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New Jersey: Guidance Released on Inclusion of Captive Entities in the Combined Group and Small Bank Exception

The New Jersey Division of Taxation has recently issued a number of Technical Bulletins and revised Technical Bulletins addressing various aspects of the legislation enacted in July that made substantial changes to the Corporation Business Tax (CBT). The latest new bulletin is TB-113, which addresses the inclusion of certain captive entities in the New Jersey combined group and the exception for captives owned by small banks and savings & loans. Effective for privilege periods ending on and after July 31, 2023, "captive" investment companies, regulated investment companies, and real estate investment trusts are taxed as C corporations and included in the combined group. Prior to this period, such entities filed a separate return. An exception from inclusion applies to real estate investment trusts, investment companies, and regulated investment companies of which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings & loan association with assets of $15 billion or less. The Bulletin reminds taxpayers that the exception for a bank (or savings & loan association) does not apply to the banks or the savings & loan associations themselves.

Importantly, TB-113 sets forth rules for determining the value of assets for purposes of the exception; in most instances, this will be measured by the annual average value of the bank's assets based on the bank's quarterly reports filed with the regulatory authorities reported in accordance with U.S. G.A.A.P. or I.F.R.S. However, the Bulletin notes that there are some instances in which an annual average of the assets may not be the best measure for determining whether the investment companies, regulated investment companies, and real estate investment trusts must be included as "captives." These include when certain types of mergers and acquisitions occur, or there are unforeseeable events that affect the value of a bank's assets. The Bulletin also provides guidance on aligning the captive's income reporting period with the combined group privilege period. If the "captives" have a different privilege period than the group privilege period, they must file short period returns for the months preceding the start of the group privilege period. If they have a different federal tax year than the group privilege period, the income of the investment companies, regulated investment companies, and real estate investment trusts occurring during the months of the group privilege period must be reported on the combined return, and a short period return must be filed for months preceding the investment companies, regulated investment companies, and real estate investment trusts being included as members of the combined group. If in a subsequent group privilege period the investment companies, regulated investment companies and real estate investment trusts were excluded from the combined group because their parent had assets valued at $15 billion or less, then such entities would file separate returns. Finally, the Bulletin provides examples of when filings are required in the case of mergers or acquisitions. Please contact Jim Venere with questions on TB-113 (N.J. Division of Taxation, Nov. 1, 2023).

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