

Income/Franchise:

New Jersey Division of Taxation Explains Income Excluded from CBT Return Under Tax Treaty

Notice: Income Excluded Pursuant to a Tax Treaty and CBT Returns, N.J. Div. of Tax. (5/20/22). The New Jersey Division of Taxation (Division) issued a notice referencing its recently published proposed administrative rules that address various matters pertaining to the 2018 through 2020 law changes to New Jersey's corporation business tax (CBT) [see Proposed Amended N.J.A.C. 18:7-1.3, 1.14, 1.16, 1.17, 2.1, 3.4, 3.6, 3.10, 3.13, 3.15, 3.16, 3.23, 5.2, 5.11, 5.12, 5.13, 5.14, 5.15, 7.6, 8.3, 8.7, 8.8, 8.10A, 8.12, 10.1, 11.6, 11.7, 11.8, 11.12, 11.15, 11.17, 11.18, 12.1, 12.2, 12.3, and 13.8; Proposed New N.J.A.C. 18:7-1.24, 1.25, 3.23A, 3.26, 3.27, 3.28, 3.29, 5.21, 5.22, 5.23, 11.17A, and 21, N.J. Div. of Tax. (5/16/22) and *State Tax Matters*, Issue 2022-20, for additional details on these proposed rules], commenting that among the proposed changes are "clarifications on the exclusion of income that was exempt from federal taxation pursuant to a treaty with a foreign nation" – which apparently is in line with a 2018 New Jersey Tax Court decision addressing the same. The Division adds that although N.J.S.A. 54:10A-4(k)(2)(A) was amended to delete the word "specific," the 2018 through 2020 law changes did *not* address the treatment of treaty excluded income and only covered treaties in connection with New Jersey's related party "addback" statutes. In this respect, the Division explains, income that was protected by a treaty is *not* required to be added back for CBT purposes, "except as may be required pursuant to other related party addback statutory provisions." Accordingly, for any CBT returns filed for privilege periods still within the statute of limitations, the Division states if a taxpayer added back such treaty-exempted income, it may file an amended CBT return. Please contact us with any questions.

URL: <https://www.state.nj.us/treasury/taxation/cbt/taxtreaty.shtml>

URL: https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=7691f941-e078-430b-bd1a-67de140db497&config=025154JABiMmFjYzAxMy1hNjlyLTQ0YTctOTY0NS1iOGNIMTRiYzBkNGQKAFBvZENhdGFsb2flnvGwky16hNN9rcMfcun6&pddocfullpath=%2fshared%2fdocument%2fadministrative-codes%2furn%3acontentItem%3a65CN-03K1-F956-S4W8-00008-00&pdcontentcomponentid=234140&pdteaserkey=sr0&pditab=allpods&ecomp=vss_kkk&earg=sr0&prid=3ac88ebe-974e-4e87-a3f5-2ff617e38d4c

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220520_8.html

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