CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

N.J.S.A. 54:10A–27.

Source and Effective Date

R.1999 d.116, effective March 12, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 7, Corporation Business Tax Act, expires on September 8, 2004. See: 36 N.J.R. 1680(a).

Chapter Historical Note

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1984 d.95, effective March 19, 1984. See: 16 N.J.R. 229(a), 16 N.J.R. 746(c).

Subchapter 15, Urban Enterprise Zones Act, was adopted as R.1984 d.496, effective November 5, 1984. See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).

Subchapter 16, International Banking Facilities, was adopted as R.1984 d.453, effective October 15, 1984. See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1989 d.196, effective March 14, 1989. See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1999 d.116, effective March 12, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7–1.1 Corporation business tax; general provisions

For all returns where the accounting period begins after June 30, 1986, the tax is measured by the portion of entire net income allocable to New Jersey, subject to the minimum tax described in N.J.A.C. 18:7–3.4(c).

Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
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.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added "accounting period before July 1, 1986" to (a). Added "accounting period before April 1, 1983" to (a)1.i and ii. Added (3) to (a). Also added (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–5 as to how taxpayers should compute the amount of franchise tax payable.

Case Notes

Authorized share schedule is to be used only where it results in a lesser amount to add to a taxpayer's net income than an amount based on total corporate assets, in determining annual corporation franchise tax; corporation business tax liability not avoidable where taxpayer belatedly realized adverse tax consequences of decision to increase number of authorized shares, even though decision had no apparent business purpose, brought no advantage to the taxpayer and caused no disadvantage or detriment to the State. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–1.2 Total tax self-assessed

The total tax is self-assessed and payable by each taxpayer.

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

Cross References

See Section 1.1 (General provisions) of this chapter.

18:7–1.3 Definition of taxpayer

(a) The term "taxpayer" shall mean any corporation required to report or to pay taxes, interest on penalties under this Act.

(b) Any 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 shall be subject to the tax imposed in the same manner and to the same extent as a corporation.

(c) The term "taxpayer" shall also mean any partnership required or consenting to report or to pay taxes, interest or penalties under this Act, provided that the term does not include a partnership that is listed on a United States national stock exchange.

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (c).
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–4(h) as to official definition of "taxpayer."

See N.J.S.A. 54:10A–11 as to receivers and others subject to the tax imposed by this Act.

18:7–1.4 Definition of corporation

(a) The term "corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or

similar written instrument and includes any corporation created or organized under the laws of New Jersey and any foreign corporation which is authorized to do business, or is doing business, or employs or owns capital or property or maintains an office in New Jersey in a corporate or organized capacity by virtue of creation or organization under laws of the United States or any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of the foregoing, which provided a medium for the conduct of business or the sharing of its gains.

1. The term includes any other entity classified as a corporation for Federal income tax purposes.

2. The term includes any State or Federally chartered building and loan association or State or Federally chartered savings and loan association.

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), added 1 and 2.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–4(c) as to definition of "corporation".

18:7–1.5 Limited partnership associations subject to the Act

Limited partnership associations formed under N.J.S.A. 42:3–1 are subject to tax under the Act. No new limited partnership associations shall be formed in New Jersey in accordance with N.J.S.A. 42:3–1 et seq. after September 21, 1988.

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

N.J.S.A. 54:10A–4(c).

Case Notes

Taxpayer holding company did not qualify as investment company that could elect to have its corporation business tax calculated on 25% of its net income and net worth, due to provision of services to subsidiaries and participation in day-to-day operation of subsidiaries, and failure to show that such activities represented less than 10% of total activities or that qualified investment activities represented 90% or more of total activities. International Thomson Business Information, Inc. v. Director, Division of Taxation, 14 N.J.Tax 424 (1995).

18:7–1.6 Subjectivity to tax; how created

(a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return and pay a tax thereunder provided it falls within any one of the following:

1. Existing under the laws of the State of New Jersey; or

2. If a foreign corporation:

i. Holding a general certificate of Authority to do business in this State issued by the Secretary of State; or

ii. Holding a certificate, license or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or

iii. Doing business in this State; or

iv. Employing or owning capital in this State; or

v. Employing or owning property in this State; or

vi. Maintaining an office in this State; or

vii. Deriving receipts from sources within this State; or

viii. Engaging in contacts within this State.

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1: An entity regularly providing asset management services as defined in N.J.A.C. 18:7–8.10(e) from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: A New York corporation delivers furniture into New Jersey by its company owned truck. The driver collects the payment from the New Jersey customer. The New York corporation is subject to tax in New Jersey.

Amended by R.1996 d.518, effective November 4, 1996.
See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a)2, added vii and viii; added (b).
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–2 as to what acts constitute doing business in State of New Jersey for purposes of acquiring a taxable status.

Case Notes

Nonresident corporation's commercial activities in state amounted to the "solicitation of orders". Pomco Graphics, Inc. v. Director, Div. of Taxation, 13 N.J.Tax 578 (1993).

Special New Rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–1.19 Definition of New Jersey S corporation

"New Jersey S corporation" means a corporation that is an S corporation which has made a valid election pursuant to section 3 of P.L. 1993, c.173 (N.J.S.A. 54:10A–5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L. 1993, c.173 (N.J.S.A. 54:10A–5.22).

Special new rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–1.20 Definition of public utility

"Public utility" means "public utility" as defined in N.J.S.A. 48:2–13.

Special new rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–1.21 Definition of qualified investment partnership

"Qualified investment partnership" means a partnership under this Act that has more than 10 members or partners with no member or partner owning more than a 50 percent interest in the entity and that derives at least 90 percent of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks or securities or foreign currencies or commodities or other similar income (including, but not limited to, gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of section 1236 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1236.

Special new rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–1.22 Definition of savings institution

"Savings institution" means a State or Federally chartered building and loan association, savings and loan association, or savings bank.

Special new rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–1.23 Definition of partnership

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

Special new rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

SUBCHAPTER 2. NATURE OF TAX

18:7–2.1 Nature of tax; in general

(a) The Act imposes a franchise tax on every domestic corporation not otherwise exempt, and upon every foreign corporation not otherwise exempt, falling within any of the taxable categories enumerated in N.J.A.C. 18:7–1.6.

(b) All corporations incorporated in New Jersey and all foreign corporations acquiring a taxable status in New Jersey immediately become subject to the tax.

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 domestic and foreign corporations deemed to have acquired a taxable status.

18:7–2.2 Calendar and fiscal years; definitions

(a) The term "calendar year" means an accounting period ending on December 31.

(b) The term "fiscal year" means an accounting period ending on the last day of any month other than December.

Statutory References

See N.J.S.A. 54:10A–4(i) as to definition of "fiscal year."

18:7–2.3 Federal calendar or fiscal year for reporting

(a) In general, the calendar or fiscal year on the basis of which the taxpayer is required to report for Federal income tax purposes is the calendar or fiscal year on the basis of which it is required to report for purposes of the Act.

(b) Reports based on a 52–53 weeks account year will be accepted where that method of reporting is permissible and used for Federal tax purposes. If that method is used, a fiscal year which begins within seven days from the beginning of any calendar month shall be deemed to have begun on the first day of that calendar month, and any fiscal year

which ends within seven days from the end of any calendar month shall be deemed to have ended on the last day of that calendar month.

(c) Subsection (b) above shall be used to determine the applicability of the Business Tax Reform Act, P.L. 2002, c.40 to a taxpayer having a 52–53 week year beginning on or about January 1, 2002.

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (c).
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–2.4 Proof of Federal accounting period

Every domestic and every foreign corporation which acquires a taxable status in New Jersey shall submit proof to the Division of Taxation, within 90 days of the date of incorporation or the date of acquisition of such taxable status, of the accounting period established by it for Federal income tax purposes.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

18:7–2.5 Proof of accounting period other than Federal basis

A subject corporation which is not required to file a Federal income tax return shall also submit proof to the Division of Taxation, within 90 days of the date of incorporation or the date of acquisition of a taxable status, of the accounting period on the basis of which to report for purposes of the Act.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

18:7–2.6 Subject corporations must file on basis of calendar year period unless otherwise permitted

A subject corporation which is not required to file a Federal income tax return must file its Corporation Business Tax Return on the basis of a calendar year accounting period unless permission to employ a fiscal year basis has been granted in writing by the Division of Taxation upon application having been made.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

18:7–2.7 Effect of failure by a corporation to establish accounting period

A corporation which has not established an accounting period for Federal income tax purposes shall be deemed to be operating on the basis of a calendar year accounting period until proof has been submitted to the Division of Taxation of the establishment of a fiscal year accounting period for Federal income tax purposes.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

18:7–2.8 Effect of failure by a corporation to submit proof of an established fiscal year accounting period

Every corporation which has not submitted satisfactory proof to the Division of Taxation that it is operating on a basis other than a calendar year accounting period for Federal income tax purposes, shall be deemed to be operating on the basis of a calendar year accounting period.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

18:7–2.9 Effect of proof of established fiscal year accounting period submitted late

Upon due proof of the establishment of a fiscal accounting period and the filing of a proper return covering such period accompanied by payment of the tax liability, a corporation shall be credited with any payment made in connection with a return previously filed on the basis of a calendar year period by reason of this regulation.

18:7–2.10 Period of application of tax

The tax is imposed for each calendar or fiscal period of the taxpayer, or any part thereof, during which the taxpayer had a taxable status as described in N.J.A.C. 18:7–1.6. See N.J.A.C. 18:7–1.6, (Taxable status; how created.)

Statutory References

See N.J.S.A. 54:10–15 as to annual payment of franchise tax for all or part of a taxpayer's annual or fiscal year accounting period.

Case Notes

Rule provides that corporation business tax be imposed upon each calendar year or fiscal period of the taxpayer; business held subject to tax despite its winding down because it remained an enterprise employing money capital coming into competition with the business of national banks and still generating interest income. I.H.E. Financial Corp. v. Taxation Div. Director, 3 N.J.Tax 375 (Tax Ct.1981).

18:7–2.11 Component factors of tax base

The tax for the period or partial period prescribed in N.J.A.C. 18:7–2.10 is measured by taxpayer's allocable entire net income. The tax liability may also be the Alternative Minimum Assessment amount calculated pursuant to N.J.S.A. 54:10A–5a and N.J.A.C. 18:7–18.

As amended, R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added the second sentence.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–5(e) as a minimum amount of franchise tax which may be assessed.

Case Notes

Provision for computation of tax based on number of shares authorized as of the close of the calendar or fiscal accounting period covered by a return, in the absence of a statutory determinative date, not challenged; provision compared to real and personal property alternative tax as mean average value on a quarterly basis in N.J.A.C. 18:7–8.6. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–3.5 (Reserved)

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.1982 d.395, effective November 1, 1982.
See: 14 N.J.R. 826(b), 14 N.J.R. 1221(b).
Added (c).
Amended by R.1983 d.219, effective June 20, 1983.
See: 15 N.J.R. 320(a), 15 N.J.R. 1038(e).
Deleted and reserved (a). In (b), added 2–4. Also deleted old (c).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax by short tax table".

18:7–3.6 Tax rates—corporations, S corporations and surtax

(a) Tax rates for C corporations are as follows:

1. Except as may be provided in (a)3 and 4 below, for all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent, for a corporation that is not a New Jersey S corporation.

2. Except as may be provided in (a)3 and 4 below, for a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980 and filing its New Jersey return Form CBT–100 on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

3. For privilege periods beginning on or after July 1, 1996, a taxpayer that is not a New Jersey S corporation that has entire net income of $100,000 or less for a 12 month privilege period, the rate for that privilege period shall be 7½ percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month.

Example: A taxpayer having a five month accounting period qualifies for the 7½ percent rate if its income for the period does not exceed $41,666.

4. For privilege periods beginning on or after January 1, 2002, a taxpayer that is not a New Jersey S corporation that has entire net income of $50,000 or less for a 12–month privilege period, the rate for that privilege period shall be 6½ percent. A corporation that is not a New Jersey S corporation having an accounting period less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $4,166 per month.

(b) Tax rates for New Jersey S corporations are as follows:

(1) For a New Jersey S corporation with a fiscal year beginning after July 7, 1993 but before January 1, 1994 the tax rate for a New Jersey S corporation is two percent.

2. For a New Jersey S corporation whose privilege period begins on or after January 1, 1994 but before January 1, 1995 the tax rate for a New Jersey S corporation is 2.350 percent.

3. For a New Jersey S corporation whose privilege period begins on or after January 1, 1995 but before January 1, 1996 the tax rate for a New Jersey S corporation is 2.42 percent.

4. Periods beginning on or after January 1, 1996 and ending on or before June 30, 1998:

i. Except as may be provided in (b)4ii below, for a New Jersey S corporation whose privilege period begins on or after January 1, 1996 and ends on or before June 30, 1998 the tax rate, with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 2.63 percent. See also (c) below.

ii. For privilege periods beginning on or after July 1, 1996, and ending on or before June 30, 1998, a taxpayer that is a New Jersey S corporation that has entire net income of $100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) shall be 1.13 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month. See also (c) below.

5. Periods ending on or after July 1, 1998 and on or before June 30, 2001:

i. Except as provided in (b)5ii below, for a New Jersey S corporation whose privilege period ends on or after July 1, 1998, but on or before June 30, 2001 the tax with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is two percent. See also (c) below.

ii. For privilege periods ending on or after July 1, 1998, but on or before June 30, 2001 a taxpayer that is a New Jersey S corporation that has entire net income of $100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 0.5 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month. See also (c) below.

6. Periods ending on or after July 1, 2001 and ending on or before June 30, 2006:

i. Except as may be provided in (b)6ii below, for a New Jersey S corporation whose privilege period ending on or after July 1, 2001 and ends on or before June 30, 2006 the tax rate, with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 1.33 percent. See also (c) below.

ii. For privilege periods ending on or after July 1, 2001, a taxpayer that is a New Jersey S corporation that has entire net income of $100,000 or less for a 12–month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) shall be 0 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month. See also (c) below.

7. Periods ending on or after July 1, 2006 but on or before June 30, 2007:

i. Except as may be provided in (b)7ii below, for a New Jersey S corporation whose taxable income is in excess of $100,000 for the privilege period and whose taxable year ends on or after July 1, 2006, but on or before June 30, 2007 the tax with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 0.67 percent. See also (c) below.

ii. For a taxpayer that is a New Jersey S corporation having entire net income less than $100,000 for privilege periods ending on or after July 1, 2001 there is no tax.

8. For privilege periods ending on or after July 1, 2007 there shall be no tax imposed on New Jersey S corporations.

(c) The rates for income of New Jersey S corporations Federally are as follows:

1. Except as may be provided in (c)2 or 3 below, for a New Jersey S corporation the tax rate is nine percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374, 1375.)

