

Notice to CBT Taxpayers
New Jersey Decouples from Federal
Deferral of Certain Discharge of Indebtedness Income
and Extends the Business Surtax
Effective July 1, 2009

The Governor signed into law P.L.2009, c.72 on June 29, 2009 extending the 4% surtax on corporation business tax liability for one year. The annual surtax, which was initially imposed under P.L. 2006, c.38 (N.J.S.A. 54:10A-5.40) for privilege periods ending on or after July 1, 2006 but before July 1, 2009, has been extended for one year. The surtax will now apply for privilege periods ending on or after July 1, 2006 but before July 1, 2010. As previously imposed, the surtax is paid in addition to the franchise tax that is required pursuant to N.J.S.A 54:10A-5. Each taxpayer shall be assessed and must pay a surtax equal to 4% of the amount of tax liability remaining after applying credits against liability, other than credits for installment payments, estimated payments made with a request for extension to file a return, or overpayments from a prior privilege period. Payments of the surtax are to be made annually as required under N.J.S.A. 54:10A-15. No credits shall be allowed against the surtax liability except for credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.

The law also decouples corporation business tax from federal Internal Revenue Code deferral of certain discharge of indebtedness income. This bill decouples the New Jersey Corporation Business Tax from section 1231 of the federal American Recovery and Reinvestment Act of 2009, which added subsection (i) to section 108 of the Internal Revenue Code. Subsection (i) allows certain businesses that repurchase debt in 2009 and

2010 to defer reporting discharge of indebtedness income as taxable income until 2014 and then to spread this income over the five tax years from 2014 through 2018.

By decoupling New Jersey from the new federal subsection (i), New Jersey corporate taxpayers will not be able to defer this income but will be required to continue reporting the income in the year it is earned. However, corporate taxpayers will be able to exclude the income from New Jersey taxable income in future years when it is required to be recognized federally as taxable income under subsection (i), thus it will not be taxed twice in New Jersey.