division of Revenue and Enterprise Services at its registration site.

If the combined group has a common parent corporation taxable (i.e., has nexus) in New Jersey, it must register as the managerial member and obtain a new identification number for combined reporting purposes. The new ID number will be used for filing and submitting payments on behalf of the group. When the common parent is not itself taxable in New Jersey, another member of the group that is taxable in New Jersey must be designated as the managerial member.

How is the combined New Jersey taxable income determined and apportioned?

The unitary entire net income (ENI) of a combined group is the sum of the ENIs of **all** group members. Generally (with exceptions), each member's income included in the combined group income is the member's ENI as determined for CBT purposes. However, all dividends paid between members of a combined group are eliminated from income. Business income from intercompany transactions is deferred in the same manner as for federal purposes.

The CBT written tax authority mandates a water's edge default filing method for a combined group. However, a worldwide or affiliated group election may be made. The water's edge method follows the *Joyce* rule for apportioning income. Under Joyce, the receipts factor denominator consists of total receipts from all members while the numerator includes only receipts of New Jersey nexus members. Taxable members of a combined group may share their tax credits (or credit carryovers) with other taxable members of the New Jersey combined group. The decision to share tax credits remains with the taxable member generating the credit. Tax credits may be shared regardless of whether the taxable members were part of the same combined group when the tax credit was generated.

Which Combined Group Members are subject to the New Jersey $2,000 Minimum Tax?

Members of the combined group are subject to a minimum tax in addition to the combined group's tax. But which members? The original law, as drafted, was unclear. New authority makes clear that only "a member of the combined group that has nexus with New Jersey is subject to the $2,000 minimum tax." For a combined group member, New Jersey nexus is generally created through activities conducted in the State including owning or renting property or having agents, officers, and employees conducting business activities in the State. The nature, continuity, frequency, and regularity of the activities of the member will be taken into account.

Regarding nexus, P.L. 86-272, which provides protection from nexus for income tax, will not provide protection from nexus for any group member for minimum tax purposes. One bright spot: a disregarded entity is not subject to the minimum tax.

What's next?

Numerous challenges and opportunities for particular combined groups will need to be addressed. Also, new treatment regarding NOLs, credits, deductions, water's edge elections, and market based sourcing should be considered. It is recommended that corporations and tax preparers begin their New Jersey combined return analysis sooner rather than later.

Contact Us

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