

# *New Jersey – Enacted legislation adopts click-through nexus, expands definition of operational income and makes other changes*

July 2, 2014

## ***In brief***

New Jersey legislation ([A.B. 3486](#), P. L. 2014, c. 13), enacted on June 30, 2014, adopts ‘click through’ nexus sales tax provisions, broadens the definition of operational (apportionable) income, modifies the corporate business tax net operating loss, and requires certain nonresident partners to file a tax return in order to receive credits and refunds related to partnership activities.

## ***In detail***

### ***Click-through nexus***

The legislation creates a rebuttable presumption of nexus when a seller makes sales of tangible personal property, specified digital products or services via a commissioned independent contractor who directly or indirectly refers potential customers, by a link on an Internet website or otherwise, to the seller. For this provision to apply, cumulative gross receipts from such sales must be in excess of \$10,000 during the preceding four calendar quarterly periods. This presumption is rebuttable by proof that the independent contractor or representative did not engage in any solicitation in New Jersey on behalf of the seller that would satisfy

constitutional nexus requirements.

This provision applies to sales made, services rendered, and uses occurring on or after July 1, 2014.

### ***Operational income***

The legislation redefines operational income to mean income from tangible and intangible property if the acquisition, management, **or** (was ‘and’) disposition of the property constitute an integral part of the taxpayer's regular trade or business operations and includes investment income serving an operational function. Thus, under the revised definition, the factors listed are independent factors in determining whether income is operational rather than

requiring the satisfaction of three factors. The provision applies to privilege periods ending on or after July 1, 2014.

### ***Net operating loss***

The legislation requires that an NOL, or NOL carryover, for any privilege period ending after June 30, 2014, be reduced by the amount excluded from federal taxable income under IRC §§ 108(a)(1)(A), (B), or (C) for debt discharged on account of bankruptcy, insolvency, or qualified farm indebtedness. The provision applies to privilege periods ending on or after July 1, 2014.

### ***Partnerships***

Under the legislation, nonresident partners must file a New Jersey tax return and report income that is subject to

tax by the state in order to apply the tax paid by the partnership and credited to the nonresident partner's partnership account against its tax liability. The partnership is not entitled to claim a refund of payments credited to any of its nonresident partners. The provision applies to privilege periods ending on or after July 1, 2014.

### **The takeaway**

With the June 30 enactment date, the legislation will likely be a Q2 event for financial statement purposes. In addition, the income tax provisions are effective for privilege periods ending on or after July 1, 2014,

meaning the changes apply retroactively. For example, dispositions before June 30, 2014, or earlier for some fiscal year taxpayers, may qualify as operational income under the new, and expanded definition.

Precluding partnerships from claiming refunds on behalf of nonresident partners represents a victory for the Division of Taxation in its desire to avoid paying refunds to corporate partners as a result of the *BIS LP* decision, which held that an out-of-state corporation did not have New Jersey nexus due to its limited partnership interest in a limited

partnership doing business in the state. [Click here](#) for our summary of the *BIS LP* decision.

With the US Supreme Court's perceived unwillingness to hear state tax nexus cases and Congress' reluctance to intervene, coupled with the 2013 decision by the New York Court of Appeals to uphold the constitutionality of that state's vendor presumption law, it can be expected that other states, like New Jersey in this instance, will continue down the road of expanding nexus standards to capture sales made over the Internet.

### **Let's talk**

If you have any questions about the legislation, please contact one of the following individuals:

#### **State and Local Tax Services**

Hardeo Bissoondial  
Partner, *New York*  
+1 (646) 471-8510  
[hardeo.bissoondial@us.pwc.com](mailto:hardeo.bissoondial@us.pwc.com)

Anthony Grasso  
Director, *Florham Park*  
+1 (973) 236-4971  
[anthony.j.grasso@us.pwc.com](mailto:anthony.j.grasso@us.pwc.com)

Leonard DiMeglio  
Director, *Florham Park*  
+1 (973) 236-5549  
[leonard.dimeglio@us.pwc.com](mailto:leonard.dimeglio@us.pwc.com)