

NEW JERSEY TAX CHANGES

Over the past week several New Jersey tax law changes have been signed into law by Governor McGreevey. There are several significant changes including: 1.) the limitation of Net Operating Losses for corporate taxpayers; 2.) the imposition of a new tax bracket for individuals whose income exceeds \$500,000, and an amendment to the employers' withholding tax requirements; 3.) the imposition of an additional fee on transfers of real estate that exceed \$350,000 and another fee on transfers of residential real estate that exceed \$1,000,000; and 4.) the decoupling from federal bonus depreciation.

Below are summaries of these changes and a listing of some others. Please contact Matt Wilk at 856-354-9200 or 609-243-9111 or mw@stevenslee.com if you have any questions concerning these changes or any other Multistate Tax matters.

Net Operating Loss Limitation

For New Jersey Corporation Business Tax purposes, the use of Net Operating Losses ("NOLs") for tax years 2004 and 2005 is limited to offsetting no more than 50% of a corporate taxpayer's taxable income. Generally, corporate taxpayers are permitted to offset current year income by any NOLs generated in prior tax periods that are permitted to be carryforward. Previous legislation had prohibited the use of NOLs for tax years 2002 and 2003.

It is important to note that the carryforward period, which is typically seven years, for NOLs that were prohibited from use in 2002 or 2003, or limited in 2004 or 2005 is extended, but only to the extent that the NOL would have been utilized during the tax years in which there is a prohibition or limitation.

It is not known how taxpayers that have based first and/or second quarter estimated tax payments on the availability of NOLs will be required to make appropriate "catch-up" payments. However, it is not anticipated that interest or penalties will be assessed by the New Jersey Department of Taxation ("DOT") for underpayments due to the law change. Based upon past actions by the DOT, it is anticipated that the appropriate catch-up payment will be due with the taxpayer's next quarterly estimate.

Additionally, the limitation is not applicable to NOLs purchased through the high technology incentive program.

N.J.P.L. 2004, c.47 (A. 3110)

Personal Income Tax and Employer Withholding Requirement

As of January 1, 2004, individual gross taxable income in excess of \$500,000 is subject to a new tax rate of 8.97%. This change creates a new top tax bracket. The previous tax bracket subjected all income in excess of \$150,000 to a tax rate of 6.37%. This change is effective for all tax years that began on or after January 1, 2004.

STEVENS & LEE

STATE & LOCAL TAX ALERT

July 2, 2004

All employers must withhold 12% from employees' compensation that exceeds \$500,000. This withholding change must be instituted by employers no later than September 1, 2004. However, this withholding requirement is only effective for the 2004 tax year.

N.J.P.L 2004, c.40 (A. 100)

Realty Transfer Taxes

A new "General Purpose Fee" was added to the taxable transfer of real property. Under current law, all taxable transfers of real estate are subject to a Basic Fee of \$1.75 for every \$500 of consideration or fractional part thereof. Transfers in which consideration exceeded \$150,000 were subject to both the Basic Fee of \$1.75 and an Additional Fee of \$0.75 for a total Fee of \$2.50 per \$500. Now, for all transfers on or after August 1, 2004, a third fee is imposed on taxable transfers of real estate that exceed \$350,000. The General purpose fee is in addition to the Basic and the Additional Fees, and consists of graduate rates, which are outlined below.

Basic Fee:

| | | | |
|---------|-----------|-------|------------------------|
| \$1.75 | for every | \$500 | |
| (\$1.25 | for every | \$500 | to the State) |
| (\$0.50 | for every | \$500 | to Local jurisdiction) |

Additional Fee - for transfers that have a value exceeding \$150,000:

| | | | |
|--------|-----------|-------|--|
| \$0.75 | for every | \$500 | |
|--------|-----------|-------|--|

General Purpose Fee – for transfers that have a value exceeding \$350,000

| | | | |
|--------|-----------|-------|--|
| \$0.90 | for every | \$500 | of consideration between \$350,000 and \$550,000 |
| \$1.40 | for every | \$500 | of consideration between \$550,000 and \$850,000 |
| \$1.90 | for every | \$500 | of consideration between \$850,000 and \$1,000,000 |
| \$2.15 | for every | \$500 | of consideration that exceeds \$1,000,000 |

Additionally, a 1% fee is imposed on the total consideration for all transfers of real estate that are zoned for residential use, whether improved or not, and the consideration exceeds \$1,000,000.

N.J.P.L 2004, c.66 (A. 3115)

Also, non New Jersey residents who have a taxable gain for New Jersey gross (personal) income tax purposes from the sale of real estate located in New Jersey may be required to remit estimated taxes at the highest applicable tax rate in effect for the tax year, but the estimated tax payment may not be less than 2% of the consideration for the transferred real estate. The estimated tax payment is due at the time the deed is filed with the county recording officer. This provision is effective for all transactions occurring on or after August 1, 2004.

N.J.P.L. 2004 (A. 3128)

Decoupling from Federal Bonus Depreciation

Although, the starting point for the Corporation Business Tax and the personal Gross Income Tax is federal taxable income, neither corporations or individuals are permitted to take the federal bonus depreciation for property acquired and placed into service after January 1, 2004 as promulgated for federal tax purposes by the federal Jobs and Growth Tax Relief Reconciliation Act of 2003.

N.J.P.L 2004, c.65 (A. 3111)

Other Changes of Note

- The cigarette tax was increased by 35 cents to \$2.40 per pack (effective July 1, 2004).
- HMOs are subject to a 1% interim assessment on net written premiums.
- The tax on transfers of hazardous substances was increased by 2.3 cents per barrel (retroactively effective to January 1, 2004).
- A tax of 3.5% of gross receipts or \$200,000, whichever is less, is imposed upon ambulatory care facilities with at least \$300,000 in gross receipts.
- A 6% gross receipts tax is imposed on certain cosmetic medical procedures

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