

# THE WISS SALT UPDATE

State and Local Tax Services

Winter 2009

- New Jersey “Throw Out” Rule
- New Jersey Net Operating Loss Period Extended
- New Jersey Sales Tax Benefits in Enterprise Zones
- Connecticut Enacts Tax Amnesty Program
- Massachusetts Enacts Tax Amnesty Program

**State and Local Taxes have become an increasingly larger portion of the cost of doing business. To help you manage your business, WISS formed the SALT (State and Local Taxation) Group, a select group of tax professionals with specialized knowledge in this particular area of taxation.**

**New Jersey “Throw Out” Rule and “Regular Place of Business” Requirement Eliminated.** On December 19, 2008 New Jersey Governor Jon S. Corzine signed into law A2722, effective for taxing periods beginning on or after July 1, 2010 which eliminates the throw-out rule and the regular place of business requirement under state corporate income tax law.

Under the throw-out rule, multi-state corporations calculate their corporate income tax liabilities based on an allocation formula that removes (throws out) any sales from the denominator of the allocation factor from states where the taxpayer does not have an income tax filing requirement. The removal of sales from the denominator will increase the allocation factor in New Jersey thereby increasing most taxpayers’ New Jersey tax liability. Repealing the throw-out rule should lower most multi-state corporations’ New Jersey tax liabilities.

Additionally, the law eliminates the requirement that a taxpayer must have a regular place of business outside of the state in order to apportion income.

**New Jersey Net Operating Loss Period Extended.** On November 24, 2008, Corzine signed legislation that extends the net operating loss carryforward period from seven to twenty years. The change is applicable to net operating losses realized in periods ending after June 30, 2009.

**New Jersey Sales Tax Benefits in Enterprise Zones.** There are numerous sales tax benefits related to sales and services within New Jersey Enterprise Zones. Although many of the statutes have been in place for several years, this area is often a source of confusion. Therefore, the following is a summary of the rules that are currently in place.

**Exemption for UEZ Businesses.** Retail Sales of personal property and leases (except motor vehicles and energy) to a qualified business within a UEZ are exempt from sales and use tax.

Businesses in a UEZ with less than \$3 million in gross receipts in the prior year are considered to be a “small business” eligible for the exemption at the time of purchase. Larger businesses must pay the full tax up front and then must apply for a refund of taxes paid.



Businesses that must apply for a refund must use form A-3730-UEZ within one year of the original sale, along with the spreadsheet form which provides detail, A-3730-UEZ-1.

Prior to January 13, 2008, a small business was designated to have less than \$1 million in gross sales in the prior annual tax period, and proof of the claim for the refund needed to be submitted prior to February 1, 2008. After that date, proof is no longer required to be included.

However the proof must be maintained for not less than four years from the postmark of the claim. Qualified businesses purchasing or leasing tangible personal property (except motor vehicles and energy) to be consumed exclusively in a UEZ should furnish form UZ-5, Urban Enterprise Exempt Purchase Certificate to the vendor.

**Exemption for Sales of Services.** Sales of services (except telecommunications and utility service) to a qualified business within an urban enterprise zone (“UEZ”) are exempt from sales and use tax.

Services include installing, maintaining or repairing tangible personal property (“TPP”) used in business (except motor vehicles); maintaining, servicing or repairing real property used in business, including janitorial services, and advertising services used or consumed exclusively within the enterprise zone.

Qualified businesses purchasing services (except motor vehicles and energy) to be consumed exclusively in a UEZ should furnish form UZ-5, Urban Enterprise Exempt Purchase Certificate.

