

1. Every corporation subject to tax, regardless of the amount of its entire net income. (See N.J.A.C. 18:7-1.6, Taxable status; how created.)

2. Every receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court to conduct the business or conserve the assets of any corporation subject to tax under the Act.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A-2 as to those corporations deemed liable to tax under the Act; 54:10A-4 as to definition of "corporation" and of "taxpayer", and 54:10A-11 as to receivers and others conducting the business of a corporate taxpayer who are subject to tax under the Act.

18:7-11.2 Returns where Federal net income is changed

If the amount of the Federal net income of any taxpayer is changed or corrected by a final determination of the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in said net income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer is required to report its changed or corrected net income or the results of renegotiation and to concede its accuracy or state where it is erroneous.

Statutory References

See N.J.S.A. 54:10A-13 taxpayer report any change correction, or recomputation of its amount of Federally taxable income to New Jersey Corporation Tax Bureau.

18:7-11.3 Effect of deficiency notice

(a) Any deficiency notice (including a notice issued pursuant to a waiver filed by a taxpayer) pursuant to the provisions of the Internal Revenue Code is a final determination unless a timely petition to redetermine the deficiency is filed in the Tax Court of the United States, in which event the judgment of the court of last resort affirming the deficiency, or the redetermination of the deficiency pursuant to the judgment of the court of last resort, is the final determination.

(b) The allowance by the Commissioner of Internal Revenue of a refund of any part of the tax shown on the taxpayer's return or of any deficiency thereafter assessed, whether the refund is made on the Commissioner's own motion or pursuant to judgment of a court, is also a final determination.

(c) A taxpayer who for any reason accepts any portion of a deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code is required to report that portion of the deficiency accepted within 90 days in accordance with N.J.A.C. 18:7-11.8 and N.J.S.A. 54:10A-13.

(d) Only the portion of any deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code that is the subject of a timely petition for redetermination in the Tax Court of the United States may delay the reporting requirements set forth in N.J.A.C. 18:7-11.8 and then only to the extent permitted by (a) above.

Example: The Internal Revenue Service redetermined the net income of a taxpayer's 1983 tax return based on the three separate issues, A, B and C. These three issues resulted in increases in net income for New Jersey purposes of \$5,000, \$30,000 and \$110,000 respectively. The taxpayer accepted Issue A resulting in a \$5,000 increase in income for New Jersey purposes and requested a hearing before the IRS on Issues B and C. The taxpayer has 90 days from the issuance of the deficiency to report Issue A to the Division of Taxation.

Six months later, the IRS issues a determination that it intends to hold to the entire amount represented by Issues B and C. The taxpayer accepts the determination on Issue B, but appeals Issue C to the Tax Court of the United States. The taxpayer has 90 days from the issuance of the IRS determination to report the \$30,000 increase in net income represented by Issue B to the Division.

One year later, the Tax Court issues an unfavorable decision to the taxpayer on Issue C. The taxpayer accepts the verdict and decides not to appeal the issue any further. The \$110,000 represented by Issue C must be reported to the Division within 90 days of the court decision.

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Amended by R.1990 d.102, effective February 5, 1990.

See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).

Added subsections (c) and (d) and example.

Statutory References

See N.J.S.A. 54:10A-13 as to requirement that taxpayer report any change of amendment in his federally taxed net income to Division of Taxation.

18:7-11.4 Amended return

Any taxpayer filing an amended return with the United States Treasury Department shall also file an amended return with the Division of Taxation. See N.J.A.C. 18:7-11.8.

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Amended by R.1994 d.186, effective April 18, 1994.

See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A-13 to requirement that taxpayer report any amended return for his Federally taxable net income to New Jersey Division of Taxation.

(See: N.J.A.C. 18:7-16 regarding international banking facilities.)

R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-8.17 Non-operational income

Non-operational income of taxpayers other than those that have their principal place from which the trade or business of the taxpayer is directed or managed in this State is not subject to allocation. See N.J.S.A. 54:10A-6.1.

New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-8.18 (Reserved)

SUBCHAPTER 9. (RESERVED)

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Formerly "Assets Allocation Factor".

SUBCHAPTER 10. SECTION 8 ADJUSTMENTS

18:7-10.1 Discretionary adjustments of business allocation factor by Director

(a) Generally, the allocation formula described in this chapter will result in a fair apportionment of the taxpayer's net worth and net income within and without New Jersey. However, experience in this and other states which impose similar franchise taxes has shown that due to the nature of certain businesses the formula may work hardships in some cases, and not do justice either to the taxpayer or the State. Accordingly, provision is made in such cases for the Director to use some other formula which will more accurately reflect the business activity within New Jersey.

(b) Section 8 of the Act provides that where it shall appear to the Director that the business allocation factor, determined pursuant to Section 6 of the Act, does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of a taxpayer reasonably attributable to New Jersey, he may in his discretion adjust the business allocation factor by:

1. Excluding one or more of the fractions therein;
2. Including one or more other elements, such as expenses, purchases, contract values (minus subcontract values);

3. Excluding one or more assets in computing entire net worth;

4. Excluding one or more assets in computing an allocation factor; or

5. Applying any other similar or different method calculated to effect a fair and proper allocation of the entire net income and the entire net worth reasonably attributable to the State.

(c) Adjustment of the business allocation factor may be made by the Director upon his own initiative or upon request of a taxpayer.

1. No taxpayer may vary the regular statutory formula without the prior consent of the Director.

2. A taxpayer making application for an adjustment of its business allocation factor must file its return and compute and pay its tax in accordance with the regular statutory formula.

3. The taxpayer must also attach a rider to the return with a Form A-3730 setting forth in full the data on which its application is based, together with a computation of the amount of tax which would be due under the proposed method.

Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Addition of form number to requirements at (c)3.

Statutory References

See N.J.S.A. 54:10A-8 as to right of Director to readjust taxpayer's business allocation factor when he believes it to be inaccurate.

Case Notes

Three-factor formula would be used in determining fairness of Director's adjustment of allocation of corporate income. *Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).*

Statutory three-factor formula was applicable when evaluating allocation where corporation received partial credit for taxes paid to other states. *Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).*

Failure to permit allocation to New Jersey corporation which owned rental property in Connecticut but had no regular employees working outside New Jersey held neither contrary to the scheme of the Business Tax Act, a burden on interstate commerce nor double taxation. *S.M.Z. Corp. v. Director, Div. of Taxation, 5 N.J.Tax 232 (Tax Ct.1982), reversed and remanded 193 N.J.Super. 305, 473 A.2d 982 (App.Div. 1984).*

18:7-10.2 through 18:7-10.3 (Reserved)

SUBCHAPTER 11. RETURNS

18:7-11.1 Returns; corporations required to file

(a) Returns are required to be filed annually by the following: