

NJSCPA
**NJ ACCOUNTING, BUSINESS &
TECHNOLOGY SHOW**

*New Jersey State
Tax Update and Review*

May 19, 2016

**Meadowlands Exposition Center
Secaucus, NJ**

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New Jersey State Tax Update and Review – May 2016

1. POSSIBLE MAY/JUNE 2016 NJ TAX LEGISLATION

- A) Increase in gas tax
- B) Phase out of NJ Estate tax
 - No change in NJ inheritance tax
- C) Possible NJ GIT charitable contributions deduction
- D) Increased NJ GIT pension exclusion

2. NEW SALES TAX LEGISLATION

- P.L. 2015 Chapter 170

- A) For boats - effective 2/1/16.
 - i. 3.5% tax not to exceed \$20,000
 - ii. No use tax if NJ resident keep boat in NJ for less than 31 days.

3. NEW REGULATIONS

- A) Gross Income Tax re-proposed 10/5/15 adopted Jan 21, 2016
- B) Sales & Use Tax re-proposed 12/7/15

4. RECENT DEVELOPMENTS

New 2015 NJ Partnership Tax Forms

- Separate Forms NJ 1065 for GIT & CBT filers
- With separate payment vouchers instead of Part 100

Criticare, Inc. Case – June 2014 – S corporation shareholder – credit for taxes paid to other states.

- Impact of differing apportionment rules by states on GIT credit for nonresident taxes paid

Update on 2014 NJ 1040 and NJ 1041 e-filing – published 12/20/15 (attached)

Update on 2015 CBT e-filing and e-payment published 1/12/16 (attached)

5. EFFECT OF TAX YEAR 2016 FEDERAL TAX DUE DATE CHANGES ON NJ DUE DATES

Federal tax due date. Changes on NJ due dates.

e.g. April 15 to March 15 for Federal Forms 1065

6. RECENT NJ TAX LEGISLATION.

- A) Increase in NJ Earned Income Tax credit proposed from 20% to 30% of Federal credit
- B) Economic Opportunity Act of 2014 (Oct. 29, 2014)
 - Credits and incentives
- C) Taxation of out of state corporate partners deriving NJ source K-1 income.
- D) Legislation to tax NJ source gains on deemed asset sales under IRC Section 338 (h) (10) – post McKesson Water Products case.
- E) Reduction of CBT NOL's for certain debt cancellation.
- F) Proposed penalties for bad electronic payments comparable to bad check penalties – Plaxico Burress

7. VOLUNTARY DISCLOSURE – NJ and Other States

8. PROPOSED LEGISLATION AND REGULATIONS NOT YET ENACTED

- A) Electronically delivered software and installation and related services.
Regulations re-proposed April 2014 and adopted December 1, 2014.
- B) Expanded use of 50% Civil Fraud Penalty and related regulations

- C) Proposed 2013 CBT Market Sourcing Regulation 18.7 – 8.10A Withdrawn–
Receipts From Services Performed in the State; Allocation for Certain Special
Industries

9. PRIOR ENACTED LEGISLATION AND GUIDANCE

A) CBT Single Sales Factor

- i) Chapter 59 Laws of 2011 (S-2754) phased out payroll and property factors for
CBT purposes.

(a) For years beginning on or after January 1, 2012

- Payroll 15%
- Property 15%
- Receipts 70%

(b) For years beginning on or after January 1, 2013

- Payroll 5%
- Property 5%
- Receipts 90%

(c) For years beginning on or after January 1, 2014

- Receipts 100%

B) 2008 pro business legislation enacted:

- i) Elimination of throw out for tax year beginning after July 1, 2010
- ii) Elimination of regular place of business requirement for apportionment
beginning after July 1, 2010

Thereafter many NJ corporations operating exclusively in NJ--both C
corporations and NJ S corporations with nonresident shareholders were subject
to lower NJ taxes beginning in 2011 based on receipts apportionment.

