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Subject: New Jersey Legislation Repeals Regular Place of Business and Throwout Provisions

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To Our Clients and Friends:

Effective for tax years beginning on or after July 1, 2010, New Jersey has repealed its longstanding regular place of business requirement for purposes of establishing the right to apportion income, as well as its more recent and controversial throwout rule with respect to the computation of the sales fraction of the apportionment formula.

By way of background, taxpayers are generally required to allocate all of their income to New Jersey unless, during the period covered by the return, they actually maintained a regular place of business (other than a statutory office) outside the state. A regular place of business generally includes an office, warehouse, factory or other space regularly used in the business where at least one regular employee is in attendance. Based on the new legislation, taxpayers will have the right to apportion income within and without New Jersey irrespective of whether a regular place of business is maintained outside the state.

Also by way of background, effective for tax years beginning on or after January 1, 2002, in calculating the sales fraction of the apportionment formula, the throwout rule provides "if receipts would be assigned to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to tax on or measured by profits or income, or business presence or business activity, then the receipts shall be excluded from the denominator of the sales fraction". The new legislation eliminates the throwout rule. It should be noted that the throwout rule recently survived a constitutional challenge (Pfizer Inc., et.al. v. Director, Division of Taxation, 24 NJ Tax 116 (2008)).

If you have any questions regarding the within, or any other state and local tax matter, please do not hesitate to contact me.

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