**Partial exemption for purchases within a UEZ.** UEZ vendors making retail sales of TPP from a place of business in the zone will have 50% of the receipts exempted from the sales and use tax. There is no exemption for purchases in the zone for the following items:

- manufacturing machinery (exempt under another statute)
- motor vehicles
- energy
- alcoholic beverages
- cigarettes
- prepared foods
- admissions
- catalog sales
- meals and rooms

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All sales must be from the vendor's place of business within the UEZ and the purchaser must take delivery at the place of business, or the vendor must deliver the TPP from his place of business in the UEZ. Delivery may be made to the purchaser outside of the zone. The delivery may be made by the vendor or by an outside carrier as long as the purchase took place in person in the UEZ.

Receipts from telephone and mail order sales are subject to tax at the regular rate where delivery is made to a location within this state.

Eligible vendors in a UEZ that lease TPP may pay use tax at one half the rate as long as the above requirements are met. There is no partial exemption on the sale or furnishing of taxable services from within the UEZ.

Businesses qualified to collect at the reduced rate are required to file form UZ-50, Combined Sales and Use Tax/Urban Enterprise Zone Sales Tax Monthly returns on a monthly basis due 20 days after the end of the month.

**Exemption for Sale of Building Materials.** Sales of building materials, supplies or services to contractors or repairmen for exclusive use in erecting structures, building on, improving, altering or repairing real property in an enterprise zone are exempt from sales and use tax.

The contractors purchasing the goods for use in the UEZ shall furnish to their vendor form UZ-4, Contractor's Exempt Purchase Certificate, Urban Enterprise Zone.

**Exemption for Energy and Utility Service.** Retail sales of energy and utility service (gas and electric) to a business in a UEZ with more than 250 employees within the zone are exempt from sales tax. At least 50% of the employees must be directly employed in a manufacturing process, for the exclusive use or consumption of the business within an enterprise zone.

The exemption is also available to a group of two or more persons, each located in a single redevelopment area adopted pursuant to the "Local Redevelopment and Housing Law" that collectively employs 250 people within an enterprise zone, at least 50% are directly employed in the manufacturing process; the two businesses are each engaged in a vertically integrated business evidenced by the manufacture and distribution of a single product and they collectively use the energy and utility service for consumption within the zone.

The qualified businesses as described above must apply for the exemption and be accepted before it is allowed.

**Connecticut Enacts Tax Amnesty Program.** The State of Connecticut will offer a tax amnesty program from May 1, 2009 through June 25, 2009. The Connecticut Tax Amnesty Program, administered by the Department of Revenue Services ("DRS"), provides an opportunity for eligible taxpayers to pay their back taxes to the state while avoiding penalties and criminal prosecution. It also offers a reduction in interest.

Amnesty will be offered to any taxpayer owing Connecticut tax for any taxable period ending on or before November 30, 2008. A taxpayer may be ineligible for amnesty for either of the following reasons:

1. The taxpayer is currently under audit by the Connecticut Department of Revenue Services; or
2. The taxpayer is a party to any criminal investigation or to any civil or criminal litigation involving the Connecticut Department of Revenue Services.
3. Taxpayers already in a payment plan with DRS or who have received a tax bill from DRS cannot participate in the amnesty program.

## Massachusetts Enacts Tax Amnesty Program

Massachusetts Governor Deval Patrick has signed legislation authorizing a two-month tax amnesty program, during which penalties for failure to timely file or pay Massachusetts taxes will be waived. The amnesty period will begin on a date to be determined by the Department of Revenue and will end no later than June 30, 2009. The amnesty program will not apply to any tax liability for a period that commenced on or after January 1, 2007. Any taxpayer who has been the subject of a tax-related criminal investigation or prosecution is not eligible for amnesty. ▼

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The WISS SALT Group provides advisory and consulting services in areas such as:

- Nexus Studies
- Sales and Use Tax Review
- Voluntary Disclosure Agreements
- Tax Audit and Examination Representation
- State and Local Tax Credits and Incentives
- Apportionment Planning
- Unitary Tax and Combined Reporting
- State of Residency Planning



For additional information related to the State and Local Tax area, contact us at 973.994.9400 or [www.wiss.com](http://www.wiss.com).

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