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New Jersey VDA opportunity targets the media industry

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On August 10, 2011, the New Jersey Division of Taxation (Division) [announced](#) a new voluntary disclosure agreement (VDA) initiative directed at the media industry, specifically encouraging certain “media and media content companies” to come into compliance with their New Jersey Corporation Business Tax (CBT) filing requirements. Generally, eligible companies will include cable television networks, syndicators, and other media content providers. The initiative runs from August 15 until November 15, 2011.

New Jersey has historically been aggressive in asserting nexus over out-of-state companies lacking a physical presence. This uncertainty with respect to the nexus standard has been compounded by application of the state’s “throwout” apportionment rule (prior to its repeal effective for tax periods beginning on or after July 1, 2010), which has the effect of increasing the New Jersey apportionment percentage. Eligible companies that fail to participate in the VDA initiative may be subject to an unlimited lookback and significant exposure for tax and penalties.

VDA Initiative Basics

Under the VDA initiative announced by the Division of Taxation, the lookback period is limited to the current year plus the three previous years. Late-filing penalties are waived, although a 5% amnesty penalty may apply in limited circumstances (as under the state’s general VDA program).

Specifically addressing the media industry VDA initiative, the Division sets forth apportionment rules for various revenue streams, including advertising, subscription



and syndication. To be eligible for this initiative, a company's receipts from licensing intangible property cannot exceed 10% of total gross receipts. In general, the Division states that it may grant discretionary apportionment relief from the throwout rule on "a case-by-case review."

PwC Observes

The New Jersey VDA initiative for media and media content companies represents a significant opportunity for these companies to achieve substantial savings and, just as important, the potential to release substantial reserves with respect to New Jersey CBT. It is important to note that not all media companies may be eligible for the initiative given its restrictions – for example, the Division does not allow companies with over 10% of gross receipts from licensing intangible property to participate in the VDA initiative. However, many media companies, including cable television networks, syndicators, and other media content providers, could significantly benefit from participation in the program.

That said, the ultimate benefit from this program will depend on the application of the Division's apportionment guidelines, as stated in the terms of the initiative, for advertising, subscription and syndication revenue, and the ability to obtain a favorable result with respect to throwout.

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