

New Jersey Announces Tax Compliance Initiative for Media Companies

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Publication Date: August 12, 2011

On August 10, 2011, New Jersey announced a new corporate tax compliance initiative for media companies. Companies that come forward voluntarily can pay reduced tax and avoid significant penalties. But companies have only until November 15 to take advantage of this program.

New Jersey is one of the most aggressive states in terms of asserting tax jurisdiction over out-of-state businesses. The state taxing authority, the New Jersey Division of Taxation (or "Division"), has previously targeted intangible licensing companies, franchisors, software companies, and the financial services industry. Now it has turned its attention to media companies, including media content companies. Under the Division's audit policy, a media company that receives advertising, subscription, or syndication revenues from New Jersey-based clients or customers is subject to New Jersey corporate income tax. Under this so-called "economic nexus" standard, a media company is subject to New Jersey tax regardless of physical presence. That is, the Division requires a media company to file returns and pay tax to New Jersey even if it has no employees and conducts no activities in the state.

The effect of this economic nexus standard is often compounded by other taxpayer-unfriendly policies employed by New Jersey. One such policy is New Jersey's "throwout rule," which generally requires companies to pay more New Jersey tax than their in-state activities would otherwise suggest. (For more information about the throwout rule, including the effect of the New Jersey Supreme Court's recent *Whirlpool* decision, please register for our August 17 teleseminar at: reedsmith.cvent.com/d/pcq7sg/4W.)

The Division's new compliance initiative provides several incentives for media companies to come forward voluntarily. First, under the terms of this Voluntary Disclosure initiative, media companies that come forward now only need to file returns and pay tax for the current and three prior tax years; otherwise, the Division can assess taxes back to at least 2002. This limited look back can be significant not only because it results in less tax liability, but also because it results in significantly less interest. New Jersey charges interest on tax underpayments at a rate of three percentage points above the prime rate. Because the interest is compounded annually, the interest charge on a 2002 liability is nearly as much as the underlying tax. Penalties (which can be as high as 35 percent of the tax due) are also abated. Further, the Division has signaled that it will negotiate additional concessions on a case-by-case basis,



including relief from the effect of the throwout rule discussed above and how taxable receipts are computed. Terms may be negotiated through an outside representative to maintain anonymity during the negotiation process.

This Voluntary Disclosure initiative may not make sense for every media company. But any media company with New Jersey customers or revenues should at least evaluate its New Jersey tax exposure and the potential benefits of the program. Media buyers may also want to conduct this analysis, given the often undocumented nature of the agency-type relationship with their clients, as well as possible assertions of sequential liability from receivables collection issues. Media companies that choose not to come forward may be the subject of future audit activity and will not be eligible for tax and penalty abatements.

To qualify for the program, a media company must not be registered for New Jersey corporation business tax and cannot have been previously contacted by the Division about an audit. A copy of the Division's notice, which includes the complete terms of the program, are available at: www.reedsmith.com/njtax.

For more information on the compliance initiative, contact the authors of this *Alert* or another member of the Reed Smith State Tax Group. For more information on Reed Smith's New Jersey tax practice, visit www.reedsmith.com/njtax.

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