

Income/Franchise:

New Jersey Division of Taxation Addresses Recently Enacted S Corporation Election Changes

TB-105: Corporation Business Tax and Gross Income Tax Guidance regarding S Corporations and Qualified Subchapter S Subsidiaries, N.J. Div. of Tax. (3/31/23); *Answers to Frequently Asked Questions P.L. 2022, c. 133, New Jersey S Corporation Procedural Changes (A supplemental FAQ to support TB-105)*, N.J. Div. of Tax. (3/31/23). The New Jersey Division of Taxation posted guidance reflecting new law that eliminates the requirement to affirmatively elect New Jersey S corporation status for privilege periods beginning on or after December 22, 2022 [see A.B. 4295 (2022) and *State Tax Matters*, Issue 2023-1, for more details on this new law]. The guidance explains that New Jersey law eliminates the requirement for a separate New Jersey S corporation election for a federal S corporation, but that such a business must be registered as a corporation with the New Jersey Division of Revenue and Enterprise Services and provide proof that it has federal “S” status. Additionally, the shareholders must consent to the New Jersey tax treatment of the entity.

[URL: https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb105.pdf](https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb105.pdf)

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[URL: https://www.njleg.state.nj.us/bill-search/2022/A4295](https://www.njleg.state.nj.us/bill-search/2022/A4295)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230106_12.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230106_12.html)

The guidance includes specific instructions on how to meet these new requirements under various scenarios, including some involving S corporations and qualified subchapter “S” subsidiaries (QSSSs) and federal acceptance letters dated before and after December 22, 2022, C corporation tax status elections and revocations, the tax treatment of S corporations and QSSSs that are hybrid corporations, reorganizations, and combined groups – noting that the New Jersey Division of Revenue and Enterprise Services and the Division of Taxation are “working in tandem to create procedures through which taxpayers will provide proof that they received federal S corporation (or QSSS) status and a process to submit the shareholder jurisdictional consent.” The publication states that it will be updated as more information becomes available, and that additional information may be found in accompanying “answers to frequently asked questions” (FAQs). Please contact us with any questions.

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