

Income/Franchise:

New Jersey Division of Taxation Addresses Tax Treatment of Convertible Virtual Currency Transactions

Technical Advisory Memorandum, TAM 2015-1(R), N.J. Div. of Tax. (3/21/22). The New Jersey Division of Taxation (Division) issued updated guidance on the state tax treatment of transactions involving convertible virtual currency (*i.e.*, cryptocurrencies) – reiterating that New Jersey generally conforms to the federal tax treatment of virtual currency as detailed in Internal Revenue Service (IRS) Notice-2014-21, as well as Rev. Rul. 2019-24 and IRS Chief Counsel Memorandum 202114020. The Division provides that because virtual currency is intangible property rather than tangible personal property, “the nexus safe harbor protections afforded by the Federal Interstate Income Act (Public Law 86-272) do not apply to a company that sells virtual currency to customers in New Jersey.” Accordingly, “an out of state company that sells virtual currency to customers in this State is considered to be doing business in this State for Corporation Business Tax purposes.” The Division also generally explains that convertible virtual currency “has an equivalent value in real currency or acts as a substitute for real and legally recognized currency;” can be used as a medium of exchange or as a form of digitally stored value; and may be used “to pay for goods or services, or hold it for investment purposes.”

URL: <http://www.state.nj.us/treasury/taxation/pdf/pubs/tams/tam-2015-1.pdf>

For state sales and use tax purposes, the Division explains that convertible virtual currency is treated as intangible property and, as such, the purchase of this currency for investment purposes is *not* subject to New Jersey sales tax. However, “when a person uses convertible virtual currency as payment for taxable goods or services, New Jersey Sales or Use Tax applies.” Accordingly, the Division states that any seller and/or retailer of taxable goods or services that accepts convertible virtual currency as payment must determine the fair market value of the currency in US dollars as of the date of payment and charge the purchaser applicable New Jersey sales tax on the underlying transaction. Moreover, in addition to complying with all other New Jersey registration and recordkeeping requirements, the Division reiterates that sellers accepting virtual convertible currency as payment for taxable property or services must:

- Record in their books and records the value of the convertible virtual currency accepted at the time of each transaction, converted to US dollars;
- Record in their books and records the amount of sales tax collected at the time of each transaction, converted to US dollars; and
- Report such sales and remit any applicable New Jersey sales tax due in US dollars when filing their periodic sales tax returns.

Please contact us with any questions.

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