

Income/Franchise:

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

Case No. A-000595-23-T04, N.J. Sup. Ct., App. Div. (4/29/25). 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 (Court), 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 (*i.e.*, for periods before mandatory combined filing) [see *State Tax Matters*, Issue 2021-38, for more details on this earlier ruling], the Court now has affirmed the New Jersey Tax Court’s 2023 holding [see Docket Nos. 008305-2007 and 014043-2012, N.J. Tax Ct. (9/13/23) and *State Tax Matters*, Issue 2023-38, for more details on this 2023 decision] that with respect to constitutional issues raised by the same taxpayer, the 2020 amended version of the CBT regulation can apply to the prior tax years at issue to cure the Commerce Clause-related constitutional violation. In doing so, the Court explained that the New Jersey Tax Court’s 2023 decision – which concluded that the Division’s subsequent deletion of a geographic limitation to the CBT regulation in 2020 and its inclusion of illustrative instances sufficiently cured the constitutional concern – was “fair and well-reasoned” and comported with “the law and overarching principles of appellate review.” Please contact us with any questions.

URL: <https://www.njcourts.gov/system/files/court-opinions/2025/a0595-23a0596-23.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210924_4.html

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

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_3.html

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