

New Jersey To Move to Single Sales Fraction; Airlines To Get Revenue Miles Fraction

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On Jan. 6, 2011, the New Jersey legislature passed a tax bill (A-1676/S-1646) that phases in a single sales factor apportionment formula for the corporation business tax, beginning this year. The current apportionment formula is based on a taxpayer's New Jersey property, payroll, and double-weighted sales.

The bill passed both houses unanimously but still needs to be signed by Gov. Christie. Assuming the bill is signed as passed by the legislature, the phase-in would occur under the following schedule:

	Sales Fraction	Property Fraction	Payroll Fraction
Existing law	50%	25%	25%
Privilege periods ending on or after July 1, 2011	70%	15%	15%
Privilege periods ending on or after July 1, 2012	90%	5%	5%
Privilege periods ending on or after July 1, 2013	100%	0%	0%

New Jersey does not conform to the Uniform Division of Income for Tax Purposes Act. As a result, New Jersey's sales-fraction rules often differ from other states' rules. Given that the sales fraction will soon take on additional importance, now may be a good time for taxpayers to evaluate their New Jersey sales fraction for possible opportunities and exposures. For example, controversies are pending involving the sourcing of dock sales and patent royalties, and whether sales of goods should be sourced to the immediate or ultimate destination.



The bill also establishes a new apportionment formula for airlines. Whereas the current airline fraction is based on the ratio of New Jersey departures to total departures, the new fraction is the ratio of revenue miles in New Jersey divided by total revenue miles. The bill provides that the revenue miles fraction applies to privilege periods ending on or after July 1, 2011.

Interestingly, the bill does not provide any guidance for how to compute "revenue miles." There may be some flexibility, therefore, in how to compute the fraction. This is illustrated by our recent Pennsylvania case, *FedEx Ground Package System, Inc. v. Commonwealth*, 939 A.2d 323 (Pa. 2007), in which we convinced the court to accept the taxpayer's revenue-miles calculation over the Department of Revenue's calculation.

To ensure that they are collecting the appropriate data, airlines will need to consider how they plan to compute their fraction under the new law.

For more information on the changes to New Jersey's apportionment formula, 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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