

NEW JERSEY TAX LAWS: OUT WITH THE OLD AND IN WITH THE NEW TAX LAWS IN 2023

Hodgson Russ SALT Alert
January 3, 2023

The COVID Extension of the Statute of Limitations on Assessments has Finally Expired.

Old Law: Almost three years ago, at the beginning of the COVID-19 pandemic, Governor Murphy issued Executive Order 103, declaring a state of emergency in New Jersey. Subsequently, the New Jersey Legislature enacted a law that extended the deadline for the Division to assess New Jersey tax until 90 days after the conclusion of the state of emergency (L. 2020, ch. 19). That extension legislation caused taxpayers to remain subject to additional tax long after the statute of limitations would normally have cut off the Division's right to issue an assessment. This situation has become a real concern for taxpayers and practitioners because the state of emergency may remain in effect for many years to come.

New Law: With the support of the Division, at the end of 2022, New Jersey enacted legislation that finally ends the COVID extension of the statute of limitations on assessments, effective December 22, 2022 ([P.L. 2022, c. 133](#)). The legislation provides that "any assessment of tax that was allowed as a result of the extension of the statute of limitations . . . but that was assessed after the date of enactment . . . shall be voided."

New Jersey Adopts Important Changes to S Corporation Election Requirements.

Old Law: Historically, in order for a federal S corporation to be recognized as an S corporation for New Jersey tax purposes, shareholders were required to make a separate New Jersey S corporation election. This requirement often took taxpayers by surprise, resulting in a continuous stream of requests for retroactive relief from taxpayers that failed to elect S corporation status in New Jersey.

New Law: Beginning January 1, 2023, no New Jersey S corporation election is required. A federal S corporation is automatically treated as a New Jersey S corporation, unless the corporation takes affirmative steps to opt out. The new legislation provides the following provisions for "opting out" of S corporation status in New Jersey:

- 100% of shareholders must consent to the opt out.

Attorneys

Paul Baldovin Jr.
Open Weaver Banks
Mario Caito
Richard Campbell
Katherine Cauley
Thomas Collura
Paul Comeau
William Comiskey
Ariele Doolittle
Christopher Doyle
Catherine Eberl
Joseph Endres
Debra Herman
Daniel Kelly
Mark Klein
Joshua Lawrence
Timothy Noonan
Elizabeth Pascal
K. Craig Reilly
Emma Savino
Joseph Tantillo

Practices & Industries

State & Local Tax

NEW JERSEY TAX LAWS: OUT WITH THE OLD AND IN WITH THE NEW TAX LAWS IN 2023

- The opt out election may be made for any taxable year at any time during the preceding taxable year or at any time on or before the due date or extended due date of the S corporation's tax return.
- The opt out election will remain effective until revoked. Revocation requires the approval of shareholders holding more than 50% of the shares.

New Jersey Adopts Changes to Partnership Audits.

New Law: New Jersey has adopted amendments in order to conform to the new federal partnership audit regime. The new legislation includes the following key provisions:

- Partnerships will be required to report any federal partnership audit adjustments made by the IRS to the Division on a federal adjustments report.
- A "state partnership representative" will have the sole authority to act on behalf of the partnership and its partners with respect to required or permitted actions under the new federal partnership audit regime. The state partnership representative will be the partnership's "federal partnership representative" unless the partnership designates in writing another person as its state partnership representative.
- The Division will be permitted to assess the federally audited partnership, partners, or both, for any New Jersey taxes they owe.
- A federally audited partnership will have the option to elect to pay New Jersey taxes due as a result of the federal audit.
- The new law takes effect immediately and applies to any adjustments to a taxpayer's federal taxable income on or after January 1, 2020.

Stay tuned as we wait for the Division to provide additional guidance with respect to the partnership audit amendments.

Contact **Open Weaver Banks** by calling 646.218.7524 or by emailing obanks@hodgsonruss.com if you have any questions about how these tax updates may impact you or your business.