- a) based on shipments to non-NJ destinations for sales of tangible property
- b) based on NJ apportionment rules in the case of sales of services and
other receipts

C) GIT-

- i) Chapter 60 of the Laws of 2011 (S-2754 effective in 2012) Establishes the alternative business calculation under the gross income tax to permit consolidation of certain business-related gross income categories and carryforward of certain business-related losses for up to 20 years.
- ii) Business categories include net profits from business, net gain or net income from rents, royalties, patents and copyrights, distributive share of partnership income and net pro rata share of S corporation income.
- iii) Final regulation 18:35-2.8 published in August 2012 and adapted January 2013 without comment

Example 1

NJ resident individual (A) is shareholder of NJ S corporation and a member of a NJ LLC. A receives a 2012 NJ K-1's with a loss of \$10,000 from the S corporation and a profit from the LLC of \$100,000.

Under the 2011 law change, A can reduce the \$100,000 LLC gain by 10% of the LLC loss and claims a \$1,000 deduction. A is not permitted to carry the remaining \$9,000 S corporation loss forward for 20 years.

Example 2

NJ resident individual (B) is a shareholder of a NJ S corporation and a partner in a NJ partnership. B. receives 2012 NJ K-1's from the S corporation with a loss of \$90,000 and from the partnership with a profit of \$5,000. B may claim 10% of the \$90,000 S corporation loss or \$9,000 but is limited to \$5,000--the amount of the partnership profit. B may carry the remaining \$85,000 S corporation loss forward for 20 years.

Effect on 2013

- A will not be able to utilize 20% of the \$9,000 carryforward loss in 2013 but could claim 20% of any eligible losses arising in 2013 to offset eligible income in 2013.
- B was able to utilize 20% of the \$85,000 carryover loss in 2013 in addition to 20% of any eligible losses arising in 2013 to offset eligible income in 2013

Effect on 2014

- Opportunity to offset 30% of eligible losses

Effect on 2015

- Opportunity to offset 40% of eligible losses

Effect on 2016 and after

- Opportunity to offset 50% of eligible losses

Planning Observation

If a NJ taxpayer is able to conduct multiple businesses in the same form of organization (i.e., all S corporations or all partnerships or multi member LLC's) that individual was always able to net current year profits and losses in full; but not below zero. Under the 2011 law change, that individual can similarly carry forward any net loss subject to the above %age limitations

10. WISH LIST FOR LEGISLATIVE/ADMINISTRATIVE CHANGES

A) Legislative

- i) Change S corporation legislation to permit rescission
- ii) Replace Gross Income Tax with piggy back tax
- iii) Eliminate \$100 per month late filing penalty

B) Administrative

- i) Rescind PA/NJ reciprocal income tax agreement

11. CORPORATE BUSINESS TAX

- A) Electronic filing of NJ CBT returns and all payments mandated for 2015 and after.

B) Cases

- i) Telebright Corporation – NJ Tax Court held and NJ Appellate Division affirmed that a telecommuter working at her home in NJ for out of state software company created NJ CBT Nexus
- ii) BIS LP, Inc. v Director – NJ Tax Court and Appellate Division held in August 2011 that a non-NJ corporate limited partner receiving K-1 income from a partnership with NJ source income was not subject to CBT if the corporate partner was not “unitary” with the limited partnership.

This issue was remanded for decision by NJ Tax Court because the limited partnership was required under the CBT Act to withhold CBT at a rate of 9% on the non-NJ corporate limited partners’ share of NJ source income.

April 2013 no withholding required and further appeal

- iii) Village Supermarkets case October 2013 – corporate limited partner held taxable
- iv) Kraft Foods Global, Inc. April 25, 2016 – upholds related party interest addback

12. GROSS INCOME TAX

- A) Quarterly withholding for nonresident partners beginning with tax year 2007— must be remitted online TB 55R dated 4/3/09 (Attached)
 - i) Inequities—can’t reduce withholding when taxpayer has loss from other partnership
 - ii) Required withholding of 6.37% for individuals, estates and trusts and 9% for tiered partnerships may have been insufficient for partners whose 2015 income >\$400,000— 4/15/16 extension payments may be needed
- B) NJ Tax Court Case ACIU by individuals with small business stock gains taxable for GIT purposes but exempt federally under IRC Section 1202 if held for 5 years.
 - Case not appealed
- C) Heightened audit attention to changes in domicile and flow through entities.

