



## Gross Income Tax Allocation and Uniformity with Corporation Business Tax Sourcing for Receipts Business Income

**TB-112 - Issued October 11, 2023**

**Tax: Gross Income Tax**

P.L. 2023, c. 96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT), Gross Income Tax Act (GIT), and other miscellaneous requirements. This bulletin discusses the requirement for Gross Income Tax taxpayers to follow the same sourcing rules required for Corporation Business Tax purposes on business receipts.

### **Sourcing Rules Prior to January 1, 2023**

Prior to January 1, 2023, the Gross Income Tax apportionment sourcing rules for receipts from business income was based on a three-factor formula of property, payroll, and receipts, following a cost of performance method.

### **Sourcing Rules Beginning on or After January 1, 2023**

On or after January 1, 2023, as required by Section 13 of P.L. 2023, c. 96, the Gross Income Tax apportionment sourcing rules for receipts from business income follow the same apportionment sourcing rules required for Corporation Business Tax purposes. This means business receipts are sourced using the single sales factor method and market based sourcing method. P.L. 2023, c. 96, only prescribes uniform sourcing and does not extend to deductions and exemptions that are allowed under the Corporation Business Tax Act. Allowable deductions and exemptions are prescribed in the Gross Income Tax Act. For business income amounts that are excluded from income for Gross Income Tax purposes, the receipts attributable to the excluded amounts of income are excluded from the allocation factor.

### **Taxpayers Subject to the Sourcing Rules Beginning on or After January 1, 2023**

The new sourcing rules apply to all taxpayers subject to the Gross Income Tax Act that engage in a trade or business, such as a sole proprietor, a partner in a partnership, or shareholder of an S corporation that conducts business operations partly within and partly without this State. The single sales factor is the default method for sourcing and must generally be used. However, if the taxpayer believes that this method does not result in an equitable allocation, the taxpayer may apply in writing to the Division as discussed in "*A Different Method of Allocation (Section 8 Relief)*" below.

### **Service Receipts and Special Industry Sourcing Rules**

Service receipts are sourced based on where the benefit of the service is received, which is commonly referred to as market-based sourcing. However, these rules also contain special rules that apply for certain special industries (such as asset management, advertising, and transportation services). See N.J.S.A. 54:10A-6 and N.J.A.C. 18:7-8.10A for details on how taxpayers engaged in the business of those special industries report their receipts.

## **Sourcing Rules for Receipts Other Than from Business Income**

Income representative of the taxpayer's salary, wages, tips, fees, commissions, bonuses, and other remuneration continues to be sourced according to the other applicable provisions of the Gross Income Tax Act. This income is not sourced following the Corporation Business Tax sourcing rules. A taxpayer that is a partner in a partnership or a shareholder in an S corporation, who receives salary, wages, tips, fees, commissions, bonuses, and other remuneration, must source such items according to the provisions of the Gross Income Tax Act.

Guaranteed payments to a partner from a partnership are considered payments of the partner's share of business profits, not compensation.

## **A Different Method of Allocation (Section 8 Relief)**

The taxpayer can request a different allocation method if the taxpayer believes the single sales factor allocation as applied is inequitable. This is referred to as Section 8 relief in N.J.S.A. 54:10A-8. Taxpayer requests must be made in writing and set forth the basis of the request, the reason(s) why the New Jersey Business Allocation Schedule does not provide an equitable allocation, and the substitute method of allocation requested to be used. Such request must be mailed to the New Jersey Division of Taxation, Gross Income Tax Audit Branch, PO Box 288, Trenton, NJ 08695-0288, attention: Chief. Taxpayers can refer to N.J.A.C. 18:7-8.3 and N.J.A.C. 18:7-10.1 for more information.

## **Nexus**

Taxpayers that were rendering services to New Jersey customers prior to the statutory amendments already had nexus with New Jersey. Thus, it is unlikely that the statutory amendments that changed to a single sales factor-market based sourcing rules will result in additional taxpayers having nexus for Gross Income Tax purposes. The statutory amendments were made to more accurately reflect income and receipts derived from New Jersey sources.

## **Other Corporation Business Tax Concepts Incorporated**

The Corporation Business Tax rule, N.J.A.C. 18:7-8.12(e), for determining whether a receipt is integrated in the business and associated case law is applicable for Gross Income Tax purposes. The rules for determining whether the business income is operational income (and allocated) or nonoperational income (and specifically assigned) apply for Gross Income Tax purposes for tax years beginning on and after January 1, 2023. See N.J.S.A. 54:10A-6.1 and N.J.A.C. 18:7-8.17 for more information. The unitary business principle for determining whether an income item is allocated (if unitary) or specifically assigned to the domicile of a taxpayer (if non-unitary) applies. See N.J.S.A. 54:10A-6.1, N.J.A.C. 18:7-8.17, and N.J.A.C. 18:7-21.2 for more information.

Although an item of income might be assigned to the business's corporate domicile, when the business pays out the income to an individual it is an item of income assigned to the individual's state of domicile.

## **Tiered Partnerships**

A partner in a tiered partnership that is a unitary business (as outlined in N.J.A.C. 18:7-21.2) and is owned by the partner, directly or indirectly, with more than a 50% ownership interest, must

use the flow-through method of accounting and sourcing for unitary partnerships described in [N.J.A.C. 18:7-7.6](#).

### **Pass-Through Business Alternative Income Tax (BAIT)**

The new uniform sourcing rules also apply to the Pass-Through Business Alternative Income Tax (BAIT). A group of pass-through entities under common control which elect to pay the BAIT and to file a consolidated PTE-100, *may* follow the sourcing methods for a combined group set forth in [N.J.A.C. 18:7-21.1](#) through 21.29. However, that group of pass-through entities is not required to do so.

### **Penalty and Interest Relief for the 2023 Tax Year**

For tax year 2023, taxpayers will not be assessed any penalties or interest on the underpayment of tax resulting from the provisions of P.L. 2023, c.96, that may have generated an additional tax liability. No interest will be assessed for not making sufficient installment payment of estimated tax. However, in order to qualify for this relief, all additional estimated tax payments must be made by the due date of the return of April 15, 2024.

### **Voluntary Disclosure Program**

Individual and business taxpayers who discover they have business activities that create nexus for New Jersey tax purposes are encouraged to voluntarily register and bring their accounts into compliance by disclosing past tax liabilities. Information about the State's [Voluntary Disclosure Program](#) is available on the Division's website.

### **More Information**

General information about [Corporation Business Tax](#) and [Changes to the Corporation Business Tax Act](#) are available on the Division's website.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.