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New Jersey's limited voluntary disclosure program for owners of intangible assets



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From September 15, 2012, to January 15, 2013, the New Jersey Division of Taxation (Division) will offer a limited voluntary disclosure initiative for companies that owned intangible assets and derived income from the use of those assets in New Jersey. Such companies will have the opportunity to come forward and voluntarily comply with their corporation business tax filing requirements. [[New Jersey Division of Taxation Notice, Intangible Asset Nexus Initiative](#) (9/18/12)]

Program requirements

In addition to the [standard procedures and requirements for voluntary disclosure agreements](#) for business taxes, the following principles will apply:

- The look back period will be limited to the periods beginning after December 31, 2003, or the date business commenced, whichever is later. Returns for prior periods will not be required.
- The taxpayer must file all required returns and remit payment of the full tax liability reported within 90 (ninety) days of the execution of its VDA.
- The Division will waive all penalties except that a 5% amnesty penalty will be assessed for all returns due prior to February 1, 2009.

- The taxpayer will remit payment of interest and the amnesty penalty within 30 (thirty) days of assessment.
- The Division will consider discretionary throwout relief by averaging a throwout receipts fraction with a non-throwout receipts fraction.
- Operating companies or those companies that have paid royalties and added them back to their New Jersey entire net income may submit amended returns for any period for which the statute of limitations remains open in order to claim an exception to the addback.
- All returns will be subject to routine audit with respect to issues not specifically covered in the VDA.
- Any settlement with respect to the throwout issue will be binding on the taxpayer and the Division. The taxpayer may not file a claim for refund in the event that the application of any future court decisions would suggest a different result.
- If the disclosure candidate does not wish to settle the throwout issue, the Division will hold the issue for a future determination. The Division would conduct an audit on the returns filed under the disclosure agreement to make the required throwout determination.

Actions to think about

The 5% amnesty penalty is presumably to penalize taxpayers who did not participate in the state's last amnesty program, which covered state tax returns due on or after January 1, 2002, and before February 1, 2009. For more information on New Jersey's recent amnesty program, please read our [June 10, 2009 summary](#).

The initiative represents an opportunity for certain companies to come forward and eliminate past liabilities related to intangible asset nexus. Taxpayers should proceed with caution on the throwout provisions. If distortion still exists after the throwout calculations, taxpayers should consider requesting alternative relief in the VDA.

The Notice is silent with respect to taxpayers who are currently under audit or who have been notified of an audit. We hope that the Division will provide further guidance in a future communication.

Let's talk

If you have any questions about New Jersey's intangible asset nexus initiative, please contact one of the following individuals:

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