New Jersey S Corporation Election - New Shareholders

Legal Alert

February 23, 2011

It is well known that in order to properly make an election to be taxed as a New Jersey S corporation, all of the shareholders must timely consent to the election, which is done by indicating their consent on a timely-filed Form CBT-2553. However, what is sometimes overlooked is that when a new shareholder is added to the corporation after the initial election was filed, that shareholder must also file a consent to the election and to the jurisdictional requirements of the State of New Jersey. N.J.A.C. 18:7-20.1(c). This is accomplished by filing another Form CBT-2553 and completing the requisite sections of that form.

If a new shareholder does not sign the consent, that shareholder is referred to as a "nonconsenting shareholder" and the corporation is required by New Jersey law to make payments of gross income tax on his/her behalf. N.J.S.A. 54:10A-5.23. The payment must be calculated at the highest marginal income tax rate on the pro rata share of the S corporation income allocated to New Jersey for each nonconsenting shareholder and must be submitted with a Form NJ-1040-SC. The New Jersey Division of Taxation has recently issued a reminder about this procedure in its Winter 2010 issue of New Jersey State Tax News (Volume 39, Number 4).

If you would like more information about the procedures discussed in this alert, please contact a member of the Taxation Practice Group at Flaster Greenberg PC.

ATTORNEYS MENTIONED

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