

Income/Franchise:

New Jersey: Retroactively Applying Rule Changes on CBT Royalty Expense “Addback” Exception Cures Violation

Docket Nos. 008305-2007 and 014043-2012, N.J. Tax Ct. (9/13/23). In a case involving New Jersey’s corporation business tax (CBT) intercompany royalty expense “addback” adjustment and related regulation in which the New Jersey Superior Court, Appellate Division, held in 2021 that the New Jersey Division of Taxation’s (Division) limited application of the “unreasonable” exception and its accompanying schedule was an appropriate exercise of its discretion for the pre-2020 tax years at issue [see *State Tax Matters*, Issue 2021-38, for more details on this earlier ruling], the New Jersey Tax Court (Court) held on remand that with respect to constitutional issues raised by the taxpayer, the 2020 amended version of the CBT regulation can apply to the prior tax years at issue to cure the constitutional “concern.” In doing so, the Court explained that while the pre-2020 CBT regulation is not discriminatory, it violates the external consistency part of the fair apportionment prong of the dormant Commerce Clause due to its geographic limitation which prevents consideration of whether tax was paid or payable on the same income in other jurisdictions, when computing the allowable deduction in New Jersey to the payor. According to the Court, the subsequent deletion of this geographic limitation to the CBT regulation in 2020 and its inclusion of illustrative instances “operate as the most sensible interpretation of the addback statute and cures the constitutional concern.” Please contact us with any questions.

URL: <https://www.njcourts.gov/system/files/court-opinions/2023/008305-2007014043-2012.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210924_4.html

— Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Kevin Friedhoff (Morristown)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

Steve Martin (Morristown)
Senior Manager
Deloitte Tax LLP
stevenmartin@deloitte.com

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