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New NJ Tax Legislation is Pro-Business - Changes Multistate Allocation Factor; Allows Netting of Gains and Losses of Certain Types of Business Income

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While the New Jersey headlines last week trumpeted a new deal intended to save the troubled Xanadu project in the Meadowlands, the governor also signed two pro-business tax bills that may be even more exciting for New Jersey business owners.

The first bill, S2753, affects businesses that allocate income to multiple states, and simplifies the New Jersey corporate business tax to a single sales factor formula. New Jersey previously relied on a weighted average of three factors -- property, sales and payroll – which tended to penalize businesses with property and payroll in New Jersey but little in the way of New Jersey sales. The new method of calculating New Jersey source income – based on New Jersey sales only – is phased in over three years, beginning in January 2012.

The second bill, S2754, will allow taxpayers to net gains and losses from certain business-related categories of New Jersey gross income and allow those losses to be carried forward for up to 20 years.

New Jersey’s gross income tax system requires that taxpayers recognize income in several different categories, or baskets. Under the current law, income or loss in one category may not offset income or loss in another category.

Under the new law, if a taxpayer has income in the following categories: (1) net profits from business, (2) net gains or net income derived from or in the form of rents, royalties, patents and copyrights, (3) distributive share of partnership income and (4) net pro rata share of S corporation income, then the gains and losses in those categories can be netted against each other. Once the law is fully implemented, a taxpayer can deduct 50% of the savings that would accrue from unlimited netting between those income categories and from applying the net loss carryforward. The bill phases in the tax savings 10% per year over five years, beginning in 2012.

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