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AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

NEW JERSEY UPDATES ON UNCLAIMED PROPERTY AND INCOME TAXES

SUMMARY

This alert contains a description of recent New Jersey legislative changes applicable to gift card rules for unclaimed property, as well as a synopsis of a recent New Jersey Tax Court case in which New Jersey resident individuals were entitled to an income tax credit for taxes paid by them to New York on their S corporation income.

DETAILS

Legislative Gift Tax Changes for Unclaimed Property

Senate Bill No. 1928 was enacted, effective June 29, providing significant and improved new statutory provisions for issuers of gift cards and stored value cards (collectively, "SVCs"), and resolving a number of issues resulting from 2010 amendments to the New Jersey Uniform Unclaimed Property Act ("2010 amendment"). The 2010 amendment provided that SVCs were a covered property type, escheatable after two years. The bill does not address treatment of traveler's checks or money orders, whose dormancy period had been shortened by the 2010 amendment.

Under the new legislation, SVCs issued on or after July 1, 2010, are generally presumed abandoned after five years of inactivity. The proceeds presumed abandoned are 60% of the value of the unredeemed card. The issuer may retain 40% of the card value. SVCs issued prior to July 1, 2010, and general purpose reloadable cards are not subject to escheat. In addition, the escheat rules do not apply to cards issued for no consideration, cards donated to a nonprofit organization, cards redeemable for admission to events, or cards issued from an issuer who sold SVCs with a face value of $250,000 or less in the past year.

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The Bill delays implementation of the controversial zip code collection requirement from the 2010 amendments for about four years and repealed the place-of-purchase presumption which had provided that if the issuer had not complied with the zip code data collection requirement, a card sold in New Jersey was presumed to have a New Jersey owner.

Beginning September 1, 2012, if a balance of less than $5 remains after redemption of an SVC, the owner generally may request that the remaining balance be paid in cash, subject to certain exceptions. Issuers are subject to a $500 penalty for each violation.

For an SVC sold on or after December 1, 2012, funds associated with the SVC generally cannot expire. An expiration date, to the extent permitted by Federal law, may be applied only to the card, but not to the underlying funds. In addition, no fees or charges may be imposed on an SVC except for fees related to the issuance and purchase of an SVC and to replacement cards.

Income Tax Credit on S Corporation Income

In a recent case, individual taxpayers were permitted a credit against their state income taxes for taxes paid to another state on income earned by their S corporation. *See Beljakovic v. Director, Division of Taxation*, N.J. Tax Court, No. 004551-2010 (Aug. 1, 2012).

For the 2006 taxable year, the Beljakovics were a married couple who were residents of New Jersey. The wife was a sole shareholder of a New Jersey S corporation which did business In New York and New Jersey. Inasmuch as the S corporation did not maintain a regular place of business outside of New Jersey, the State required that 100% of the S corporation income be allocated to New Jersey under the then-existing law. However, because the S corporation did business and maintained payroll in New York, it also sourced 51% of its business to New York State on its S corporation tax return (which passed through to the shareholder), and 29% to New York City on its general corporation tax return.

The taxpayers claimed a credit against their New Jersey Gross Income Tax (“GIT”) for the amount of taxes paid to New York State on their income from the S corporation. The credit was disallowed upon audit because the New Jersey Personal Income Tax statute bars a credit for any income tax imposed on S corporation income that is allocated fully to New Jersey.

The court ruled that the allocation of corporate income under the Corporation Business Tax (“CBT”) rules should not mechanically control the application of the GIT credit provision. The legislative intent of the credit provision is to prevent multiple taxation of the same income actually taxed by foreign jurisdictions. The court determined that the Beljakovics were entitled to an income tax credit because the legislative intent and design of the GIT credit provision prevailed over the required 100% allocation under the CBT provisions.