2. For privilege periods beginning on or after July 1, 1996, a taxpayer that is a New Jersey S Corporation that has entire net income of $100,000 or less for a 12 month privilege period, the tax rate is 7.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374, or 1375). A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month.

3. For privilege periods beginning on or after January 1, 2002, a taxpayer that is a New Jersey S corporation that has entire net income of $50,000 or less for a 12 month privilege period, the tax rate is 6.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374 or 1375.) A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $4,166 per month.

(d) In addition, a surtax calculated pursuant to N.J.S.A. 54:10A–5.1 and 5.2 shall be computed and added to the applicable tax, provided that on and after January 1, 1994 there shall be no surtax imposed. The adjusted surtax rate for accounting periods ending between January 1 and June 30, 1994 is determined by multiplying the surtax rate for the period (.00375) by a quotient, the numerator of which is the number of complete calendar months in the taxpayer's accounting period ending before January 1, 1994, and the denominator of which is the total number of complete calendar months in the accounting period. This calculation ensures that the surtax rate is reduced proportionally for those taxpayers with a tax year ending after January 1, 1994. The surtax is then completely eliminated for fiscal year 1995 and thereafter.

$$.00375 \times \frac{\text{Months ending before January 1, 1994}}{\text{Total months in accounting period}} = \text{Adjusted Surtax Rate}$$

Example 1. A taxpayer whose tax year covers a 12–month period ending on January 31, 1994 determines the adjusted surtax rate as follows: .0035 × 11/12 =.00344. Note: For ease of computation, the calculation is rounded to the fifth decimal place.

Example 2. The adjusted surtax rates for taxpayer with accounting periods covering 12 months are listed below. Taxpayers with accounting periods covering less than 12 months must compute the appropriate rate using the formula indicated above.

Fiscal Year Ended	Adjusted Surtax Rate
1/31/94	0.00344
2/28/94	0.00313
3/31/94	0.00281
4/30/94	0.0025
5/31/94	0.00219
6/30/94	0.00188

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.1980 d.146, effective April 9, 1980.
See: 12 N.J.R. 159(b), 12 N.J.R. 293(b).
Repeal and New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Method of computing part two of tax; net income base".
Amended by R.1995 d.134, effective March 6, 1995.
See: 27 N.J.R. 57(a), 27 N.J.R. 935(c).
Amended by R.1996 d.495, effective October 21, 1996.
See: 28 N.J.R. 3056(b), 28 N.J.R. 4592(b).

Amended by R.1998 d.193, effective April 20, 1998.
See: 30 N.J.R. 605(a), 30 N.J.R. 1426(a).
Rewrote (g) and (h); inserted new (i) and (j); and recodified former (i) through (k) as (k) through (m).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–5(c) as to computation of tax on basis of entire net income.

18:7–3.7 (Reserved)

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.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
(a)2: Added "but before June 30, 1974"; (a)3: Added "but before December 31, 1980".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Corporation tax prepayments; amounts due".

18:7–3.8 Investment company; tax self-assessed and payable

(a) The tax payable by an investment company entitled and electing to report as such is a tax measured by 40 percent of its entire net income at the rate provided by law.

(b) In no case shall the total tax be less than $250.00 provided that for privilege periods beginning on and after January 1, 2002 the tax shall not be less than $500.00, except that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986 and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000 for the privilege period.

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.489, effective October 1, 1990.
See: 22 N.J.R. 1871(a), 22 N.J.R. 3147(a).
Tax rate amended to conform to statutory tax rates.
Repeal and New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Investment company; tax assessed and payable".
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–5(b) as to method of computing amount of franchise tax payable on taxpayer's entire net worth. See N.J.S.A. 54:10A–5(d) as to method of computing amount of franchise tax payable by an investment company which has elected to report as such.

18:7–3.9 (Reserved)

Amended by R.1982 d.6, effective February 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
"By" was "for"; added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "N.J.A.C. 18:7–3.7"; deleted "section 3.7"; deleted "of this chapter".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Investment company tax prepayments; amounts, dates due".

18:7–3.10 Regulated investment company; tax payable

(a) For the privilege periods beginning before January 1, 2002, the tax payable by a regulated investment company, entitled and electing to report as such, is $250.00.

(b) For privilege periods beginning on and after January 1, 2002 the tax applicable to a regulated investment company shall be $500.00, provided, however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue code of 1986 and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000 for the privilege period.

(c) A regulated investment company, as defined in N.J.S.A. 54:10A–4(g), that also qualifies as an investment company, as defined in N.J.S.A. 54:10A–4(f), is not subject to the AMA. Such a company shall annually file form CBT–100, completing page 1 and Schedule M for regulated investment companies. In addition, a statement should be attached to the taxpayer's return indicating that the regulated investment company qualifies as an investment company.

(d) A taxpayer that qualifies as both a regulated investment company and an investment company shall pay the minimum tax applicable to all taxpayers of $500.00 unless it is a member of a controlled or consolidated group having total payroll of $5,000,000 or more, in which case the minimum tax would rise to the level of $2,000.

(e) A regulated investment company that does not qualify as an investment company is subject to the alternative minimum assessment.

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.1983 d.496, effective November 7, 1983.
See: 15 N.J.R. 1365(a), 15 N.J.R. 1872(b).
Deleted old (a)-(c). In (a), added $250.00 tax. Also added new (b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–5 as to how taxpayer should compute the total amount of franchise tax payable.

18:7–3.11 (Reserved)

Amended by R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "N.J.A.C. 18:7–3.7"; deleted "section 3.7"; deleted "of this chapter".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Regulated investment company; tax prepayments, amounts and dates due".

18:7–3.12 Method of accounting

In general, the method of accounting, whether cash, accrual or other basis, used in computing net income for Federal income tax purposes is to be used in computing entire net income 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–4(k)(3) as to Director's right to redetermine the period in which income should be included despite method of accounting used by the taxpayer.

18:7–3.13 Estimated tax

(a) For any privilege periods beginning on or after January 1, 1985, each taxpayer shall pay its estimated tax in four installments as follows:

1. Twenty-five percent on or before the 15th day of the fourth month; and

2. Twenty-five percent on or before the 15th day of the sixth month; and

3. Twenty-five percent on or before the 15th day of the ninth month; and

4. The balance on or before the 15th day of the 12th month of its current accounting period.

(b) For privilege periods beginning on or after January 1, 2003, each taxpayer with gross receipts of $50,000,000 or more for the prior privilege period shall pay its estimated tax for its current privilege period in installments as follows:

1. Twenty-five percent on or before the 15th day of the fourth month of the period;

2. Fifty percent on or before the 15th day of the sixth month of the period; and

3. The balance on or before the 15th day of the 12th month of its current privilege period.

(c) When the tax liability for the preceding tax year is $500.00 or less, a taxpayer may, in lieu of making the installment payments otherwise required, discharge its entire obligation with respect to estimating its tax by making a single payment on or before the original due date for filing its return. The single payment is 50 percent of the tax shown on the face of its return. Such tax must be determined with reference to the tentative return or final return which was filed or should have been filed on or before the original date of such return. The single payment should be computed by taking into account any payment which may have been made on the 15th day of the first month of its current tax year.

(d) For purposes of applying this rule, it is necessary that the preceding tax year be a full calendar or fiscal year, or where such return is for a short period of less than 12 months, the actual tax liability for such short period must be divided by the number of whole months covered by the return and multiplied by 12 to impute a tax for a full calendar or fiscal year. For the purpose of this computation a fraction of a month is to be disregarded.

(e) A taxpayer shall be entitled to a credit in the amount of the estimated tax payments made and shall be entitled to the return of any amount so paid which is in excess of the total tax payable under N.J.S.A. 54:10A–15(c) and N.J.A.C. 18:7–3.

(f) Any amount overpaid and appearing on the face of the return CBT–100 for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that it elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.

(g) The term "taxpayer" as used in this section is defined at N.J.A.C. 18:7–1.3 and includes corporations as defined in N.J.S.A. 54:10A–4(c), investment companies, regulated investment companies, real estate investment trusts, financial business corporations, banking corporations and savings institutions.

(h) The due date for any payment of estimated tax cannot be extended.

New Rule, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Amended by R.1990 d.296, effective June 18, 1990.
See: 22 N.J.R. 1045(a), 22 N.J.R. 1946(a).
In (f): added last sentence. Added form number CBT–100.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), substituted "privilege periods" for "accounting period" in the introductory paragraph; added new (b); recodified former (b) through (g) as (c) through (h); in new (g), substituted "savings institutions" for "limited partnership associations".
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–3.14 Estimated payment for fourth quarter 2002

Notwithstanding contrary provisions of law, for the privilege period of the taxpayer beginning in calendar year 2002, an underpayment of the installment payment due on or before the 15th day of the 12th month of the period exists if the amount actually paid is less than the amount that would have been paid if the taxpayer had paid 25 percent of its actual liability for the current privilege period. The underpayment is the amount of this difference.

Special new rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–3.15 Interest on underpayment of installment payments

(a) N.J.S.A. 54:10A–15.4 imposes an addition to the tax on the amount of the underpayment of any installment of estimated tax by a corporation (with certain exceptions). This addition to the tax is imposed irrespective of any reason for the underpayment. The amount of the underpayment for any installment date is the excess of:

1. The amount of the installment payment which would be required to be paid if all installment payments were equal to 90 percent of the tax shown on the return for the accounting year or, if no return was filed, 90 percent of the tax for that year, over

2. The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(b) Interest is determined at the annual rate referred to in (c) below based upon the amount of the underpayment of any installment of estimated tax for the period from the date such installment was required to be paid until the 15th day of the fourth month following the close of the tax year, or the date such underpayment was received by the Director, whichever is earlier. For purposes of determining the period of the underpayment:

1. The date prescribed for payment of any installment of estimated tax may not be extended; and

2. A payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under (a)1 above for such date shall be considered a payment of any previous underpayment.

(c) The rate to be used in (b) above is an annual rate of five percent above the prime rate, compounded daily from the date the tax was originally due and payable until the date of payment. On and after July 1, 1993, the rate is three percent above the prime rate compounded annually. Each such underpayment shall bear interest at the rate prescribed above. The following is an example of underpayment interest computation:

1. Assume the average predominant prime rate for January 1, 1994 is six percent. Therefore, the applicable interest on underpayment pursuant to this subsection is six percent plus three percent or nine percent on the amount of any underpayment of estimated tax due on or after April 1, 1994 but before July 1, 1994. The method prescribed for computing the addition to the tax may be illustrated by the following example:

i. A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for 1994, estimated tax in the amount of $50,000. It made payments of $12,500 each on April 15, 1994, June 15, 1994, September 15, 1994 and December 15, 1994. On April 15, 1995, it filed its tax return, CBT–100, showing a total tax of $200,000. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for 1994	$200,000
Item (2)	Ninety percent of item (1)	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of $180,000)	45,000
Item (4)	Deduct amount paid on each installment date	12,500
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4))	$ 32,500
Item (6)	Interest shall be charged on each underpayment at the rate as prescribed in this subsection	

First installment: Interest period April 15, 1994 to April 15, 1995
Second installment: Interest period June 15, 1994 to April 15, 1995
Third installment: Interest period September 15, 1994 to April 15, 1995
Fourth installment: Interest period December 15, 1994 to April 15, 1995

(d) If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in (e) below precludes the imposition of the addition to the tax, it should attach to its tax return, CBT–100, for the taxable year a Form CBT–160 showing the applicability of any exception upon which the taxpayer relied.

(e) Exceptions to imposition of interest on underpayment of an installment payment. The addition to the tax under this rule will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equalled or exceeded the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

1. An amount equal to the tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year. If the tax rates for the current taxable year with respect to which the underpayment occurs differ from the rates applicable to the preceding taxable year, the exception will only apply to installments due on or after the change in tax rates. If the preceding return was a short period return filed pursuant to N.J.A.C. 18:7–12, the tax computed on the basis of the facts shown on such return for purposes of determining the applicability of the exception shall be the tax appearing on such short period return

multiplied by 12 and then divided by the number of whole months covered by such short period return; or

2. An amount equal to 90 percent of the tax determined by placing on an annual basis the taxable income and taxable net worth for:

i. The first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

ii. Either the first three months or the first five months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the sixth month;

iii. Either the first six months or the first eight months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the ninth month; and

iv. Either the first nine months or the first eleven months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the twelfth month.

3. The tax so determined shall be placed on an annual basis by first multiplying it by 12, and then dividing the resulting amount by the number of months in the taxable year.

New Rule, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Amended by R.1984 d.322, effective August 6, 1984.
See: 16 N.J.R. 1043(a), 16 N.J.R. 2152(b).
Section substantially amended.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substantially amended (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–3.16 Banking corporations and financial business corporations

N.J.A.C. 18:7–3.13, 3.15, 11.12 and 13.6 apply to banking corporations and financial business corporations. See N.J.S.A. 54:10A–34 et seq. regarding their general taxability under the Corporation Business Tax Act.

New Rule, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–3.17 Coordination of tax credit

(a) The priority of credits for a taxpayer under the Corporation Business Tax Act shall be the priority of statutory credits set forth in this section. The tax imposed for a fiscal or calendar accounting year pursuant to section 5 of P.L. 1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 12 of P.L. 2000, c.12 (N.J.S.A. 17B:32B–12), then by the amount of any credit allowed pursuant to section 3 of P.L. 1993, c.170 (N.J.S.A. 54:10A–5.6), then by any amount allowed pursuant to section 19 of P.L. 1983, c.303 (N.J.S.A. 52:27H–78), then by any amount allowed pursuant to section 12 of P.L. 1985, c.227 (N.J.S.A. 55:19–13), then by any amount allowed pursuant to section 42 of P.L. 1987, c.102 (N.J.S.A. 54:10A–5.3), then by any amount allowed under sections 3 or 4 of P.L. 1993, c.171 (N.J.S.A. 54:10A–5.18 or 54:10A–5.19), then by any amount allowed pursuant to section 1 of P.L. 1993, c.175 (N.J.S.A. 54:10A–5.24), then by any amount allowed pursuant to section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A–15), then by any amount allowed pursuant to section 3 of P.L. 1997, c.349 (N.J.S.A. 54:10A–5.30), then by any amount allowed pursuant to section 1 of P.L. 1999, c.102 (N.J.S.A. 54:10A–5 Note), then by any amount allowed pursuant to section 3 of P.L. 2001, c.415 (N.J.S.A. 52:27D–492), then by any amount allowed pursuant to section 1 of P.L. 2001, c.321 (N.J.S.A. 54:10A–5.31), then by any amount allowed pursuant to section 56 of P.L. 2002, c.43 (N.J.S.A. 52:27BBB–55). Section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A–15) shall reduce the taxes listed in section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A–15).

(b) The total amount of the credits listed in this section that are allowed against the tax imposed pursuant to section 5 of P.L. 1945, c.162 for the tax year shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c.162.

