

## Rosen Seymour Shapss Martin & Company LLP

*Certified Public Accountants & Profitability Consultants*

### State and Local Tax New Jersey Tax Law Changes

Dear Clients and Friends of the Firm:

On April 28, 2011, Governor Christie signed two major tax bills which are discussed in detail below.

#### **Corporate Single Sales Factor Phase-In**

The first bill deals with how corporations doing business in New Jersey apportion its income to New Jersey. Under the current law, the allocation formula is the property fraction, plus twice the sales fraction plus the payroll fraction divided by four. Under the amended law, there is a phase-in to a single sales factor as follows:

1. for privilege periods beginning on or after January 1, 2012 but before January 1, 2013, 15% of the property fraction, plus 70% of the sales fraction, plus 15% of the payroll fraction;
2. for privilege periods beginning on or after January 1, 2013 but before January 1, 2014, 5% of the property fraction, plus 90% of the sales fraction, plus 5% of the payroll fraction; and
3. for privilege periods beginning on or after January 1, 2014, 100% of the sales fraction.

#### **Business Loss Netting**

The second law change affects how individuals/trusts determine their New Jersey taxable income. Under the current law, such taxpayers who have income or losses from certain types of business categories may not offset one categories loss against another categories income. For example, net partnership losses cannot offset net S corporation income. Furthermore, such losses cannot be carried forward to subsequent tax years.

Beginning in 2012, these taxpayers can reduce their taxable income by a percentage of their "*business increment*" which is phased in over a five year period as follows:

<b>Tax Years:</b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016 &amp; later</u></b>
<b>%</b>	<b>10</b>	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>

The law also allows for the carryforward of unused alternative business losses up to twenty years.

Business increment is the excess of "**regular business income**" over "**alternative business income**". However, when computing the business increment, the alternative business income cannot be below zero. Regular business income is the sum of the following four categories of income referred to above without any netting:

1. Net profits from business;
2. Net gains or net income derived from or in the form of rents, royalties, patents and copyrights;
3. Distributive share of partnership income, and
4. Net pro rata share of S corporation income.

Alternative business income is the sum of the four categories of income referred to above after netting plus alternative business loss carryforwards.

It should be noted that any losses from these categories still may not be used to offset salaries and wages, gains from the disposition of property and interest and dividends. In addition, since this an adjustment to taxable income, there is no affect on an individual's medical expense deduction. Lastly, this will not affect a non-resident's ratio of income used to determine their tax liability since that ration is based on New Jersey source income divided by gross income everywhere.

However, the impact of this law leaves several questions unanswered. First, how will this affect the application of the **Miller/Mandelbaum** regulations that were issued in 2007? Second, how will this affect the **Koch** basis adjustments? Third, how will this affect the tax benefit rule as applied to the sale of Subchapter S corporation stock? Fourth, how the netting provisions will affect both simple and complex trusts, specifically the determination of distributable net income.

Should you require any additional information on this matter, please feel free to contact Steven J. Eller at (212) 303-1051 or via email at [seller@rsmcpa.com](mailto:seller@rsmcpa.com).

Sincerely,  
**Rosen Seymour Shapss Martin & Company LLP**

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