

## New Jersey's Interest Addback Held 'Unreasonable' - For Many, Refunds Due September 15

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Last week, New Jersey's Tax Court held that New Jersey's disallowance or "add back" of interest paid to an affiliate is "unreasonable."<sup>1</sup> This decision helps level the playing field for taxpayers with high New Jersey apportionment. Typically, only taxpayers with low New Jersey apportionment can avoid adding back interest by taking advantage of the "3-percentage-point safe harbor." In fact, our experience has been that almost any company with New Jersey apportionment below 33 percent can avoid the interest addback because of this safe harbor. Although the Tax Court explicitly refused to expand the 3-percentage-point safe harbor to cover more companies concentrated in New Jersey, the "unreasonableness" ruling extends relief to many of these companies. Thus, many more taxpayers now likely qualify for some sort of exception.

A company that added back interest must consider filing a refund claim. Time is short. Especially for companies that filed a bank and financial company return on form BFC-1. For a calendar-year taxpayer, the BFC-1 return is due September 15. The four-year statute of limitations expires on the fourth anniversary of when that return was actually filed. So the statute on refund claims for 2005 will expire Wednesday of next week-at the latest-for BFC-1 taxpayers. The refund opportunity also applies to a company filing a CBT-100; that return is due October 15 for a calendar-year taxpayer.

Fortunately, it is easy to file a claim. Simply re-compute your New Jersey tax by excluding the "Related Interest Addback" on line 30 of Schedule A (which is on page 2 of the BFC-1<sup>2</sup> or CBT-100<sup>3</sup> return). Attach a refund claim form A-3730<sup>4</sup> and a short explanation raising all the possible issues.<sup>5</sup>

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<sup>1</sup> *Beneficial New Jersey, Inc. v. Director*, N.J. T.C. No. 009886-2007 (decided August 31, 2010).

<sup>2</sup> <http://reedsmithupdate.com/ve/9191UTzL679459s93/stype=click/OID=91097182855171/VT=0>

<sup>3</sup> <http://reedsmithupdate.com/ve/9191UTzL679459s93/stype=click/OID=51097182855267/VT=0>

<sup>4</sup> <http://reedsmithupdate.com/ve/9191UTzL679459s93/stype=click/OID=41097182855261/VT=0>

<sup>5</sup> We use a standard document that raises all statutory, regulatory and constitutional issues.

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