



Intangible Holding Companies' Voluntary Disclosure

Client Advisories

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Businesses with multi-state operations sometimes establish a non-New Jersey company (an Intangible Holding Company or "IHC") to own patents, know-how, trademarks and service marks the business intends to use (hereinafter "Intangibles"). This can be done for any of several reasons, including to protect the Intangibles in the event of the insolvency of the operating business, and to obtain tax benefits. The tax benefits come in two parts. First, the operating business, and any other entity wishing to use the Intangibles, must enter into a license agreement with the IHC under which it agrees to pay royalties to the IHC for the right to use the Intangibles. Depending on the state in which the IHC is formed, those royalty payments may be tax-free on the state level. The second benefit is that the royalty payment made for use of the Intangibles can be a tax-deductible business expense.

Since 2003 in New Jersey, however, the license of intangibles to a New Jersey-based business was sufficient to give New Jersey the right to tax the royalty income, even if the IHC had no physical presence in New Jersey. This effectively negates the first of the tax benefits described above.

In order to incentivize IHCs to pay this tax, the New Jersey Division of Taxation has announced an "amnesty" program for IHCs with taxable New Jersey royalty or related payments. IHCs that have failed to pay the tax can file Voluntary Disclosure Agreements ("VDAs") between September 15, 2012, and January 15, 2013, disclosing any royalty payments for which the tax should have, but was not, paid. The disclosures can go back as far as the later of December 31, 2003, or the date business commenced in New Jersey. For such disclosures, the Division will waive all penalties, except a 5% post-2009 amnesty penalty will be assessed for all returns originally due before February 1, 2009.

It is likely that upon conclusion of the amnesty program, the Division will target out-of-State IHCs that may be subject to the above tax. If you believe that your company may be subject to the above tax as a result of Intangibles being licensed into New Jersey, please contact Mark J. Sever, Jr. in our Haddonfield office at (856) 354-3045 or msever@archerlaw.com, or L. Gerald Rigby in our Philadelphia office at (215) 279-9684 or grigby@archerlaw.com.

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