

## **Governor Murphy Signs Law that Favorably Impacts New Jersey BAIT Credit**

In 2020, New Jersey enacted the Business Alternative Income Tax Act (NJ BAIT) as a work around to the \$10,000 federal cap on individuals' itemized deductions for state and local income taxes (SALT). This allowed Pass Through Entities (PTEs) structured as partnerships and LLCs with at least two owners and all S-corporations to elect to pay state tax at the PTE level providing owners with a tax deduction against their income for federal tax purposes. The owners then claim a refundable credit on their New Jersey individual income tax return for their share of the NJ state tax paid.

The law signed by Governor Murphy modifies and improves the NJ BAIT Act in the following ways:

1. Taxable income for the BAIT calculation will be based on New Jersey income, not federal income. This change increases the federal tax deduction.
2. A three-factor formula based on sales, payroll and assets can be used for allocation of income between New Jersey and other states for all PTEs.
3. Tax payments made in tiered partnership structures now may be applied to upper-tier entities, which previously wasn't permitted.
4. It will no longer be necessary for non-resident withholding on income allocated to non-resident owners if the PTE has a reasonable basis to believe that the BAIT tax will cover the owner's New Jersey income.
5. If a BAIT overpayment exists, the law now allows the choice of a refund or application to future year's estimated BAIT tax payments.
6. The highest tax bracket on which tax can be computed now includes distributable income in excess of \$1 million. This change also permits a larger federal tax deduction.

These changes will be very beneficial to resident and non-resident partners of New Jersey S-corporations, partnerships and LLCs. As always, if you have questions, please contact the GGG partner or staff member servicing your account.

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