

Income/Franchise:

New Jersey: New Law Revises Elective Passthrough Entity Business Alternative Income Tax

S.B. 4068, signed by gov. 1/18/22. Effective January 1, 2022, new law revises New Jersey's elective passthrough entity business alternative income tax (BAIT) [see S. 3246 (2020) and previously issued Multistate Tax Alert for more details on the 2020 enactment] that allows certain passthrough entities (PTEs) to report and pay tax at the entity level and provides a refundable tax credit for members of an electing PTE subject to New Jersey gross (individual) income tax. According to the bill's accompanying Senate Budget and Appropriations Committee statement, the new law essentially makes changes to the elective BAIT by modifying:

[URL: https://www.njleg.state.nj.us/bill-search/2020/S4068](https://www.njleg.state.nj.us/bill-search/2020/S4068)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-establishes-elective-entity-tax-for-pass-through-entities.html?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0](https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-establishes-elective-entity-tax-for-pass-through-entities.html?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0)

[URL: https://www.njleg.state.nj.us/Bills/2020/S4500/4068_S3.PDF](https://www.njleg.state.nj.us/Bills/2020/S4500/4068_S3.PDF)

- How the optional tax is calculated “so that more income is subject to the tax, thereby allowing a larger credit to be obtained for paying the optional tax;”
- The offsetting tax credit structure and permitted uses of the credits “so that the credits are more generous;”
- The tax brackets for the optional tax to “better align with the most recent changes to the State’s gross income tax brackets;” and
- The treatment of overpayments of tax and excessive credits “so that they may be applied to tax liability in the successive year, or refunded in the case of corporation business taxpayers.”

The legislation also provides that impacted entities will not be required to make a payment on the share of the income of each nonresident entity-owner if the entity-owner expects to “get the money back in the form of a tax credit as a result of the entity paying the optional entity-level tax.”

See forthcoming Multistate Tax Alert for more details on this new law, and please contact us with any questions in the meantime.

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