

New Jersey announces VDA tax initiatives for intangible asset nexus and for partnership tax and partner fees

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In brief

The New Jersey Division of Taxation (Division) has announced two voluntary disclosure agreement (VDA) initiatives that run from March 15, 2014, through May 15, 2014, for intangible asset nexus and for partnership tax and per partner fees. Taxpayers that participate in a VDA will have a limited look back period and waived penalties, but must pay all interest. The Division provides that all returns will be subject to audit with respect to issues not specifically covered in the VDA.

Interested taxpayers should consider the benefits of entering into a voluntary disclosure agreement with the state.

In detail

Standard procedures and requirements for VDA

The general guidelines to be an eligible participant in a VDA include:

- Taxpayer has had no previous contact by the Division
- Taxpayer is not registered for the taxes it voluntary wishes to come forward on
- Taxpayer is not currently under criminal investigation
- Taxpayer must be willing to pay outstanding tax liabilities

and file prior year returns for a limited look back period.

Intangible Asset Nexus VDA initiative

The intangible asset nexus VDA initiative covers companies that have nexus with New Jersey resulting from having derived income from the use of intangible assets in the state.

Taxpayers that participate in the VDA can voluntarily come forward and comply with their Corporation Business Tax requirements. The following terms apply:

- look back period will be limited to the periods

beginning after July 1, 2010, or the date business commenced, whichever is later

- all required returns and payments of taxes owed must be made within 45 days of execution of the VDA
- all penalties will be waived
- interest must be remitted within 30 days of assessment
- for any period that the statute of limitations remains open, operating companies or those companies that paid royalties and added them back to their New Jersey

entire net income can file amended returns to claim an exception to the addback

- all returns remain subject to audit with respect to issues not specifically covered under the terms of the VDA.

Partnership VDA initiative

The partnership VDA initiative covers partnerships with New Jersey sourced income that have failed to file the required returns and remit the (1) partnership tax due under the Corporation Business Tax Act and (2) the per partner fee due under the Gross Income Tax Act.

Taxpayers that participate in the VDA can voluntarily come forward and comply with their Corporation Business Tax and Gross Income Tax requirements. The following terms apply:

- look back period will be limited to periods beginning on or after January 1, 2010

- all required returns and payments of taxes owed must be made within 45 days of execution of the VDA
- all penalties will be waived
- interest must be remitted within 30 days of assessment
- all returns remain subject to audit with respect to issues not specifically covered under the terms of the VDA.

The takeaway

The Division continues to discover companies that have an obligation to the state, which has influenced these VDA initiatives. The Division appears to believe that intangible assets may be 'embedded' into companies with other business operations beyond merely owning intellectual property and that the fee for the use of an intangible asset may be integrated into an intercompany pricing analysis. It is unknown how aggressive the state will be in asserting nexus based on the ownership or presence of intangible

property following the conclusion of the VDA programs.

Companies and individuals should review whether they have derived income or have income sourced in New Jersey that would subject them to tax and consider whether either VDA initiative would cover their liabilities. Even if liabilities aren't addressed under either program, negotiations may be possible under New Jersey's general voluntary disclosure program.

State voluntary initiative programs may be difficult to navigate, could be time consuming, and may involve some uncertainty in the absence of administrative guidelines. Taxpayers with outstanding liabilities covered by these two programs should consider the benefits, obligations, and administrative requirements of the programs before applying.

Let's talk

For more information regarding the VDA initiatives, please contact:

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