

# New Jersey – Appellate court allows income tax refund of tax payments made by related entity

April 15, 2014

## In brief

On April 11, 2014, a New Jersey Superior Court, Appellate Division (Appellate Court) found that because an out-of-state company filed a corporate business tax return, it provided sufficient consent to taxation in order to apply for refunds on tax amounts paid on its behalf by an affiliate. The court rejected the state's argument that only the party actually remitting tax to the state could request and receive a tax refund.  
[\[BIS LP, Inc. v. Director, Division of Taxation\]](#), Sup. Ct. NJ, App. Div., No. A-1647-12T3 (4/11/14)]

## In detail

BIS LP (BIS) filed its 2003 New Jersey Corporation Business Tax (CBT) return and the tax owed on such return was paid by an affiliate pursuant to a contractual servicing arrangement. BIS requested a refund of tax paid arguing that it had no constitutional nexus with the state. BIS's only connection with New Jersey was its limited partnership interest in a limited partnership doing business in New Jersey.

In 2011, a New Jersey Appellate Court agreed with BIS and held that it did not have income tax nexus with New Jersey. [Click here](#) for our summary of the decision. The court remanded to the Tax Court to consider the party to which payment should be made.

On remand, the Tax Court addressed the state's argument that BIS was not entitled to a refund because: (1) BIS did not pay the tax, (2) BIS did not consent to New Jersey taxation, and (3) BIS was not doing business nor did it have nexus with the state. The state argued that any refund of taxes paid on BIS's behalf should not be paid to BIS, but rather should be remitted to the affiliate that actually paid tax to the state on BIS's behalf. Because the affiliate was time-barred from seeking a refund, the state's position would have resulted in no refund of such taxes.

The Tax Court determined that the state was obliged to refund the taxes paid. [Click here](#) for our summary of the Tax Court's decision. The state appealed to the New Jersey Appellate Court.

On April 11, 2014, the Appellate Court found that because BIS filed a CBT return, it provided sufficient consent to taxation in order to apply for refunds on tax amounts paid on its behalf.

## The takeaway

Although BIS won the nexus argument, the Division has been looking for creative ways to avoid paying refunds for similarly situated taxpayers. This decision is a step in the right direction and taxpayers are encouraged to file protective refund claims. We understand that the governor's budget may include provisions that would limit a corporate partner's ability to obtain refunds for taxes withheld/paid by a partnership. As a result, if that proposal becomes law, this decision may have limited applicability.

## Let's talk

If you have any questions regarding the *BIS LP* decision, please contact:

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