- D) GIT – Identity Theft. Unlike the IRS, the Division of Taxation has not adopted a formal process for notification or relief. Division suggests that a taxpayer contact the Division through the Division’s Call Center or through the Division’s Practitioner Hot-Line. Alternatively, a taxpayer or practitioner might contact the NJ Taxpayer Advocate who has assisted certain cases.
- E) GIT right to apportion-When the CBT law was changed for tax year 2011 and after eliminating the regular place of business as a condition for apportionment, the GIT law did not change.
Partnerships, LLC's and sole proprietorships use NJ Form NR-A to apportion. That form for 2011 contained a requirement for a regular place of business outside NJ. Based on those instructions, some NJ Division of Taxation representatives felt that requirement was still in effect. Because the GIT law doesn't specifically address regular place of business, the leadership of the Division of Taxation issued a policy on March 13, 2013 eliminating the regular plan of business and revising Form NR-A (copies attached)
- F) Kassner GIT case limits tax on undistributed income to NJ source income from S corporation but excludes other undistributed income. Based on migration of trustees out of NJ consistent with older Potter and Pennoyer cases decided in 1983. – upheld on appeal by NJ
- G) GIT – Days worked in New York. NJ residents working in NY wage allocation not always 100% NY

13. SALES & USE TAX

Refund claims during NJ field audit

14. GUIDANCE PUBLISHED BY DIVISION OF TAXATION

- A) Information for Sellers of Printed Advertising Material: Charges for Postage (December 18, 2014)
- B) Tax Topic Bulletin GIT-12, Estates and Trusts (December, 2014)
 - i) Definitions
 - (a) Trust or portion of trust consisting of property transferred by will of a decedent who at his death was domiciled in NJ
 - (b) Trust or portion of a trust consisting of property of

- A person domiciled in NJ at the time such property was transferred to the trust – if portion was then irrevocable or if then revocable and has not subsequently become irrevocable, or
 - Person domiciled in NJ at the time such trust or portion became irrevocable – if revocable when property was transferred but has subsequently become irrevocable
- ii) Non-resident trust and determination of filing requirement see above Kassner case
- iii) Tax nexus –
- (a) Resident estate or trust does NOT have nexus if all the following requirements are met:
- There are no tangible assets in NJ AND
 - There is no income from NJ sources AND
 - There are no trustees or executors in NJ
- (b) If all requirements are met, NJ-1041 must be filed with statement certifying exempt status based on Potter and Pennoyer cases above
- iv) Other definitions and discussions of certain trusts, trusts years, etc.
- v) Discussion of Pension, Annuity and IRA income
- (a) In general, pension and annuity income received by survivor or beneficiary is taxable to extent that it exceeds decedent's previously taxed contributions
- (b) If pension or annuity was subject to tax under the NJ Transfer Inheritance Act, the value of the pension or annuity as determined and taxed for NJ transfer inheritance tax purposes is deemed to be the decedent's previously taxed contributions and is deductible in determining the taxable pension, annuity or IRA income received.
- C) Publication GIT - 9P
- D) Publication GIT- 9S
- E) TB57 Estimated GIT payment requirements on sale of NJ real property by nonresidents 9/30/15
- F) TB 76 Sales and Use Tax Nexus for out of state vendors.

- G) TB 78 Nexus for Sales and Use Tax
- H) TB 79 Nexus for Corporate Business Tax
- I) GIT 3B Credit for taxes paid to other jurisdictions/business non-wage
- J) GIT 3W Credit for taxes paid to other jurisdictions/ wage
- K) S&U 5 Mail order and internet sales
- L) S&U 12 Leases and rentals



STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
PO BOX 281
TRENTON, NJ 08695-0281

December 18, 2015

Dear Tax Practitioner,

It is almost time for the 2015 tax filing season to begin. We would like to remind you of your obligation to electronically file your clients' NJ-1040 and NJ-1041 returns if you prepare 11 or more individual gross income tax resident returns. This includes returns filed for estates and trusts.