(c) Any credit carryover should be taken in the manner set forth in the section granting the relevant credit and should be applied in the sequence that the credits are listed in (a) above. If the credit carryover section is silent about whether a carryover should be allowed, no carryover is allowed.

(d) Corporate tax credits may not be used to decrease the tax due calculated under the alternative minimum assessment. N.J.S.A. 54:10A–5a.

New Rule, recodified from 18:7–3.20 by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).
Former N.J.A.C. 18:7–3.17, Enterprise zone employees tax credit, recodified to N.J.A.C. 18:7–3.20.
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote (a); added (d).

Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–3.18 Recycling tax credit

(a) As used in this section:

"Cost of recycling equipment" means the "invoice cost" or "purchase price" of the eligible equipment itself. The term does not, for example, include peripheral or indirect costs associated with the purchase, installation or construction of the eligible equipment. Ineligible costs include, but are not limited to, sales tax, shipping costs, design and engineering costs and site preparation.

"Maximum yearly credit" means the maximum amount of the tax credit allowable in a tax year.

"Qualified recycling equipment" means that recycling equipment used in New Jersey which is certified in writing by the Commissioner of the Department of Environmental Protection as qualified for the corporation business tax credit.

"Total credit allowable" means the total corporate tax credit that a taxpayer can take on equipment certified by the Department of Environmental Protection.

(b) A corporate taxpayer which purchases qualified recycling equipment is entitled to a corporation business tax credit equal to 50 percent of the cost of the certified equipment, subject to the following limitations:

1. The taxpayer must receive certification from the Commissioner of the Department of Environmental Protection prior to claiming the credit.

2. The maximum yearly credit shall not be more than 20 percent of the total credit allowable in any one given full tax year.

3. The credit shall be based on amounts paid for the equipment less the amount of any loan made pursuant to section 36 of P.L. 1987, c.102 (N.J.S.A. 13:1E–96).

4. The credit allowable in a given tax year cannot exceed 50 percent of the tax liability otherwise due on that return. See N.J.A.C. 18:7–3.17 for priority of tax credits.

5. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A–5(e).

(c) No tax credit may be taken by a taxpayer in the year that the equipment is disposed of.

(d) The basis for computation of the tax credit amount is cost exclusive of any loans received by the taxpayer pursuant to section 36, P.L. 1987, c.102 (N.J.S.A. 13:1E–96).

(e) The tax credit shall be prorated based on months or the fraction thereof that the equipment is used in the state. The base period for this proration is 12 months.

(f) Taxpayers who purchase qualified recycling equipment and have unused credits on December 31, 1996 can carry forward the tax credit to subsequent periods subject to the limitations contained in (b)2, 3, 4 and 5 above.

(g) The equipment must be used in New Jersey during the year to be eligible for the tax credit.

Example: XYZ Corporation begins to use qualified recycling equipment in this State on January 2, 1990. The cost of the equipment, excluding sales tax, shipping and installation, is $100,000 and the taxpayer did not receive any loans from the recycling fund to help with the purchase of the equipment. The taxpayer receives an enterprise zone employee tax credit of $5,000 and their corporate tax liability after the credit is $30,000. The credit for the taxpayer is the lesser of $10,000 ($100,000 cost x 50 percent (total credit allowable) x 20 percent maximum yearly credit), or $15,000 (50 percent of the tax liability after the enterprise zone tax credits). In this case the allowable credit for XYZ Corporation is $10,000, the lesser of the two amounts.

(h) The Commissioner of the Department of Environmental Protection's certificate and an affidavit from the taxpayer representing use in New Jersey must be a part of the return claiming any credit.

New Rule, R.1988 d.413, effective September 6, 1988.
See: 20 N.J.R. 48(b), 20 N.J.R. 2318(a).
Amended by R.1992 d.479, effective December 7, 1992.
See: 24 N.J.R. 2809(a), 24 N.J.R. 4411(b).
(a): Added "Cost of recycling equipment"; (g): Added text to Example.
Amended by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).
In (b)4, added reference to N.J.A.C. 18:7–3.17 for priority of tax credits.

18:7–3.19 Smart moves for business program (formerly employer trip reduction program) tax credit

(a) Corporate taxpayers are allowed a credit under N.J.S.A. 27:26A–15 for the cost of commuter transportation benefits provided to employees. See N.J.A.C. 16:50–9 for information on the tax credit.

(b) For the purposes of verifying eligibility for the credit, the Director of the Division of Taxation will compare the claim with a list of those employers certified by the Commissioner of the Department of Transportation or have registered with the Department of Transportation or have an approved compliance plan or an approved amended compliance plan.

(c) To claim the credit, the taxpayer must complete Form 307 and attach it to the Corporation Business Tax return (Form CBT–100 or CBT–100S) being filed.

New Rule, R.1995 d.148, effective March 20, 1995.
See: 26 N.J.R. 4976(a), 27 N.J.R. 1201(a).
Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
In (a), changed N.J.A.C. reference; and in (b), deleted a former first sentence.

18:7–3.20 Enterprise zone employees tax credits

See N.J.A.C. 18:7–15 for credits against the total tax applicable for "qualified businesses" located within "urban enterprise zones".

New Rule, R.1984 d.496, effective November 5, 1984.
See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).
Recodified from 18:7–3.17 by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).

18:7–3.21 Manufacturing equipment and employment investment tax credit

(a) The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

"Base year" means the tax year immediately preceding the year in which a qualified investment was placed in service.

"Cost of qualified equipment" means, and is determined according to, the following criteria:

1. With respect to self-constructed equipment, the term means the cost amount properly charged to the capital account for depreciation in accordance with the Federal income tax law. This includes all charges incurred to produce a particular manufacturing piece of equipment. Costs include engineering designs, drafting, and other consultations required, as well as the physical construction costs associated with the finished product.

2. With respect to purchased equipment, the term is determined to be the net cost or net monetary consideration provided for acquisition of title and/or ownership of the subject property.

3. With respect to equipment acquired by written lease, the term is the minimum amount required by the agreement to be paid over the term of the lease, provided that the minimum amount shall not include any amount required to be paid after the expiration of the useful life of the equipment. Property which a taxpayer leases, rents or licenses to another person is not qualified equipment.

4. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion.

"Credit allowable" means the credit available after applying limitations listed under (b)2i and ii below.

"Credit available" means the credit earned plus any unused carryover from prior years.

"Credit earned" means the manufacturing equipment portion of the credit plus the employment investment portion of the credit in a given tax year.

"Employee equivalents" means the aggregate hours of qualified part-time employees who worked for the taxpayer for at least 20 hours per week for at least six months. This amount is used to determine the total number of full-time employees and equivalents necessary when calculating the employment investment portion of the credit. The employees must be New Jersey residents domiciled in this State who are working at locations in New Jersey.

"Measurement year" means the tax year immediately following the year in which a qualified investment was placed in service.

"Placed in service," with respect to qualified equipment, means and occurs in the earlier of the following tax years:

1. The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to N.J.S.A. 54:32B–8.13a, having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use. Lease renewals, subleases, or assignments shall not be considered as qualified equipment. See N.J.A.C. 18:24–4.2.

"Useful life" used to distinguish three-year property from all other property, is determined in accordance with section 168 of the Federal Internal Revenue Code.

(b) A corporate taxpayer that acquires qualified manufacturing equipment either by purchase or lease and/or has an increase in New Jersey employees due to the equipment investment is entitled to a corporation business tax credit.

1. The credit earned is subject to the following limitations:

i. The manufacturing equipment portion is limited to two percent of the cost of qualified equipment placed in service up to a maximum credit for the tax year of $1,000,000.

ii. The employment investment portion is limited to three percent of the cost of qualified equipment, not to exceed a maximum allowed amount of $1,000 multiplied by the increase in the average number of qualified employees and/or employee equivalents. It is valid for each of the two tax years next succeeding the tax year for which the manufacturing equipment portion is allowed.

2. The two portions combined plus any carryover (the credit available as defined herein) is also subject to the following limitations:

i. The amount of the tax credit shall not reduce the tax liability below 50 percent of the tax liability otherwise due for any tax year or below the statutory minimum tax provided at N.J.S.A. 54:10A–5(e).

ii. See N.J.A.C. 18:7–3.20.

(c) If the total credit earned in the current or prior years is unused due to the limitations contained in (b)2i and ii above, the unused portion may be carried over to the seven tax years succeeding the year in which the credit was earned.

(d) The credit assigned to property that has been disposed of, or which ceases to be qualified equipment prior to the end of its categorized useful life, should be redetermined using the ratios specified below:

THREE-YEAR PROPERTY	ALL OTHER PROPERTY
Number of months qualified use	Number of months qualified use
36	60

(e) Property subject to lease agreements shall have a minimum term of four years with a maximum not to exceed 20 years to be considered qualified equipment.

(f) The following example illustrates the application of the credit:

Example:	1993	1994	1995	1996
Cost of qualified equipment placed in service	None	$3,000,000	$5,000,000	$1,000,000
Average employees and/or employee equivalents	125	140	150	160

1994: XYZ Corporation places qualified manufacturing equipment in service in New Jersey during 1994. The cost of the manufacturing equipment, excluding shipping and installation, is $3,000,000. The taxpayer receives a recycling equipment tax credit of $10,000 and its corporate tax liability is $400,000. The manufacturing equipment portion of the credit is $60,000 ($3,000,000 cost × two percent, not to exceed $1,000,000), and the employment investment portion is unavailable until the two years following placement of equipment in service. Therefore, the credit is the lesser of $60,000 or $190,000 (50 percent of the tax liability less the recycling equipment credit). In this case the allowable credit for XYZ Corporation is $60,000, the lesser of the two amounts.

Qualified investment:			
line 4(a) with three year life	0.35 ×	$ 100,000 =	$ 35,000
line 4(b) with five year life	0.70 ×	200,000 =	140,000
line 4(c) with seven year or more life	1.00 ×	1,000,000 =	1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)			$1,175,000

The investment base is $1,175,000.

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A–5.5 and N.J.A.C. 18:7–3.22(b).)

Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor:

line 6(a) Average New Jersey employment for this tax year	120
line 6(b) Average New Jersey employment for last tax year	50
line 6(c) Subtract line 6(b) from line 6(a)	70
line 6(d) Divide line 6(a) by 2	60
line 6(e) Number of eligible new jobs	65
line 6(f) Smaller of 6(c), 6(d), or 6(e)	60
line 7(a) Divide line 6(f) by 50 with no remainder	1
line 7(b) Multiply line 7(a) by .005	.005
line 7(c) Enter the smaller of .10 or line 7(b)	.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with $10,000,000 in gross receipts, not a small taxpayer in 1994.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) × line 2 × .2 .005 × $1,175,000 × .2 =	$1,175
line 9 Qualified investment from prior two years	0
line 10 Aggregate Annual Credit: (Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))	$1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey attributable to the qualified investment	$3,000,000
line 12 Total compensation of all employees in New Jersey	$5,000,000
line 13 Divide line 11 by line 12	.60
line 14 Enter tax liability from front page of CBT	
line 15 Multiply line 13 by line 11 CBT–100 page 1	6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent	$3,000
line 17 Enter the smaller of line 10 or line 16	1,175

New Rule, R.1995 d.461, effective August 21, 1995.
See: 27 N.J.R. 840(a), 27 N.J.R. 3209(a).
Administrative correction.
See: 27 N.J.R. 4908(a).
Public Notice: Inflation adjustments.
See: 27 N.J.R. 4921(a).
Public Notice: Inflation adjustments.
See: 29 N.J.R. 708(a).
Public Notice: Inflation adjustments.
See: 30 N.J.R. 1330(c).
Public Notice: Inflation adjustments.
See: 31 N.J.R. 1112(a).
Public Notice: Inflation adjustments.
See: 32 N.J.R. 1087(b).
Public Notice: Inflation adjustments.
See: 33 N.J.R. 903(a).
Public Notice: Inflation adjustments.
See: 34 N.J.R. 1057(a).
Public Notice: Notice of Corporation Business Tax; New Jobs Investment Tax Credit Revised Inflation Adjustment.
See: 35 N.J.R. 280(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), added 2.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.
Petition for Rulemaking.
See: 36 N.J.R. 589(b).

18:7–3.23 Research credit

(a) A taxpayer shall be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with IRC Section 41 as in effect on June 30, 1992, provided that IRC Section 41(h) relating to termination of the availability of the credit in 1995 shall not apply.

(b) For purposes of this section, the term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

1. In-house research expenses; and

2. Contract research expenses.

(c) In general, the term "in-house research expenses" means:

1. Any wages paid or incurred to an employee for qualified services performed by such employee;

2. Any amount paid or incurred for supplies used in the conduct of qualified research; and

3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection IRC 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) The term "supplies" means any tangible property other than:

1. Land or improvements to land; and

2. Property of a character subject to allowance for depreciation.

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by IRC Section 3401(a).

2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of IRC Section 401(c)(1)), the term "wages" includes the earned income (as defined in IRC Section 401(c)(2)) of such employee.

3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under IRC Section 51(a).

(g) In general, the term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

1. If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(h) Trade or business requirement may be disregarded for in-house research expenses of certain start-up ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. Of the taxpayer; or

2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under IRC subsection 41(f)(1).

(i) Base amount requirements are as follows:

1. In general, the term "base amount" means the product of:

i. The fixed-base percentage; and

ii. The average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (hereinafter referred to as the "credit year").

2. In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

3. Fixed-base percentage requirements are as follows:

i. Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

ii. Start-up companies shall comply with the following:

(1) For taxpayers to which this subparagraph applies, the fixed-base percentage shall be determined under this subparagraph if there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(2) In a case to which this subparagraph applies, the fixed-base percentage is:

(A) Three percent for each of the taxpayer's first five taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses;

(B) In the case of the taxpayer's sixth such taxable year, one-sixth of the percentage which the aggregate qualified research expenses of the taxpayer for the fourth and fifth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(C) In the case of the taxpayer's seventh such taxable year, one-third of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth and sixth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(D) In the case of the taxpayer's eighth such taxable year, one-half of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, and seventh such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(E) In the case of the taxpayer's ninth such taxable year, two-thirds of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, and eighth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(F) In the case of the taxpayer's tenth such taxable year, five-sixths of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, eighth, and ninth such taxable years is of the aggregate gross receipts of the taxpayer for such years; and

(G) For taxable years thereafter, the percentage which the aggregate qualified research expenses for any five taxable years selected by the taxpayer from among the fifth through the tenth such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(3) The Director may in future prescribe rules providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under (i)3ii(1) and (2) above.

iii. In no event shall the fixed-base percentage exceed 16 percent.

iv. The percentages determined under (i)3i above shall be rounded to the nearest 1/100th of one percent.

4. Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

i. The Director may in future prescribe rules to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

5. For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade of business within the United States.

(j) Qualified research, for purposes of this subsection, is defined as follows:

1. The term "qualified research" means research:

i. With respect to which expenditures may be treated as expenses under IRC section 174;

ii. Which is undertaken for the purpose of discovering information

(1) Which is technological in nature; and

(2) The application of which is intended to be useful in the development of a new or improved business component of the taxpayer;

iii. Substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in (j)3 below; and

iv. Does not include any activity described in (j)4 below.

2. For purposes of this subsection, the following tests shall be applied separately to each business component:

i. In general, paragraph (j)1 above shall be applied separately with respect to each business component of the taxpayer.

ii. The term "business component" means any product, process, computer software, technique, formula, or invention which is to be:

(1) Held for sale, lease, or license; or

(2) Used by the taxpayer in a trade or business of the taxpayer.

iii. Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

3. For purposes of (j)1iii above, the following are purposes for which research may qualify for credit:

i. In general, research shall be treated as conducted for a purpose described in this paragraph if it relates to:

(1) A new or improved function;

(2) Performance; or

(3) Reliability or quality.

ii. Research shall, in no event, be treated as conducted for a purpose described in this paragraph if such research relates to style, taste, cosmetic, or seasonal design factors.

4. The term "qualified research" shall not include, nor shall credit be allowed for, any of the following:

i. Research after commercial production, that is, any research conducted after the beginning of commercial production of the business component;

ii. Adaptation of existing business components, that is, any research related to the adaptation of an existing business component to a particular customer's requirement or need;

iii. Duplication of existing business component, that is, any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component;

iv. Surveys, studies, or similar activities as follows:

(1) Efficiency survey(s);

(2) Activity relating to management function or technique;

(3) Market research, testing, or development (including advertising or promotions);

(4) Routine data collection; or

(5) Routing or ordinary testing or inspection for quality control;

v. Except to the extent provided in rule, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in:

(1) An activity which constitutes qualified research (determined with regard to this subparagraph); or

(2) A production process with respect to which the requirements of (j)1 above are met;

vi. Foreign research, that is, any research conducted outside the United States;

vii. Any research in the social sciences, arts, or humanities; or

viii. Funded research, that is, any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(k) Credit allowable with respect to certain payments to qualified organizations for basic research shall be as follows:

1. In general, in the case of any taxpayer who makes basic research payments for any taxable year;

i. The amount of basic research payments taken into account under (k)2 below shall be equal to the excess of such basic research payments, over the qualified organization base period amount.

ii. That portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of this paragraph.

2. Basic research payments shall be defined, for purposes of this subsection, as follows:

i. In general, the term "basic research payment" means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if:

(1) Such payment is pursuant to a written agreement between such corporation and such qualified organization; and

(2) Such basic research is to be performed by such qualified organization.

ii. In the case of a qualified organization described in (k)6iii or iv below (k)2i(2) above shall not apply.

3. For purposes of this subsection, the term "qualified organization base period amount" means any amount equal to the sum of the minimum basic research amount, plus the maintenance-of-effort amount.

4. Concerning the minimum basic research amount, for purposes of this subsection:

i. In general, the term "minimum basic research amount" means an amount equal to the greater of:

(1) One percent of the average of the sum of amounts paid or incurred during the base period for:

(A) Any in-house research expenses; and

(B) Any contract research expenses; or

(2) The amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

ii. Except in the case of a taxpayer which was in existence during the taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

5. Concerning the maintenance of effort amount, for purposes of this subsection:

i. In general, the term "maintenance-of-effort" amount means, with respect to any taxable year, an amount equal to the excess (if any) of an amount equal to: the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins, over the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a

taxpayer to any qualified organization described in (k)6i below:

(1) For which a deduction was allowable under IRC section 170; and

(2) In which was not taken into account:

(A) In computing the amount of the credit under this provision (as in effect during the base period) during any taxable year in the base period; or

(B) As a basic research payment for purposes of this section.

iii. Cost-of-living adjustment shall be defined as follows:

(1) In general, the cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under IRC section 1(f)(3), by substituting "calendar year 1987" for "calendar year 1989" in subparagraph (B) of Code Section 1(f)(3).

(2) If the base period of any taxpayer does not end in 1983 or 1984, IRC section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which the base period ends for 1989. Such substitution shall be in lieu of the substitution under (k)5iii(1) above.

6. For purposes of this subsection, the term "qualified organization" means any of the following organizations:

i. Educational institutions, that is, any educational organization which:

(1) Is an institution of higher education (within the meaning of IRC section 3304(f)), and

(2) Is described in IRC section 170(b)(1)(A)(ii).

ii. Certain scientific research organizations, that is, any organization not described in (k)6i above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a);

(2) Is organized and operated primarily to conduct scientific research; and

(3) Is not a private foundation.

iii. Scientific tax-exempt organizations, that is, any organization which:

(1) Is described in:

(A) IRC section 501(c)(3) (other than a private foundation); or

(B) IRC section 501(c)(6);

(2) Is exempt from tax under section IRC 501(a);

(3) Is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph i pursuant to written research agreements; and

(4) Currently expends:

(A) Substantially all of its funds; or

(B) Substantially all of the basic research payments received by it, for grants to, or contracts for basic research with, an organization described in (k)6i above.

iv. Certain grant organizations, that is, any organization not described in (k)6ii or iii above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a) (other than a private foundation);

(2) Is established and maintained by an organization established before July 10, 1981, which meets the requirements of (k)6iv(1) above;

(3) Is organized and operated exclusively for the purpose of making grants to organizations described in (k)6i above pursuant to written research agreements for purposes of basic research; and

(4) Makes an election, revocable only with the consent of the U.S. Secretary of the Treasury, to be treated as a private foundation for purposes of U.S. Code Title 26 (other than IRC section 4940, relating to excise tax based on investment income).

(*l*) Definitions and special rules shall be as follows:

1. The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include:

i. Basic research conducted outside of the United States; or

ii. Basic research in the social sciences, arts, or humanities.

2. The term "base period" means the three-taxable-year period ending with the taxable year immediately preceding the first taxable year of the taxpayer beginning after December 31, 1983.

3. For purposes of determining the amount of credit allowable under subsection (k)1 above, for any taxable year, the amount of the basic research payments taken into account under subsection (k)2 above:

i. Shall not be treated as qualified research expenses under (k)1i above; and

ii. Shall not be included in the computation of base amount under (k)1ii above.

4. For purposes of applying (b) above to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of (g)1 above).

5. The term "corporation" shall not include:

i. An S corporation;

ii. A personal holding company (as defined in IRC section 542); or

iii. A service organization (as defined in IRC section 414(m)(3)).

(m) For Special Rules, see IRC section 41(f).

(n) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (u) below, a credit can be claimed for only those research activities that are performed in New Jersey.

(*o*) Notwithstanding any provision in this section to the contrary, a credit for increased research activities is allowed based on qualified expenditures made in taxable years beginning on and after January 1, 1994.

(p) The filing of a consolidated tax return by a controlled group of corporations shall not be permitted.

(q) Section references are to the Internal Revenue Code, unless otherwise noted.

(r) The research credit shall be generally allowed for qualified research. Qualified research is that which is limited to scientific experimentation or engineering activities designed to aid in the development of a new or improved product, process, technique, formula, invention, or computer software program held for sale, lease, or license, or used by the taxpayer in a trade or business. For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business. The research credit shall generally not be allowed for the following types of activities:

1. Research conducted after the beginning of commercial production;

2. Research adapting an existing product or process to a particular customer's need;

3. Duplication of an existing product or process;

4. Survey or studies;

5. Research relating to certain internal-use computer software;

6. Research conducted outside the State of New Jersey;

7. Research in the social sciences, arts, or humanities; or

8. Research funded by another person (or government entity.)

(See IRC Section 41 and regulations thereunder for other definitions and special rules concerning the research credit.)

(s) The research and expenditure tax credit is determined as follows:

1. First, calculate fixed-base percentage. Fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983 and before January 1, 1989 is of the aggregate gross receipts of the taxpayer for such taxable years.

Example:

Year	Qualified Research Expenses	Gross Receipts
1984	$ 2,000,000	$ 10,000,000
1985	4,000,000	15,000,000
1986	6,000,000	20,000,000
1987	8,000,000	30,000,000
1988	10,000,000	25,000,000
Total	$30,000,000	$100,000,000

$30,000,000 / $100,000,000 = 3% fixed base percentage

2. Next, compute the base amount. The base amount is the average gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (credit year) multiplied by the fixed base percentage.

Example:

Year	Gross Receipts
1990	$ 25,000,000
1991	20,000,000
1992	35,000,000
1993	30,000,000
Total	$120,000,000
	divided by 4 =
Average Gross Receipts	$ 30,000,000
Fixed Base Percentage	× 3%
Base Amount	$ 900,000

3. Then, compute current qualified research expenses.

	Total Costs Incurred	Research Tax Credit Qualified Research Expenses
Wages	$ 750,000	$ 500,000
Supplies	250,000	250,000
Depreciation	100,000	-0-
Overhead	250,000	250,000
Total	$1,350,000	$1,000,000

Then compute the research tax credit.

Current year qualified research expenses	$1,000,000
Less: Base Amount	(900,000)
Total incremental research expenses	$ 100,000
Research tax credit %	× 10%
New Jersey research tax credit	$ 10,000

(t) Credit for increased research activities shall take priority as specified by N.J.S.A. 54:10A–5.24b. If any amount of property or expenditures is included in the calculation of the research credit, or for which a credit is allowed, then no such amounts can be allowed for the recycling credit, manufacturing and employment investment credit, and the new jobs credit.

(u) If taxpayer has research within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for the period beginning after December 31, 1983 and before January 1, 1989, calculate the amount to be used in the numerator of the ratio to arrive at the fixed base percentage as follows: take the figure for qualified research and development expenses everywhere for the period and multiply it by the average of the average of the payroll fraction and the property fraction used on the corporation business tax returns for the corresponding years in question. This amount becomes the numerator of a fraction whose denominator is taxpayer's aggregate gross receipts everywhere for the period.

(v) Any Federal deduction under IRC Section 174 will be the same for New Jersey purposes, since there is no New Jersey provision for a separate modified state tax credit amount under such circumstances.

(w) The credit allowable in any given tax year cannot exceed 50 percent of the tax liability otherwise due on the return.

(x) The amount of the credit cannot reduce the tax liability to any amount less than the statutory minimum provided in N.J.S.A. 54:10A–5(e).

(y) The amount of the tax year credit allowable which cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven accounting years following a credit's tax year.

(z) Credits allowable shall be applied in the order of the credits' tax years.

New Rule, R.1995 d. 462, effective August 21, 1995.
See: 27 N.J.R. 842(a), 27 N.J.R. 3210(a).
Administrative correction.
See: 28 N.J.R. 4509(a).

SUBCHAPTER 4. ENTIRE NET WORTH

18:7–4.1 (Reserved)

Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added last sentence to (a). Added last sentence to (b)5.
Amended by R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).
(c) added.
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Entire net worth; definition; computation".

18:7–4.2 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Effect on net worth of investment in subsidiaries".

18:7–4.3 (Reserved)

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Investment in subsidiaries allows proportionate reduction for calculating net worth".

18:7–4.4 (Reserved)

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Net worth; right of director to independently determine".

18:7–4.5 Indebtedness owing directly or indirectly

(a) "Indebtedness" is not limited in scope by the duration thereof and thus includes all debts due, whether money, goods or services, including, inter alia, accruals of salaries, bonuses and dividends, as well as interest accrued on all indebtedness.

(b) "Indebtedness owing directly or indirectly" includes but is not limited to all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own or beneficially own 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(c) "Immediate family" includes the collective body of persons, consisting of parents, children and other relatives, living together in one household in a permanent and domestic character under one head or management.

(d) Direct indebtedness: In the case of a creditor, corporate or otherwise (other than an individual), including an estate, trust or other entity, indebtedness is includible by reason of direct holding of taxpayer's stock by the creditor whether or not the creditor is functioning as a mere conduit of funds from a third party source.

(e) Indirect indebtedness: Indebtedness must be owing directly or indirectly to a 10 percent shareholder. Indebtedness owing by a taxpayer to a commonly controlled creditor is presumed to be owing indirectly to the common parent. However, indebtedness between commonly controlled debtors and creditors may not be attributable as owing indirectly to the common shareholder if it can be shown that the common shareholder was in no way the source of the funds. The taxpayer must establish that the common shareholder was not the source of the funds since it has the burden of defeating the presumption. The taxpayer must conclusively establish that:

1. The creditor is merely a conduit of funds from an unrelated third party source; or

2. The indebtedness was from funds generated by the creditor from its own operations and clearly not in any way attributable to or funded by the common shareholder.

18:7–4.13 (Reserved)

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Effect of short tax table on subsidiary deductions".

18:7–4.14 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Parent must report book value of subsidiary corporation".

18:7–4.15 (Reserved)

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Consolidated returns for subsidiary corporations".

Case Notes

Taxpayer corporation, which possessed 100 percent ownership of investment in French and Brazilian corporations directly and through its wholly-owned Dutch subsidiary, was entitled to 100 percent exclusions for the dividends received from the French and Brazilian corporations. International Flavors & Fragrances, Inc. v. Taxation Div. Director, 5 N.J.Tax 617 (Tax Ct.1983), affirmed per curiam 7 N.J.Tax 652 (App.Div.1984), affirmed 102 N.J. 210, 507 A.2d (1986).

18:7–4.16 (Reserved)

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Valuation of securities".

18:7–4.17 (Reserved)

New Rule, R.1984 d.496, effective November 5, 1984.
See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Urban enterprise zones".

18:7–4.18 (Reserved)

SUBCHAPTER 5. ENTIRE NET INCOME; DEFINITION, COMPONENTS AND RULES FOR COMPUTING

18:7–5.1 Entire net income; definition

(a) "Entire net income" means total net income from all sources, whether within or without the United States, and includes:

1. The gain derived from the employment of capital or labor, or from both combined, as well as

2. Profit gained through a sale or conversion of capital assets.

(b) For the purpose of the New Jersey tax, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax, subject to the adjustments set forth in this Subchapter.

(c) Consistent with N.J.A.C. 18:7–11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Example 1: Corporation A is part of a consolidated group filing for Federal purposes which as a group incurred a net operating loss for the year. Corporation A, however, on a separate entity basis had net income of $100,000 before its charitable contribution expense of $15,000 is taken into account. Based on a separate, nonconsolidated calculation under the Internal Revenue Code, and the contribution limitations applicable to all corporations for the period under review (that is, 10 percent), Corporation A's reportable net income for New Jersey purposes is $90,000 ($100,000 - ($100,000 × .10)).

Example 2: Corporation B is part of a consolidated group filing for Federal purposes which sold goods in the ordinary course of business to Corporation C, also a member of the same consolidated group filing. The selling price between Corporation B and C was at arm's length and included a profit element in it. The Federal corporate consolidated filing would recognize but defer the gain on the sale of the goods between Corporation B and C since Corporation C had not disposed of the property outside the group at year end. For New Jersey purposes, however, Corporation B must report the gain on the sale of the property for net income purposes, and Corporation C must include the full sales price of the property in its inventory value.

(d) Entire net income shall be determined as if no election had been made under 26 U.S.C. 1371 (Subchapter S of the Federal Internal Revenue Code).

Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
(c) added.
Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).
Added examples to (c); deleted (e).

Law Reviews

How New Jersey treats the acquisition of assets. John M. Metzger, 147 N.J.L.J. 1356 (1997).

Statutory References

See N.J.S.A. 54:10A–4(k) as to definition and scope of "entire net income."

Case Notes

Regulations were valid. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

State's prohibition against filing of consolidated income tax returns by related corporations does not immunize subsidiary corporation from state taxation of any gain realized as result of deemed sale of its assets. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

New York S corporation's distribution to New Jersey taxpayer would be treated as being from corporation's accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 135 N.J. 301, 639 A.2d 301.

Absent showing that S corporation's income was from current earnings it would be assumed that distribution was from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 135 N.J. 301, 639 A.2d 301.

18:7–5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as Federal taxable income, is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

1. Add to Federal taxable income:

i. The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, where such specific exemption or credit has been deducted in computing Federal taxable income;

ii. All interest income from sources within the United States which has not been included in computing Federal taxable income, including interest on State and Municipal bonds and certain obligations of the United States and its instrumentalities, less interest expense incurred to carry such investments, to the extent such interest expense has not been deducted in computing Federal taxable income;

iii. All dividend income from sources within the United States which has not been included in computing Federal taxable income;

iv. All Federal taxes on or measured by income or profits which were deducted in computing Federal taxable income;

v. All New Jersey franchise taxes paid or accrued under the Corporation Business Tax Act, whether measured by net worth, net income or otherwise, to the extent such taxes were deducted in computing Federal taxable income; and, with respect to accounting years beginning after July 7, 1993, taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part by "net taxable capital" to the extent such taxes were deducted in computing Federal taxable income;

vi. All taxes paid or accrued to any foreign country, state, province, territory or subdivision, on or measured by profit or income or business presence or business activity, to the extent such taxes were deducted in computing Federal taxable income with respect to accounting beginning on or after January 1, 2002;

vii. Taxes paid or accrued with respect to subsidiary dividends should be added back to the extent dividends are excluded from entire net income and such taxes were deducted in computing Federal taxable income;

viii. Net operating losses sustained during any year or period other than that covered by the return, which were deducted in computing Federal taxable income, but a net operating loss deduction shall be allowed to the extent provided by N.J.A.C. 18:7–5.12 through 5.16.

ix. For accounting or privilege periods ending on or before January 10, 1996, the amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written statement. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent of more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder which owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or $1,000, whichever is larger. Thus, if the amount of such interest is $1,000 or less, then none of said amount need be added back. (For definition of and guidance in determining "directly" and "indirectly" see N.J.A.C. 18:7–4.5(d), (e) and (f).) However, there shall be allowed as a deduction:

(1) Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who is prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

(2) Any part of a deduction for interest that relates to financing of motor vehicle inventory held for sale to customers, provided that the underlying indebtedness is owing to a taxpayer customarily and routinely providing this type of financing. The portion of such interest which may be deducted is limited to interest on indebtedness relating to floorplanning of motor vehicles evidenced by a trust receipt or similar document and is also limited to interest on unsold inventory items. The interest must be paid or accrued directly to a creditor which is a taxpayer under the act and not indirectly to any related entity. That taxpayer, or a corporation which is a parent or subsidiary of that taxpayer must be the manufacturer or the motor vehicles financed; and

(3) Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C. 18:7–1.16. A debt is owed to an "affiliate" corporation when it is owing directly or indirectly to holders of ten percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes as defined in N.J.A.C. 18:7–4.5. The deduction may not be claimed on the Corporation Business Tax Return, Form CBT–100. Any corporation which is a financial business corporation must file the Corporation Business Tax Return for Banking and Financial Corporations, Form BFC–1, and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A–38; and

(4) Any part of a deduction for interest that related to debt of a banking corporation owing directly to a bank holding company as defined in 12 U.S.C. 1841 of which the banking corporation is a subsidiary. The allowable deduction for interest is limited to interest paid or accrued directly by the subsidiary to its bank holding company parent notwithstanding that related indebtedness may be excluded from net worth where it is indirectly owing to such bank holding company.

x. Recoveries with respect to war losses, regardless of whether such war losses were deducted in any return previously made for the purpose of computing the New Jersey Corporation Business Tax;

xi. All income from sources outside the United States which has not been included in computing Federal taxable income less all allowable deductions to the extent that such allowable deductions were not taken into account in computing Federal taxable income. See (a)2iii below for limitations respecting foreign tax deduction;

xii. In any year or short period which ends after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any depreciation or cost recovery (ACRS or MACRS) which was deducted in arriving at Federal taxable income and which was determined in accordance with Section 168 of the Federal Internal Revenue Code in effect after December 31, 1980. See (a)2iv below for depreciation allowable in computing entire net income.

xiii. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Federal taxable income as a result of a "safe harbor leasing" election made under Section 168(f)8 of the Federal Internal Revenue Code; provided, however, that for a fiscal year or short period which begins in 1981 and ends in 1982, any such amount which relates to property placed in service during that part of the return year which occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect to a qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be allowed in any event.

(1) Where the "user/lessee" of qualified lease property which is precluded from claiming a deduction for rent under this rule would have been entitled to cost recovery on property which is subject to such "safe harbor lease" election in the absence of that election, it may claim depreciation on that property under the provisions of (a)2iv and v below. See (a)2vi below for the treatment to be accorded related income on such "safe harbor lease" transactions.

xiv. All income, from whatever sources derived not included in computing Federal taxable income and not otherwise required to be added back under (a)1i through ix above, less all allowable deductions attributable thereto, to the extent that those allowable deductions were not taken into account in computing Federal taxable income.

xv. The amount deducted from Federal taxable income for any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for violation of a State or Federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this subsection shall not apply to a penalty or fine assessed or collected for a violation of a State or Federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

xvi. The amount deducted from Federal taxable income of treble damages paid to the Department of Environmental Protection and Energy pursuant to subsection a of section 7 of P.L.1976, c.141 (N.J.S.A.

58:10–23.11f) for costs incurred by the Department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the Department to remove, or arrange for the removal of, the discharge.

xvii. Any deduction for research and experimental expenditures to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to N.J.S.A. 54:10A–5.24 unless those research and experimental expenditures are also used to compute a Federal credit claimed pursuant to IRC section 41;

xviii. Interest paid, accrued or incurred to a related member except as may be permitted pursuant to N.J.A.C. 18:7–5.18; and

xix. Interest expenses and costs and intangible expenses and costs directly or indirectly paid accrued or incurred in connection with a transaction with one or more related members, except as may be permitted pursuant to N.J.A.C. 18:7–5.18.

2. Deduct from Federal taxable income:

i. 100 percent of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary under N.J.A.C. 18:7–4.11(a)1 of this chapter and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;

ii. Fifty percent of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income or added to Federal taxable income in accordance with (a) above if received from 50 to less than 80 percent owned subsidiaries defined under N.J.A.C. 18:7–4.11(a)2. Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

iii. Income, war-profits, and excess profits taxes imposed by foreign countries or possessions of the United States, allocable to income included in Federal taxable income subject to the following limitations:

(1) To the extent that these income, war-profits and excess profits taxes were allowed as a credit against the Federal income tax under the applicable provisions of the Internal Revenue Code;

(2) Provided, that such taxes were not reflected in deductions made in computing Federal taxable income or taken under (a)1xi above; and

(3) Also provided that the amount of the deductible income, war-profits and excess profits taxes paid to each foreign country or possession of the United States shall not exceed the net income earned by the taxpayer in such foreign country or possession.

iv. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993 on which ACRS or MACRS has been disallowed under (a)1xii above using any method, life and salvage value which would have been allowable under the Federal Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Federal Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Federal Internal Revenue Code at December 31, 1980;

v. In any privilege period or taxable year beginning on or after January 1, 2002, with respect to property acquired on or after January 1, 2002 and before September 11, 2004, any depreciation which was deducted in arriving at Federal taxable income and which was determined in accordance with Sections 168(k) and 1400L of the Federal Internal Revenue Code. Assets acquired before January 1, 2002 for which such depreciation was taken will continue for the entire life of the asset to follow Federal depreciation. Assets acquired in periods beginning before January 1, 2002 will continue to follow Federal depreciation even if the asset itself was acquired after January 1, 2002 but during such fiscal year. Upon early retirement a basis adjustment will be required to equalize Federal and State basis.

Example: Federal bonus depreciation with respect to an asset acquired February 1, 2002 by a corporation which is a calendar year corporation will be disallowed for the corporation when filing its CBT–100 for 2002.

vi. Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Federal Internal Revenue Code, there shall be allowed as a deduction any excess or there must be restored as an item of income any deficiency of depreciation disallowed under (a)1x above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

vii. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under Section 168(f)(8) of the Federal Internal Revenue Code; provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to a qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

(1) Where income relating to such safe harbor leasing election would have been included in Federal taxable income whether or not the election is made, no exclusion is permitted.

Example: A corporation which finances the acquisition of machinery and equipment is not permitted to exclude interest income merely because it is one of the parties to a "safe harbor lease" whereby it agreed that all parties to the transaction characterize it as a lease for Federal income tax purposes.

(2) For treatment of deductions relating to such safe harbor lease transactions, see (a)1xi above.

viii. Any banking corporation which is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as herein described, from its entire net income, as follows:

(1) Any deductions under this section can only be claimed to the extent that they are not deductible in determining Federal taxable income, or not deductible under N.J.S.A. 54:10A–4(k)(1) through (3).

(2) The eligible net income of an IBF is the amount of income remaining after subtracting the applicable expenses, as defined by (a)2vii(4) below.

(3) Eligible gross income is the gross income derived from an IBF. This will include gross income derived from the following:

(A) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled, by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(B) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities; or

(C) Entering into foreign exchange or hedging transactions relating to any transactions under (a)2vii(3)(A) and (B) above or (D) below.

(D) Any other activities which an IBF may be, at any time, authorized to engage in by Federal or state law, the Board of Governors of the Federal Reserve, the Comptroller of the Currency, the New Jersey Banking Commission, or any other authority.

(4) Applicable expenses are any expenses or deductions which are directly or indirectly attributable to eligible gross income as defined in (a)2vii(3) above.

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

Amended by R.1983 d.62, effective March 7, 1983
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added new 10 and 11 to (a). Recodified old 10 as new 12 and added 4–6 to (b).
Amended by R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).
(b)7 added.
Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
Substantially amended.
Amended by R.1987 d.335, effective August 17, 1987.
See: 19 N.J.R. 712(a), 19 N.J.R. 1568(b).
Substantially amended.
Amended by R.1992 d.289, effective July 20, 1992.
See: 24 N.J.R. 175(a), 24 N.J.R. 2628(b).
Revised text.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.1997 d.204, effective May 19, 1997.
See: 28 N.J.R. 5158(a), 29 N.J.R. 2467(a).
In (a)1vii, inserted "For accounting or privilege periods ending on or before January 10, 1996,".
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Case Notes

Benefits from safe harbor leases do not constitute "real intangible personal property", for purposes of corporate tax. Reuben H. Donnelley Corp. v. Director, Div. of Taxation, 128 N.J. 218, 607 A.2d 1281 (1992).

Interpretation of amendment to corporate tax governing safe harbor leases was not an administrative rule.. Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

Corporate owner of safe harbor leased property could not include it in owner's business allocation factor. Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

State's inclusion of Federal obligations in taxpayer bank's tax bases under the Corporation Business Tax Act complied with the Federal public debt statute since the tax was nondiscriminatory; taxpayer bank's net worth and net income bases appropriately included the value of and income from the bank's holdings of state and local obligations. Garfield Trust Co. v. Director, Div. of Taxation, 6 N.J.Tax 462 (Tax Ct.1984), affirmed per curiam 7 N.J.Tax 663 (App.Div.1984), affirmed 102 N.J. 420, 508 A.2d 1104 (1986), appeal dismissed 107 S.Ct. 390, 479 U.S. 925, 93 L.Ed.2d 345.

Federal minimum tax for tax preference was not properly excludable from the taxpayer's entire net income in the calculation of New Jersey corporation business tax, since the Federal minimum tax is on income and not an excise tax on capital. Texaco, Inc. v. Director, Div. of Taxation, 4 N.J.Tax 63 (Tax Ct.1982).

18:7–5.3 Tax paid to foreign country or United States possession; when deductible from net income

(a) With respect to foreign taxes required to be included in income as dividends received under Section 78 of the Internal Revenue Code, no deduction from Federal taxable income is permitted if 100 percent of the dividend received amount is deductible therefrom under N.J.A.C. 18:7–5.2(a)2i.

1. However, if 100 percent of the foreign tax amount is not deductible from Federal taxable income as dividends received under N.J.A.C. 18:7–5.2(a)2i, then the percentage which is taxed may be deducted from Federal taxable income. No other foreign taxes are deductible.

Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
In (b), changed N.J.A.C. references throughout.
Administrative change and correction.
See: 31 N.J.R. 1818(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7–5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this rule for:

1. Gains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue Code but only to the extent that recapture or other provisions of the Code are not paramount to these sections.

2. The general business credit allowed or allowable for Federal income tax purposes under Section 38 of the Internal Revenue Code.

i. This may not be taken as a deduction in computing the New Jersey net income tax base, nor as a credit, in any manner, in computing tax liability under the Act.

ii. Upon disposition of assets which qualified for a general business credit under Section 38 of the Internal Revenue Code, taxpayer must use the same basis for computing gain or loss for New Jersey net income tax purposes as employed for Federal income tax purposes.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under Section 38 of the Internal Revenue Code.

i. This depreciation may not be taken as a deduction in computing the New Jersey net income tax base.

ii. Depreciation taken for New Jersey net income tax purposes must be reported at the same amount as reported for Federal income tax purposes for the same period.

Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
(a)2 deleted; (a)1 amended; 3 and 4 renumbered as 2 and 3.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–5.5 Entire net income; determining stock ownership

(a) The provisions of N.J.A.C. 18:7–4.5 and 4.6 relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(b) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1: Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludible from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from Corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C				20%
Investment in Corporation B	90%			
Investment of Corporation B in Corporation C	70%			
Indirect investment in Corporation C	.90	× .70	=	63%
Aggregate ownership by Corporation A of the stock of Corporation C				83%

Example 2: Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludible from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F				20%
Investment in Corporation E	90%			
Investment of Corporation E in Corporation F	60%			
Indirect investment in Corporation F	.90	× .60	=	54%
Aggregate ownership by Corporation D of the stock of Corporation F				74%

New Rule, R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Old rule repealed.

Cross References

See N.J.A.C. 18:7–4.5 (Net worth; indebtedness includible) and 18:7–4.6 (Receivables offset against includible indebtedness) as to computing net worth.

Statutory References

See N.J.S.A. 54:10A–4(e) as to what may be included in "indebtedness owing directly or indirectly."

18:7–5.6 Adjustment of entire net income to period covered by return; how computed

(a) If the entire net income required to be reported is for a period other than a period covered by the taxpayer's Federal income tax return, the taxpayer shall compute its net income as follows:

1. Its Federal taxable income is first adjusted in the manner set forth on N.J.A.C. 18:7–5.1 through 5.4;

2. The result is then divided by the number of calendar months or parts thereof covered by the Federal income tax return;

3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Act. A part of a month shall be deemed to be a month.

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

4. Regular employee: A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the compensation paid to an individual (such as a W–2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7–8.14.):

i. The facilities of a public warehouse located outside New Jersey and utilized to store property of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer where the warehouse is not the space of the taxpayer.

ii. The facilities of an independent contractor located outside of New Jersey and used to store, convert, process, finish and/or improve the goods of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer.

iii. A job site, field office or other facility which is not regularly maintained, occupied and used in taxpayer's business or where administrative duties, such as performing payroll functions, telephoning, recordkeeping, banking, accounting, the hiring and firing of employees and similar functions are not performed, is not a regular place of business.

iv. The location of inventories outside of New Jersey in the possession of employees in their homes, or in trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) A taxpayer does not have a regular place of business outside New Jersey solely by consigning goods to an independent factor outside New Jersey for sale at the direction of either the consignor or consignee.

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdictions shall not be determinative as to whether the taxpayer maintains a regular place of business outside of New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).

(a)1–2 deleted and new text (a)1–4 substituted; (c) added.

Statutory References

See N.J.S.A. 54:10A–6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

Case Notes

Apportionment of franchise tax for multi-state corporations which maintain a regular place of business outside New Jersey other than a statutory office is not applicable to a corporation whose out-of-state offices consist of space in corporate engineers' personal homes used for their own convenience in connection with their employment. Hoeganaes Corp. v. Director, Div. of Taxation, 145 N.J.Super. 352, 367 A.2d 1182 (App.Div.1976) and dissenting opinion.

Corporation which did not pay rent out of state did not maintain regular place of business out of state. Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

Reduction in corporation business tax based on an allocation of tax basis due to maintenance of a regular place of business outside of the State denied because New York office was not a "regular place of business", since it was leased in the name of the parent corporation, the taxpayer paid no rent and did not maintain control over the premises, and because the full time employees at the office were all employees of the parent corporation. Shelter Development Corp. v. Taxation Div. Director, 6 N.J.Tax 547 (Tax Ct.1984).

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).

Corporation held not entitled to apportion part of its net income to other states because it did not maintain a regular place of business in other states; "regular place of business" test held not to violate commerce clause. Rocappi Inc. v. Taxation Div. Director, 3 N.J.Tax 311, 182 N.J.Super. 163, 440 A.2d 96 (Tax Ct.1981).

18:7–7.3 "Allocating" and "non-allocating" companies; definition

(a) A taxpayer which allocates a portion of its entire net income outside this State is referred to as an "allocating" taxpayer.

(b) A taxpayer which does not allocate any part of its entire net income outside this State is referred to as a "non-allocating" taxpayer.

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–4(b) as to definition of "allocation factor," and 54:10A–6 as to how to determine allocation factor for a taxpayer who maintains a regular place of business outside New Jersey.

Case Notes

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).

18:7–7.4 Allocation factor; definition

"Allocation factor" means the proportionate part of a taxpayer's entire net income used to determine a measure of its 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–4(b) as to definition of "allocation factor."

18:7–7.5 Allocation factor; application

If the taxpayer had a regular place of business outside New Jersey during the period covered by the return, its tax liability under the New Jersey Corporation Business Tax Act is measured by that part of its entire net income allocated to New Jersey according to a formula called the business allocation factor.

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

Historical Note

Laws of 1968, Chapter 250 eliminated the use of the asset factor for the purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968.

Statutory References

See Laws 1968, Chapter 250 as to elimination of asset factor for purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968. See N.J.S.A. 54:10A–4(b) as to definition of "allocation factor." See N.J.S.A. 54:10A–6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

18:7–7.6 Corporate partners and partnerships

(a) A foreign corporation that is a general partner in a general or limited partnership or is deemed to be a general partner in a limited partnership doing business in New Jersey satisfies the subjectivity requirements set forth in N.J.S.A. 54:10A–2. A foreign corporation that is a general partner of a general or limited partnership doing business in New Jersey is subject to filing a corporation business tax return in New Jersey and paying the applicable tax under the terms of the corporation business tax to New Jersey. Such a corporation is also deemed to be employing or owning capital or property in New Jersey, or maintaining an office in New Jersey, if the partnership does so.

(b) Subsection (a) above may apply to foreign corporations, otherwise not subject to the New Jersey corporation business tax, whose only connection to this State is restricted to owning one or more limited partnership interests in one or more limited partnerships doing business in New Jersey, provided the taxpayer's connection with this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States. See N.J.A.C. 18:7–1.6.

(c) A foreign corporate limited partner of a limited partnership doing business in New Jersey is considered exercising its franchise to do business in this State, doing business in this State or employing capital in this State, and, therefore, is subject to tax under N.J.S.A. 54:10A–2 and filing a corporation business tax return, if:

1. The limited partner is also a general partner of the limited partnership;

2. The foreign corporation limited partner, in addition to the exercise of its rights and powers as a limited partner, takes an active part in the control of the partnership business;

3. The foreign corporate limited partner meets the criteria set forth in N.J.A.C. 18:7–1.9 or 1.6; or

4. The business of the partnership is integrally related to the business of the foreign corporation.

(d) Tax filing and payment responsibilities of partnerships are set forth in N.J.A.C. 18:7–17. For the partnership processing fee, see N.J.A.C. 18:35–11.

(e) It shall be the burden of the taxpayer to prove to the Director by clear and cogent evidence that the facts and circumstances surrounding its involvement with the limited partnership or limited liability company do not subject it to tax under the Act.

(f) For purposes of this section, the term "partnership" has the same meaning as is set forth under I.R.C. § 7701(a)(2) and the regulations issued thereunder. Partnerships that are not treated for Federal tax purposes as pass-through entities are also not treated as pass-through entities under this section. The term "partnership" shall include limited liability companies treated as partnerships.

(g) For purposes of apportionment (allocation) of corporate income, where the subject corporation and the partnership are not part of a single unitary business, including a business carried on directly by the foreign corporate partner, separate accounting apportionment should be used to arrive at corporate income. If the New Jersey business of the partnership is part of a single unitary business including a business carried on directly by the foreign corporate partner, flow through accounting apportionment should be used with respect to the incomes of the two entities.

1. Separate accounting apportionment, for purposes of this section only, means use of the following method: The corporation's distributive share of the partnership's business income would be apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A–6 apportionment factor for that business by only taking into account the corporate partner's share of the receipts, payroll and property of the business that the partnership carries on directly. Second, the corporation's entire net income, excluding its distributive share of the partnership's income is apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A–6 apportionment factor for that business by only taking into account the receipts (excluding receipts from the partnership namely, receipts from intercompany transactions), payroll and property of the business that the corporation carries on directly. Third, these two amounts would be added together to arrive at the corporation's entire net income apportioned to New Jersey.

(f) The amount by which the exclusion of receipts from the denominator of the sales fraction increases the liability of all the members of an affiliated group or controlled group pursuant to sections 1505 or 1563 of the Internal Revenue Code of 1986 over the liability calculated without application of the exclusion shall not exceed $5,000,000. If the exclusion increases the liability of all the members of an affiliated group or controlled group by more than $5,000,000 for the privilege period, then the amount of liability in excess of $5,000,000 due to the exclusion shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts. The Director may allow a single corporation within the affiliated group or controlled group to act as the key corporation (clearinghouse) for the abatement. "Business presence" or "business activity" taxes include, but are not limited to, net worth taxes, gross receipts taxes, single business taxes. For example, business presence or business activity taxes include, but are not limited to, the Pennsylvania Bank Shares Tax (72 P.S. 7701 et seq.) and the New York Franchise Tax on Banking Corporations (Article 32 of the New York tax laws). Property taxes, excise taxes (for example, cigarette taxes), payroll taxes, and sales taxes are not considered "business presence" or "business activity" taxes.

(g) If the exclusion of sales increases the liability of a single entity taxpayer that is independent of and not affiliated with any controlled or affiliated group as defined above, then such increase shall be capped at $5,000,000 and the excess shall be abated.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(b) substantially amended and Examples added.
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (d) through (g).
Adopted concurrent amendment, R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Rewrote (d) and (f).

Statutory References

See N.J.S.A. 54:10A–6(B) as to factors includible in determination of receipts fraction.

18:7–8.8 Scope of allocable receipts

(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and transshipped to a point outside this State.

i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.

iii. The sale of goods shipped by a taxpayer from outside of New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside of New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside of New Jersey results in receipts which are not allocable to New Jersey.

Example:

Taxpayer, a non-New Jersey manufacturer, transports goods from outside of New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside of New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside of New Jersey results in receipts not allocable to New Jersey.

2. Services performed in New Jersey;

3. Rentals from property situated in New Jersey;

4. Royalties from the use in New Jersey of patents or copyrights;

5. All other business receipts earned in New Jersey. See example in N.J.A.C. 18:7–8.7(c).

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
Substantially amended.
Amended by R.1989 d.311, effective June 19, 1989.
See: 21 N.J.R. 438(b), 21 N.J.R. 1744(c).
Exceptions to receipts allocable to New Jersey added at (a)1i-iv, with examples.

Statutory References

See N.J.S.A. 54:10A–6(B) as to factors includible in computing receipts fraction.

18:7–8.9 Receipts from sales of capital assets; when includible

(a) The gross receipts from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or without New Jersey should not be included in either the numerator or denominator of the receipts fraction. The net gains from such sales which are included in entire net income are the amounts which are properly to be included in the computation of the receipts fraction. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.

ILLUSTRATION
FACTS

	Selling Price	Cost	Net Gain	Net Loss
Property #1	$1,000	$ 600	$400	
Property #2	2,000	2,200		$200
Property #3	3,000	2,900	100	
			$500	$200
			(200)	
Amount of gain appearing on Schedule A			$300	

The $300 net gain is includable in the denominator of the receipts fraction in all cases. The computation to arrive at the amount to be included in the numerator is given in the following examples:

Example 1:

At the time of sale, Property #1 was located within New Jersey whereas Property #2 and #3 were located outside New Jersey.

Amount of N.J. Gains $400 = 80% x $300 (net gain) = $240
Total Gains $500

The amount of $240 is to be included in the numerator of the receipts fraction.

Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

Amount of N.J. Gains -0- = 0% x $300 (net gain) = -0-
Total Gains $500

There is nothing attributable to this transaction which will affect the numerator of the receipts fraction.

Example 3:

At the time of sale, Property #1 and #3 were located within New Jersey, whereas Property #2 was located outside New Jersey.

Amount of N.J. Gains $500 = 100% x $300 (net gain) = $300
Total Gains $500

(b) Where the taxpayer's business is the buying and selling of real estate or the buying or selling of securities for trading purposes, these assets are not deemed to be capital assets and the gross receipts from the sales thereof are included in the same manner as other includable receipts.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(a) substantially amended and examples added.

Statutory References

See N.J.S.A. 54:10A–6(B) as to what tangible personal property shall be includible when computing taxpayer's receipts fraction.

Case Notes

Rule held to impose restriction not warranted by statute; only net gain from sales of tangible personal property includable in receipts fraction of the business allocation formula of the Corporation Business Tax Act; income derived from the sale or redemption of short-term obligations and the interest increment realized upon the sale or redemption of such obligations issued at a discount were includable in receipts fraction of the business allocation formula. American Telephone & Telegraph Co. v. Director, Div. of Taxation, 4 N.J. Tax 638 (Tax Ct.1982), affirmed 194 N.J.Super. 168, 476 A.2d 800 (App.Div. 1984), certification denied 97 N.J. 627, 483 A.2d 157 (1984).

18:7–8.10 Receipts; compensation for services

(a) The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned under this section if the service is performed within this State. If the service is performed both within and outside this State, the numerator of the receipts fraction includes receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method which should reflect the trade or business practice and economic realities underlying the generation of the compensation for services. Cost of performance is defined as all direct costs incurred in the performance of the service, including direct costs of subcontractors.

1. All amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.

2. It is immaterial where the amounts were payable or where they actually were received.

Example 1: Taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The appropriate method of assigning the portion of its advertising revenues attributable to services performed in New Jersey is based upon the proportion of its listening audience in New Jersey.

Example 2: Taxpayer earns income from the sale of long distance telephone communications service. It bills the originators of long distance telephone calls directly and for all calls placed by them. The appropriate method of allocating its long distance toll revenues attributable to services performed in New Jersey is based upon billings for calls originating in New Jersey.

(b) Commissions received by the taxpayer are allocable to New Jersey if the services for which the commissions were paid were performed in New Jersey. If the taxpayer's services for which commissions were paid were performed for the taxpayer by salesmen attached to or working out of a New Jersey office of the taxpayer, the taxpayer's services will be deemed to have been performed in New Jersey.

Example

The taxpayer is a New Jersey sales agent of a Pennsylvania manufacturer and receives in New Jersey an order from a New York customer. The order is forwarded to the manufacturer which accepts it and fills it by shipment direct to the customer. The taxpayer's commission is allocable to New Jersey.

(c) Certain service fees from transactions having contact with this state are allocable to New Jersey based upon the following:

1. Twenty-five percent of such fees are allocated to the state of origination.

2. Fifty percent of such fees are allocated to the state in which the service is performed.

3. Twenty-five percent of such fees are allocable to the state in which the transaction terminates.

Example 1: A taxpayer issues credit cards to its customers allowing funds to be obtained through the use of authorized machines located within New Jersey. A customer originates a transaction at a New Jersey location, and the taxpayer's computer, located outside this State, performs a credit check. Funds (or a bank draft) are received by the customer at the point of origin in New Jersey, where the transaction terminates. Taxpayer must allocate 50 percent of the service fee income earned from this transaction to New Jersey based upon the points of origination and termination. For purposes of this example the issuer of credit cards has nexus with New Jersey through physical presence in New Jersey.

Example 2: Taxpayer earns income by providing online internet access to customers located within New Jersey and outside New Jersey. Taxpayer's physical equipment allowing such access is located outside New Jersey. Taxpayer must allocate 50 percent of its revenue from internet access charges to New Jersey based upon the origination and termination of such access from points within New Jersey. Absent specific identification of points of origination and termination, the customer's billing address will serve to locate these activities. For purposes of this example, the internet service provider has physical presence through a home office located in New Jersey.

4. Certain lump sum payments for services performed within and without New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

i. Securities and commodities brokers executing orders on an exchange are to allocate commissions derived from the execution of purchases or sales orders for the accounts of customers to New Jersey as follows:

(1) 80 percent of commissions on orders originating at any New Jersey place of business; plus

(2) 20 percent of commissions on orders executed on any exchange located in New Jersey.

ii. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of departures from New Jersey to total departures. Departures may be weighted as to cost and value of aircraft by type where weighting would give a more fair and reasonable business allocation factor.

iii. Inland freight revenues must be segregated into two components. The numerator of the receipts fraction attributable to receipts from services performed within New Jersey is the sum of:

(1) A portion of such freight attributable to long distance hauling is calculated based upon the proportion of the taxpayer's costs of long distance hauling to the sum of the costs of long distance hauling, terminal operations and local pickup and delivery during the period covered by the return and included in the receipts fraction based upon the proportion of revenue miles in New Jersey to revenue miles everywhere; plus

(2) The balance of freight revenues are in the numerator of the receipts fraction based on the proportion of total revenues from goods consigned to points within New Jersey to total freight revenues.

(3) The computation of the receipts fraction must accompany the return.

Illustration

Local pickup and delivery costs and terminal operation costs	$ 525,000
Long distance hauling costs	225,000
Total	$ 750,000
Revenue miles in New Jersey	100,000
Total revenue miles	500,000
Consignments to points in New Jersey	450,000
Total freight revenues	$1,000,000

$1,000,000 x 225,000/750,000 x 100,000/500,000 = $ 60,000

$1,000,000 x 525,000/750,000 x 450,000/1,000,000 = $315,000

Receipts from services performed within New Jersey $375,000

Assuming no other receipts enter into the computation, the receipts fraction is $ 375,000/1,000,000 or .375000

(d) If a taxpayer receives a lump sum in payment for services and also for materials or other property, the sum received must be apportioned on a reasonable basis.

1. That part apportioned to services performed is includible in receipts from services; and

2. That part apportioned to materials or other property is includible in receipts from sales;

3. Full details must be submitted with the taxpayer's return.

(e) Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

1. In the case of asset management services directly or indirectly provided to individuals, receipts shall be allocated to New Jersey if the domicile of the individual is in New Jersey.

2. In the case of asset management services directly or indirectly provided to a pension plan, retirement account or institutional investor, such as private banks, national and international private investors, international traders or insurance companies, receipts shall be allocated to New Jersey to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account or beneficiaries of the similar pool of assets held by the institutional investor is in New Jersey.

i. In the event the domiciles of the beneficiaries are not or cannot be obtained, a reasonable proxy may be used to allocate receipts to New Jersey that reflects the trade or business practice and economic realities underlying the generation of receipts from the asset management services. The burden of demonstrating the reasonableness of the method rests on the taxpayer. Based on specific facts and circumstances, reasonable proxies used to allocate receipts to New Jersey may take into account, among other things, the latest available population census data, the domicile of the sponsor of the plan, account or pool of assets, the sponsor's New Jersey payroll apportionment factor or the sponsor's ratio of New Jersey employees to total employees.

3. In the case of asset management services directly or indirectly provided to a regulated investment company, receipts shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the following:

i. The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes that ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of year balance of shares owned by the regulated investment company shareholders. A separate computation is made to determine the allocation of receipts from each regulated investment company.

4. As used in (e)1 through 3 above:

i. "Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets and related activities. As used in this section, "related activities" means administration services, distribution services, management services and other related services.

ii. "Administration services" means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services but does not include trust services.

iii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company.

iv. "Management services" means the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made or the selling or purchasing of securities and related activities.

v. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1–2m in the case of an individual and under N.J.S.A. 54A:1–2o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of (e)3 above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

vi. In addition to amounts received directly from a regulated investment company, "receipts" shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such.

vii. "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A–4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.

viii. "Sponsor" means the party that has contracted directly with the beneficiaries of the plan, account or similar pools of assets.

5. See N.J.A.C. 18:7–1.6 regarding foreign advisors having customers in New Jersey.

(f) Receipts from the services of a registered securities or commodities broker or dealer shall be sourced to New Jersey if the customer is located within the State.

1. For purposes of this subsection:

i. "Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475;

ii. "Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475; and

iii. "Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the Federal Securities and Exchange Commission or the Federal Commodities Futures Trading Commission.

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.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(c) substantially amended and examples and illustration added.
Amended by R.1989 d.439, effective August 21, 1989.
See: 21 N.J.R. 1106(a), 21 N.J.R. 2527(a).
Added subsection (e)1–2vi.
Administrative Correction to (c).
See: 21 N.J.R. 3477(a).
Administrative Correction to (c) and Example 1.
See: 22 N.J.R. 363(a).
Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Rewrote (a) and (c).
Administrative correction.
See: 30 N.J.R. 3660(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote (e); added (f).
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

See N.J.S.A. 54:10A–6(C) as to includability of compensation for personal services in receipts fraction.

18:7–8.11 Receipts; rents and royalties

(a) Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use in New Jersey of patents or copyrights, are allocable to New Jersey.

1. Receipts from rentals include all amounts received by the taxpayer for the use or occupation of property, whether or not such property is owned by the taxpayer.

2. Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not such patents or copyrights were originally issued to or are owned by the taxpayer.

3. A patent or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.

(b) Receipts from royalties derived from trademarks utilized in business in New Jersey are deemed located in New Jersey.

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. B licenses those trademarks to affiliated entities, and the affiliates pay B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10

percent of its sales revenue from the use of a trademark within New Jersey and 90 percent in other jurisdictions, 10 percent of the royalty paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Added (b).

Statutory References

See N.J.S.A. 54:10A–6(B)(5) as to includability of rents and royalties in computing receipts fraction.

18:7–8.12 Other business receipts

(a) All other business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules. Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies or proceeds from sales of scrap.

(b) For treatment of dividends see N.J.A.C. 18:7–8.7(c)2, Example.

(c) For treatment of receipts from sales of capital assets, see N.J.A.C. 18:7–8.9.

(d) Receipts from the sale of real property situated in New Jersey are earned in New Jersey.

(e) Intangible income not apportioned by other provisions of these rules is included in the numerator of the receipts fraction where the taxable situs of the intangible is in this State. The taxable situs of an intangible is the commercial domicile of the owner or creditor unless the intangible has been integrated with a business carried on in another state. Notwithstanding that the commercial domicile is outside this State, the taxable situs is in New Jersey to the extent that the intangible has been integrated with a business carried on in this State.

Example: Taxpayer has its domicile outside this State. It is in the business of lending money, some of which is loaned to New Jersey residents. Interest income recognized from such loans is income derived from sources within this State and, as such, is earned in New Jersey. That interest income is includable in the numerator of the receipts fraction.

(f) For treatment of non-operational income, see N.J.A.C. 18:7–8.17.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Case Notes

Place to or from which shipment is made is not relevant to the determination of whether receipts must be included in numerator of receipts fraction under statute requiring inclusion of 'all other business receipts' earned in New Jersey in receipts numerator for computation of corporation business tax for taxpayer which does business in New Jersey and maintains regular place of business in another state; issue is solely whether receipt was earned by taxpayer within New Jersey. Stryker Corporation v. Director, Division of Taxation, 773 A.2d 674 (2001).

Cross References

See subsection (g) of section 8.8 (Scope of allocable receipts) of this chapter as to treatment of dividends received from subsidiaries. See section 8.9 (Receipts of capital assets; when includible) of this chapter as to treatment of receipts of capital assets.

Statutory References

See N.J.S.A. 54:10A–6(B) as to includibility of all business receipts earned within New Jersey in receipts fraction.

18:7–8.13 Business allocation factor; payroll fraction

(a) Wages, salaries and other compensation include all amounts paid for personal services rendered to the taxpayer, but do not include amounts paid of the taxpayer which do not have in them the element of compensation for personal services actually rendered or to be rendered.

(b) The percentage of the taxpayer's payroll allocable to New Jersey is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within New Jersey during the period covered by the return by the total amount of compensation of all the taxpayer's employees during the period.

1. All executive salaries are includible in both the numerator, as applicable, and the denominator.

2. In general, a taxpayer reporting to the Division of Employment Security in the New Jersey Department of Labor must allocate to New Jersey all wages, salaries and other personal service compensation, and other items reportable to that Division, including the portions thereof, in individual cases, over $6,200 for the calendar year 1978 and $6,600 for the calendar year 1979 and for subsequent years the amount prescribed by the New Jersey Department of Labor. (As a point of reference, such base wage amount for 1992 was $15,300 and for 1993 was $16,000.)

(c) Wages, salaries and other compensation are computed on the cash or accrual basis, in accordance with the method of accounting used by the taxpayer in reporting for Federal income tax purposes.

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–6(c) as to treatment of wages, salaries and other personal service compensation of taxpayer's employees.

18:7–8.14 Definition of officers and employees

(a) Those officers and employees whose wages, salaries and other personal service compensation are required to be included in the computation of the payroll fraction of the business allocation factor include every individual, officer and general executive officer whose relationship with the taxpayer is that of employee and employer.

(b) Generally, the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by him but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method or designation of the compensation, are immaterial.

(c) Compensation paid to officers, such as the Chairman, President, Vice–President, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, Comptroller, and any other officer charged with and performing general executive duties of the corporation must also be included.

(d) A director of a corporation is not an employee; therefor compensation paid to directors for acting as such should not be included in either the numerator or denominator in computing the payroll fraction.

Statutory References

See N.J.S.A. 54:10A–6(c) as to includibility of wages, salaries, and other personal service compensation of officers of taxpayer, and 54:10A–7 as to definition and scope of "compensation" of officers and employees.

18:7–8.15 Compensation of officers and employees within New Jersey

(a) Compensation of officers and employees within this State shall include the entire amount of wages, salaries and other personal service compensation for services performed within or both within and without this State if:

1. The service is performed entirely within this State; or

2. The service is performed both within and without this State, but the service performed without the State is incidental to the individual's service within the State. For example, service which is temporary or transitory in nature or which consists of isolated transactions;

3. The service is not performed entirely in any state but some of the service is performed in this State; and

i. The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this State; or

ii. The base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State;

4. Contributions are not required or paid with respect to such service under an unemployment compensation law of any other state.

Statutory References

See N.J.S.A. 54:10A–6(C) as to includibility of compensation of officers of taxpayer, and 54:10A–7 as to definition and scope of "compensation" of officers.

18:7–8.16 Allocation: International Banking Facilities

Any banking corporation, having an international banking facility, which maintains a regular place of business (other than a statutory office) outside of New Jersey, which elects to take the deduction from entire net income provided by N.J.A.C. 18:7–5.2(a)2vii, shall complete the allocation factor under this subchapter in the usual way. For the purpose of allocation, however, all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in N.J.A.C. 18:7–16.1, shall be included in both the numerator and denominator of the fractions described in this subchapter, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

(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 is not subject to allocation but shall be specifically assigned. One hundred percent of non-operational income from taxpayers having their principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State, unless another state has nexus to all of the income.

New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Law Reviews and Journal Commentaries

Unitary Taxation in New Jersey. John Mackay Metzger, 28 Seton Hall L. Rev. 162 (1997).

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:

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 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.

11. The Director does not undertake to approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white with hand writing of satisfactory legibility.

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–18 as to authority of Director to design tax return forms and determine the information to be required thereon.

18:7–11.19 through 18:7–11.21 (Reserved)

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7–12.1 Short period returns; when required

(a) In general, every corporation must file a return for each fiscal or calendar accounting period or part thereof during which it has or had a taxable status in New Jersey. In certain cases, the taxpayer will be required to file a return covering an accounting period of less than 12 months. This may necessitate an adjustment of entire net income.

(b) Some of the circumstances which require the filing of short period returns are:

1. A newly organized corporation whose first accounting period established for Federal income tax purposes is less than 12 months;

2. A foreign corporation which acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey Corporation Business Tax return embraces a period less than the accounting period reported upon the Federal income tax purposes;

3. Corporations which dissolve, merge, consolidate, withdraw, surrender or otherwise cease to have a taxable status in New Jersey prior to the close of a full twelve months accounting period;

4. A corporation which changes its accounting period.

(c) In general, short period returns are not required from a corporation that remains a New Jersey C corporation for the full year.

Example 1: If a corporation, that at all times during the year was a New Jersey C corporation, ceases being an S corporation for Federal purposes during the year, and at all times retains its independent existence, it shall file one New Jersey return CBT–100 for the year, and attach copies of the two Federal returns for its Federal short periods.

Example 2: The target corporation in an IRC 338(h)(10) reorganization shall file two short period returns. The first short period return covers the period from the beginning of its tax year through and including the date of acquisition. Any gain or loss from the transaction is recognized on this return. The second short period return covers the period starting the day after the acquisition through the last day of the new Federal year end. Such period would reflect the new basis of its assets.

(d) If a corporation ceases to exist as the result of an action such as a merger or if its New Jersey S status terminates, for example, the short period return for the disappearing corporation or corporation losing its New Jersey S status would be due on the 15th day of the 4th month after the close of the short year ending on the date of the merger or on the day before the S corporation disqualifying event.

Example: A corporation had been granted New Jersey S status for the period beginning January 1, 1998. The election terminated on April 6, 1998 due to merger. The due date for the return for the short period January 1, 1998 to April 6, 1998 (that is, through the close of business on the date that the merger occurs) is August 15, 1998 which is the 15th day of the 4th month after the close of the period. An automatic six-month extension of the time to file the CBT–100S is available by making a tentative return and paying the tentative tax on form CBT–200T by August 15, 1998.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
Rewrote (c); and added (d).

Cross References

As to the requirements which must be met in order to obtain a change in accounting period, see Change of accounting period, N.J.A.C. 18:7–11.5.

Statutory References

See N.J.S.A. 54:10A–4 as to definition of "fiscal year" and "privilege period"; 10A–17 as to right of Director to independently determine entire net worth and entire net income when the period covered by the taxpayer's report is other than that covered by his Federal income tax report or when it is a short period.

Case Notes

Taxpayer that separated from consolidated group was not required to file short-term returns. Drake Bakeries, Inc. v. Taxation Div. Director, 12 N.J.Tax 172 (1991) returns.

18:7–12.2 Short period returns; proration procedures

(a) Where a short period return is required, the entire net income is permitted to be prorated as follows:

1. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.

2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the number of calendar months or parts thereof covered by the Federal Income Tax Return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.

3. With respect to net income, a foreign corporation whose short period return under the Act covers the same period as the accounting period reported upon for Federal income tax purposes shall not be entitled to prorate its adjusted entire net income.

4. Where a taxpayer is entitled and elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7–12.3.

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–2 as to requirement to file a return under Act for each year taxpayer holds franchise; 10–4 as to definition of allocation factor, net worth, and net income; 10A–5 as to how taxpayer shall compute the amount of tax payable; 10A–6 as to how taxpayer maintaining place of business outside New Jersey shall compute his entire net income and entire net worth; 10A–15 as to fiscal or calendar accounting periods required; and 10A–17 as to right of Director to independently determine entire net worth and entire net income of taxpayer making short period report.

18:7–12.3 Short period returns; allocation

(a) In the case of a taxpayer entitled and electing to allocate less than the full amount of its entire net income to New Jersey, the applicable allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return.

(b) In that case, the allocation factors shall be applied to entire net income only after such entire net income shall have been prorated as indicated in N.J.A.C. 18:7–12.2.

(c) A taxpayer filing a one-day return recognizing gain on a step up in the basis of its assets would use a business allocation factor which would be based upon the property fraction (reflecting the location of the assets) and the receipts fraction (sourced to the location of the assets). There would be no payroll fraction for the short one-day period.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
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–6 as to how taxpayer maintaining regular place of business outside New Jersey shall compute his entire net income, entire net worth, and 10A–17 as to right of Director to independently determine entire net income, entire net worth of taxpayer making short period return.

18:7–12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7–13.1 Assessment and reassessment

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1. The Director shall cause the return to be examined and shall make any audit or investigation or reaudit he may deem necessary;

2. If the Director determines that there is a deficiency with respect to payment of any tax due under the Act, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon it for payment;

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment. On and after July 1, 1993, interest shall be calculated at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

4. If the failure to pay tax when due is explained to the satisfaction of the Director, the Director may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate.

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect. For tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1. In the case of a false or fraudulent return with intent to evade the tax, the Director may assess the tax at any time.

2. Where no return has been filed as provided by law, the Director may make an estimate of the tax and assess the same at any time.

3. For tax liabilities accruing prior to July 1, 1993, where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For tax liabilities accruing on and after July 1, 1993, the period to assess additional tax is four years.

(c) Where, before the expiration of the period prescribed by law for the assessment of any additional tax, a taxpayer has consented in writing that such period may be extended, the amount of any additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(b) The Secretary of State may for good cause shown to him, give further time for the payment of such tax in which case a certificate shall be filed by the Secretary of State in the office of the Director, stating the reasons for granting an extension.

Statutory References

See N.J.S.A. 54:11–1 as to voiding charter of corporation for delinquent taxes.

18:7–14.6 Forfeiture of charter; procedure

(a) On or before the first Monday in January of each year the Director is required to report to the Secretary of State a list of all corporations which for two years next preceding the report have failed to pay the taxes assessed against them under the Corporation Business Tax Act.

(b) The Secretary of State shall then issue a proclamation declaring that the charters of these corporations are repealed, and all powers previously conferred by law upon them are inoperative and void.

Statutory References

See N.J.S.A. 54:11–2 as to duty of Director to report all corporations who have been for two years delinquent to the Secretary of State for forfeiture of charter.

18:7–14.7 (Reserved)

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.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substituted "crime of the fourth degree" for "misdemeanor".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Acting under voided charter a crime of the fourth degree".

18:7–14.8 Reinstatement of voided domestic corporation; conditions warranting

(a) If the charter of a corporation organized under any law of this State becomes inoperative or void by proclamation of the Governor or the Secretary of State or by operation of law for nonpayment of taxes, the Secretary of State may, with the advice of the Attorney General, upon payment by the corporation to the Secretary of State of whatever sum in lieu of taxes and penalties as to them may seem reasonable, but in no case less than the fees required upon the filing of the original certificate of incorporation, permit the corporation to be reinstated and entitled to all its franchise and privileges.

(b) Upon payment the Secretary of State shall issue his certificate entitling the corporation to continue its business and franchises.

Statutory References

See N.J.S.A. 54:11–5 as to right of Secretary of State to reinstate corporate charter upon payment of delinquent taxes, should he see fit.

18:7–14.9 Reinstatement of voided domestic corporation; procedure

(a) The administrative procedure for reinstatement requires that a voided corporation must file returns without remittance with the Division of Taxation covering the period or periods which have elapsed since the period covered by the last return filed by it.

(b) At the same time, an application for reinstatement is filed with the Attorney General's office. Upon audit of the returns, the Division of Taxation advises the Attorney General's office of the amount due.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Statutory References

See N.J.S.A. 54:11–5 as to minimum payments taxpayer shall be required to make in order to have charter reinstated.

18:7–14.10 Revocation of authority of foreign corporation to do business in New Jersey

(a) In the event of failure or neglect of any taxpayer which is a foreign corporation to pay the tax imposed by the Corporation Business Tax Act on or before the first day of December in each year.

1. Immediate notice thereof may be given by the Director to the Secretary of State;

2. The Secretary shall revoke the certificate of authority of said corporation to do business in the State of New Jersey.

3. Notice of revocation shall be given by the Secretary of State to the corporation affected;

4. Thereafter that corporation, so far as the further transaction of business in the State of New Jersey is concerned, shall be in the same condition as if no certificate of authority had ever been issued to it by the Secretary of State.

(b) Remedies provided by the Act for the collection of the tax and interest and penalties shall remain unimpaired.

Statutory References

See N.J.S.A. 54:10A–21 as to revocation of certificate of authority to do business of a foreign corporation to pay tax under the Act.

18:7–14.11 New certificate of authority for a foreign corporation

(a) After the revocation of a certificate of authority of a foreign corporation for nonpayment of tax, no new certificate shall be issued by the Secretary of State to the defaulting corporation until all assessments imposed under the Act and remaining unpaid, together with penalties, interest and any costs that may have been accrued have been paid.

(b) It is important to note that the certificate of the Director, evidencing payment of all taxes, interest and penalties, is a prerequisite to obtaining a new certificate of authority.

Statutory References

See N.J.S.A. 54:10A–21 as to authority of Secretary of State to issue new certificate upon payment of delinquent taxes by foreign corporation.

18:7–14.12 Personal liability of officers or directors for unpaid taxes

(a) Any officer or director of any corporation who shall be instrumental in the following corporate violations shall be personally liable for payment of that corporation's unpaid taxes, fees, penalties and interest:

1. Violating N.J.S.A. 54:50–13 (which provides for the payment of all State taxes including the Corporation Business Tax, as well as fees, interest and penalties prior to merger, consolidation, dissolution or partial or complete liquidation), or

2. Filing any certification under N.J.S.A. 54:50–15c.(2) (which represents that the corporation making certain undertakings has a net worth ten times the amount of certain taxes paid by another corporation) which is materially false.

(b) The amount of such personal liability shall be recoverable by the State in any court of competent jurisdiction and the Director shall have such additional remedies for the enforcement and collection of such personal liability as may be available under any law of this State.

Amended by R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
(a)1 and (a)2 added.
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. 54:50–18 as to conditions creating personal liability of corporation officials for unpaid taxes.

18:7–14.13 through 18:7–14.16 (Reserved)

Repealed by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Sections repealed 14.13 Criminal penalties for failure to file; filing of false or fraudulent return; 14.14 False swearing; 14.15 Certain offenses deemed occurring in Director's office; Prima Facie evidence; and 14.16 False or fraudulent books, records or accounts.

18:7–14.17 Tax Clearance Certificate

(a) This section describes certain actions and certain transactions by corporations which require the prior issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interest and fees have been paid or provided for in order to avoid a transferee liability to certain officers and directors.

(b) The following words and terms, when used in this section, have the following meanings (unless the context clearly indicates otherwise):

"Authorized foreign corporation" means a corporation holding a general Certificate of Authority to do business in New Jersey issued by the Secretary of State to the exclusion of any other authority, license or right derived from any other source.

"Certification" means a writing on behalf of a corporation making an undertaking executed under oath of its president, vice president or treasurer which represents that the corporation making the undertaking has a net worth not less than ten times the amount of all taxes paid by a corporation applying for a Tax Clearance Certificate during the last complete year in which it filed tax returns with the State of New Jersey. Net worth, for this purpose, is net worth defined in the conventional accounting sense determined consistent with generally accepted accounting principles and not as defined at Section 4(d) of the Corporation Business Tax Act nor at N.J.A.C. 18:7–4.1.

"Director" means the Director of the Division of Taxation.

"Domestic corporation" means a corporation which received its charter under any law of the State of New Jersey.

"Foreign corporation" means any corporation other than a domestic corporation which is subject to taxes. The term includes entities which are taxable as such, as well as any entity obligated to withhold personal income taxes or to collect sales and use tax.

"Liquidation" means any distribution by a corporation to its shareholders with respect to its capital stock except dividend distributions out of retained earnings.

"Taxes" means all taxes, fees, penalties and interest owing under any tax law of the State of New Jersey which are payable to or collectible by the Director.

"Undertaking" means a writing by a domestic corporation or by an authorized foreign corporation executed under another on its behalf by its president, vice president or treasurer which undertakes, as surety and not as guarantor, to pay all taxes of a corporation applying for a Tax Clearance Certificate on or before the date such taxes are payable. Where more than one corporation undertakes to pay such taxes, it must be jointly and severally undertaken.

(c) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

(d) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation; or merge or consolidate, under the laws of any jurisdiction, into a foreign corporation which is not an authorized foreign corporation; and no domestic corporation may dissolve, and no authorized foreign corporation may withdraw as an authorized corporation (except only where that withdrawal is affected by its merger or consolidation under the laws of another state into a domestic corporation or into another foreign corporation which, itself, is an authorized corporation), unless it shall have applied for and received a Tax Clearance Certificate from the Director which is dated not earlier than 45 days prior to the effective date of the corporate action or transaction described.

(e) The Tax Clearance Certificate is issued by the Director upon application in good form which is accompanied by a statutory fee of $25.00. The Certificate is dated and it voids and becomes a nullity 46 days after that date. The Certificate is evidence that the corporation business taxes have been paid or provided for only during the 45–day period succeeding its issue.

(f) A Tax Clearance Certificate may be issued under any one of three conditions:

1. Where an amount is deposited or paid on account which, in the judgement of the Director, is adequate to cover estimated taxes up to the date of the relevant corporation action. The amount which is deemed to be adequate is described in the instruction sheet accompanying the estimated summary tax return to be filed with the application; or

2. Where the application is accompanied by a written undertaking and a certification; or

3. Solely in the case where:

i. A domestic corporation intends to dissolve or where any corporation proposes to distribute any of its assets in dissolution or in partial or complete liquidation, and

ii. The application is accompanied by a written undertaking by the corporation or corporations which either own 50 percent or more of all classes of the applicant corporation's capital stock, or are a party together with the applicant corporation in the type of reorganization described at Section 368(a)(1)(C) of the Federal Internal Revenue Code, and the application is accompanied by a legal opinion signed by an attorney at law of the State of New Jersey who states that he or she is familiar with the facts of the transaction to the effect that all of the above requirements are met.

(g) The Director may require as a condition of issuing any Tax Clearance Certificate evidence by affidavit, or by any means that seems to him or her appropriate, that any foreign corporation which is not an authorized foreign corporation and which is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes which it owes.

Example: A foreign corporation which is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or to remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

(h) The Director may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

Example: A foreign corporation sold a piece of property located in this State at a substantial gain that it has elected to report on the installment method of accounting for Federal income tax purposes. Before it has recognized all of the gain on this sale, it withdraws from the State and cancels its certificate of authority to do business.

(i) In order properly to reflect the entire net income of the taxpayer, the Director may include all the unrecognized gain on the taxpayer's final return, notwithstanding any inconsistency in the timing of income for Federal and State tax purposes.

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Statutory fee raised from "$10.00" to "$25.00".
Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).
Revised (g); added (h) and (i).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–14.18 Actions not requiring the prior issuance of a Tax Clearance Certificate

(a) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

(b) A corporate dissolution before commencing business may be made without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12–2(3).

(c) A dissolution of a corporation without assets may be made without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12–4.1(3).

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Added (b), corporate dissolution before commencing business and (c), dissolution of a corporation without assets.

18:7–14.19 Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors

No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or consolidate with another corporation to form a new corporation or merge into a foreign corporation which is an unauthorized foreign corporation, and no domestic corporation may dissolve (except as may be provided by law), and no authorized foreign corporation may withdraw its authority to do business in New Jersey, unless it shall have applied for and received a Tax Clearance Certificate from the Director.

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
Added "(except as may be provided by law)".

18:7–14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) Application forms and instructions relating to Tax Clearance Certificates may be obtained by writing to:

New Jersey Division of Taxation
Tax Clearance Section
PO Box 277
Trenton, NJ 08646–0277

or by making a telephone call to Taxpayer Information Service at (609) 292–6400.

(b) The consequences of failing to obtain the Tax Clearance Certificate pursuant to this section are described at N.J.A.C. 18:7–14.12.

New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Changed the address.
Amended by R.1989 d.437, effective July 21, 1989.
See: 21 N.J.R. 2526(b).
Address changed.

SUBCHAPTER 15. URBAN ENTERPRISE ZONES ACT

Authority

P.L. 1983, c.303, section 22 (N.J.S.A. 52:27H–81) and N.J.S.A. 54:10A–27.

18:7–15.1 General

(a) The New Jersey Urban Enterprise Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H–60 et seq., approved August 15, 1983, provides for the establishment of up to 10 urban enterprise zones in urban areas suffering from high unemployment and economic distress. P.L. 1985, c.391 made certain changes to eligibility requirements for designation as a zone. P.L. 1988, c.93 modified the definition of a qualified business, made adjustments to the eligibility requirements for the employee tax credit, and provided for an alternative investment tax credit. P.L. 1993, c.367 further modified the definition of a qualified business and provided for the designation of 10 additional enterprise zones. Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain corporation tax and other benefits to businesses existing in, or formed in, enterprise zones, which have met the definition of a qualified business. This subchapter of the corporation tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any or all of these corporation tax benefits. Rules on the sales and use tax and urban enterprise zones are in N.J.A.C. 18:24–31. For Urban Enterprise Zone Authority rules and policies, see N.J.A.C. 12A:120 and 12A:121.

(b) No business can obtain tax benefits under this subchapter unless it meets the definition of a "qualified business" in N.J.A.C. 18:7–15.2.

Amended by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

18:7–15.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

A "qualified business" means either:

1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Resident within the zone, within another zone, or within a qualifying municipality;

ii. Either unemployed, while residing in New Jersey, for at least six months prior to being hired, or recipients of New Jersey public assistance programs, for at least six months prior to being hired;