What if my client does not want their return E-Filed?

If your client does not want his or her return filed electronically, complete an E-File Opt-Out Request, Form NJ-1040-O.

NOTE: If you complete a client's return for free ("pro bono"), you are not required to complete Form NJ-1040-O for that tax return.

How do I meet the E-File Opt-Out requirements?

You **must** fill in the NJ-1040-O oval or check the NJ-1040-O box on the tax return (next to your signature) and enclose the completed and signed Form NJ-1040-O with your client's return. You **must** also keep a copy of this Form NJ-1040-O in your records. We will examine filings to make sure that paper tax returns include completed Opt-Out forms.

Where do I find Form NJ-1040-O?

Form NJ-1040-O is enclosed with this letter for your convenience. You can make copies as needed. Once the 2015 tax filing season starts, Form NJ-1040-O will also be available on our web site at: www.state.nj.us/treasury/taxation/prntgit.shtml

How can I E-File my clients' returns?

You have several methods of electronically filing a New Jersey resident tax return for your clients; the Federal/State E-File Program with commercial software, NJ WebFile or any other electronic method approved by the Division. See the "Tax Professionals" tab at www.NJTaxation.org

Where can I get more information?

Call our Tax Practitioner Hotline at 609-633-6657 or visit our web site at: www.state.nj.us/treasury/taxation/efilemandate.shtml

The electronic filing requirement is authorized by N.J.S.A. 54A:8-6.1. The requirements are outlined in N.J.A.C. 18:35-6.4(f).

Thank you for your continued cooperation.

Sincerely,

Technical Information Branch
New Jersey Division of Taxation

Encl.

NJ-1040-O
2015

STATE OF NEW JERSEY
Division of Taxation
E-File Opt-Out Request Form

An Important Message to Taxpayers

New Jersey law requires most tax preparers to electronically file (E-file) New Jersey income tax resident returns (Form NJ-1040 and Form NJ-1041). Filing your return electronically has the following benefits:

- Direct deposit option for your refund
- Reduced chance of errors

The Division of Taxation strongly urges you to allow your tax preparer to electronically file your New Jersey income tax return. However, if you do NOT want your return filed electronically, you can complete this form (NJ-1040-O) and enclose it with your return. This form authorizes your tax preparer to file your 2015 New Jersey income tax return on paper.

Part I: Taxpayer Information (to be completed by Taxpayer)

Last Name	First Name	SSN
Spouse's/Civil Union Partner's Last Name (if filing jointly)	First Name	SSN
Street Address	Apt. no.	Telephone Number
City	State	Zip Code

I (We) elect not to E-file my (our) NJ Resident Return

Reason _____

Taxpayer's signature	Date
Spouse's/Civil Union Partner's signature	Date

Part II: Tax Preparer Information (to be completed by Tax Preparer)

Paid Preparer's Last Name	First Name	SSN/PTIN
Paid Preparer's Signature	Date	Telephone Number
Street Address	Apt. no.	Email Address
City	State	Zip Code
Firm's Name (if applicable)	FEIN	

An Important Message to Tax Preparers

- FORM NJ-1040-O MUST BE ENCLOSED WITH A TAXPAYER'S PAPER FORM NJ-1040 OR FORM NJ-1041 WHEN FILED.
- Fill in the oval next to your signature on the income tax return.
- Keep a copy of this form for your records.



New Jersey Division of Taxation CBT E-File & E-Pay Mandate Frequently Asked Questions

[Requirements](#) | [Registration](#) | [Opt-Out](#) | [Extensions](#) | [Miscellaneous](#)

For tax years beginning on or after January 1, 2016, **all taxpayers and tax preparers** must file CBT returns and make payments electronically. The mandate includes all CBT returns, estimated payments, extensions, and vouchers.

You may make a payment by EFT, e-check, or credit card through the Division of Taxation's online Corporation Business Tax Service. [Make your CBT payment.](#)

Requirements

What are the requirements of the E-file/E-Pay mandate?

All CBT returns and payments, whether self-prepared or prepared by a tax professional, must be e-filed if the return periods begin date is January 1, 2016 or later. If you don't file and pay electronically when required to do so, the Division of Taxation may impose penalties on your business. This mandate applies to all businesses subject to CBT. A business cannot opt out of E-file or E-pay.

What types of returns are not included?

At this time, electronically submitted amended returns are **NOT** accepted. If you are submitting an amended CBT-100 or CBT-100S you must use a paper return. An amended return is currently the only return that is an exception to this mandate. ALL other returns, payments, extension requests, and vouchers must be electronically filed.

Does e-filing increase the preparer's liability?

Under New Jersey tax law, the taxpayer is responsible for the accuracy of the information on their tax return, for filing it timely and for timely payment of any tax owed. A tax practitioner who files NJ tax returns and/or pays NJ taxes on behalf of either an individual or a business client does not become personally responsible for payment of the client's liabilities. This clarification applies only for NJ purposes and does not affect responsibilities to the IRS or any other state.

Is there a penalty for not following the requirement?

Yes. If you don't file and pay electronically when you are required to do so, the Division of Taxation can charge the following:

- A \$50 penalty for each return that is not filed electronically;
- A \$50 penalty for each payment (estimated, extension, or tax liability payment) that is not paid electronically;

All penalties, interest, and collection fees as outlined in Publication ANJ-1. [View this publication](#)

Registration

How do I find software that supports electronic filing?

Tax software is any computer software program intended for tax return preparation purposes. This includes, but is not limited to:

- an off-the-shelf software program loaded onto a tax preparer's or taxpayer's computer; or
- an online tax preparation application.

The Division of Taxation does not provide an online service to file Form CBT-100 or CBT-100-S. You can use approved e-file software to e-file returns. You can find [a list of approved vendors](#)

How do I find my 10-digit Corporate ID (Entity ID) number?

[You can look up your business's 10-digit Corporate ID \(Entity ID\) number](#)

Opting Out

What if I or my client does not want to have a return electronically filed or pay electronically?

There is currently NO option to opt out of this mandate. We will not consider a business's desire to opt out of e-filing, ignorance of the law, or reluctance to provide bank account information as reasonable cause to not follow the mandate.

Extensions

Am I required to electronically file Form CBT-200-T?

Yes. It is a requirement of this mandate to electronically file the extension request. The Division of Taxation provides a [free online service to file your CBT-200-T and/or make payments by EFT, e-check, or credit.](#)

Miscellaneous

I received a notice regarding the CBT e-file mandate. Why did I receive this notice?

We notified you because you recently filed a return, voucher, or made a payment on paper, i.e. mailed in an estimated payment voucher with a paper check to the Division of Revenue. This letter is to advise you to stop filing your CBT transactions by paper. If you continue to send in paper returns, vouchers, or make payments by paper checks or money order, you will be penalized by the Division of Taxation. All transactions must be filed electronically.

Your notice contained a 4-digit PIN provided by the Division which may be used to make payments at the Division's website. You do not need to use this 4-digit PIN to make a payment through the Division's online services.

Does New Jersey require a PIN to e-file or e-pay?

No. You do not need a PIN when making a payment or filing a return.

Does e-file prevent my clients from viewing their returns prior to submission?

No. Electronic filing does not prevent the review of completed returns prior to submission. Since taxpayers are responsible for the accuracy of their tax returns, all taxpayers should carefully review their returns prior to sending them to the Division. This applies to returns they prepare and complete themselves as well as returns prepared and completed by a paid preparer.

Are the CBT Banking and Financial returns and payments included in the CBT E-file/E-pay mandate?

No. The CBT E-file/E-pay mandate does not include BFC filings and/or payments.

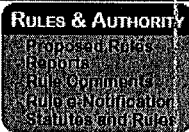
Will I be notified of changes to the E-file/E-Pay Mandate?

If you would like to receive email messages concerning the E-File/E-Pay Mandate and other matters of general interest, [please register for E-News.](#)

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