CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

N.J.S.A. 54:10A-27.

Source and Effective Date

R.2004 d.367, effective September 1, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

Chapter Expiration Date

Chapter 7, Corporation Business Tax Act, expires on September 1, 2009.

Chapter Historical Note

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

Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979. See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

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Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

Chapter 7, Corporation Business Tax Act, was readopted as R.2004 d.367, effective September 1, 2004. See: Source and Effective Date. See, also, section annotations.

Subchapter 3B, Film Tax Credits, was adopted as new rules and Subchapter 15, Urban Enterprise Zones Act, was recodified as Subchapter 3A by R.2007 d.203, effective July 2, 2007. See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

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Statutory References

N.J.S.A. 54:10A–5, 15.

18:7–2.12 Application of State franchise tax to corporations

The franchise tax is imposed for all or any part of each calendar or fiscal year during which the taxpayer possessed a New Jersey franchise or otherwise has a taxable status as set forth in N.J.A.C. 18:7–1.6 or other provision of these rules.

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).
Substituted "N.J.A.C. 18:7–1.6 or other provision of these rules" for "N.J.A.C. 18:7–1.16".
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.

Cross References

As to taxable status, see N.J.A.C. 18:7–1.6.

Statutory References

See N.J.S.A. 54:10A–15 as to payment of franchise tax for all or part of each of a taxpayer's fiscal or calendar year accounting period (beginning January 1).

18:7–2.13 Conditions destroying franchise and franchise tax

A domestic corporation may cease to possess a franchise as a result of:

1. Its dissolution;

2. Its consolidation or merger into another corporation;

3. The surrender, revocation or annulment of its charter; or

4. The expiration of the term of duration prescribed in its charter.

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

18:7–2.14 Allocation of payments received with CAR–100

(a) The CAR–100 serves both as a corporation's annual report and also as a voucher with which to remit the total corporation business tax balance due and the annual report fee payments. Payments received in connection with the joint Corporation Business Tax/Corporate Annual Return filing and payment program shall first be used to satisfy the Corporate Annual Report Fee and/or the Registered Agent Change filing fee pursuant to N.J.S.A. 14A:15–2(5) or (6). Any remaining credit shall then be used to satisfy taxpayer's Corporation Business Tax liability pursuant to N.J.S.A. 54:10A–1 et seq.

(b) Underpayments relating to unpaid Corporate Annual Report fees are not subject to imposition of penalty and interest pursuant to the Corporation Business Tax Act, N.J.S.A. 54:10A–1 et seq., or the State Tax Uniform Procedure Law, N.J.S.A. 54:48–1 et seq.

(c) Corporations filing Corporation Business Tax Returns that are foreign corporations not authorized to do business in New Jersey (cf. N.J.S.A. 14A–13.3) or corporations that have had their corporate charters voided or revoked or that have withdrawn their corporate authorization shall have the Corporate Annual Report Fee and/or Registered Agent Change fee satisfied only if the tax return as filed reflects the fee on the appropriate line.

(d) Corporations filing Corporation Business Tax Returns for an initial short period return covering a period of less than six months shall not have payments applied to the Corporate Annual Report Fee. Other short period returns of less than six months shall have the Corporate Annual Report Fee and/or Registered Agent Change fee satisfied only if the tax return as filed reflects the fee on the appropriate line. For purposes of this section only, returns filed for periods in excess of six months shall be deemed full year filings.

(e) Subsequent payments made to satisfy Corporation Business Tax deficiencies will first be applied to the oldest year where a deficiency exists satisfying the required Corporate Annual Report Fee and/or Registered Agent Change fee and then any remainder shall be used to satisfy Corporation Business Tax, penalties, or interest due.

New Rule, R.2001 d.260, effective August 6, 2001.
See: 33 N.J.R. 1344(a), 33 N.J.R. 2678(a).

SUBCHAPTER 3. COMPUTATION OF TAX

18:7–3.1 General bases for computation of tax

On a return for any accounting period which begins after June 30, 1986, no portion of the tax is measured by net worth.

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). Also added (b)-(e).
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 taxpayer should compute the total amount of franchise tax payable.

18:7–3.2 (Reserved)

Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(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 "Computation of tax on entire net worth".

18:7–3.3 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
As amended, 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 April 1, 1983".
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 on average value of real and tangible personal property".

18:7–3.4 Minimum tax

(a) The tax paid in the case of an investment company, a regulated investment company or real estate investment trust shall not be less than $250.00, provided, however, for calendar year 2002 and thereafter the minimum tax shall be $500.00, unless the taxpayer 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. The minimum tax for other corporations is set forth in (b) through (i) below.

(b) For accounting or privilege periods beginning prior to calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $25.00 and in the case of a foreign corporation shall not be less than $50.00.

(c) For accounting or privilege periods beginning in calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $50.00 and in the case of a foreign corporation shall not be less than $100.00.

(d) For accounting or privilege periods beginning in calendar year 1995, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $100.00 and in the case of a foreign corporation shall not be less than $200.00.

(e) For accounting or privilege periods beginning in calendar year 1996, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $150.00 and in the case of a foreign corporation shall not be less than $200.00.

(f) For accounting or privilege periods beginning in calendar years 1997, 1998, 1999 and 2000, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $200.00 and in the case of a foreign corporation shall not be less than $200.00.

(g) For accounting or privilege periods beginning in calendar year 2002, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $500.00 and in the case of a foreign corporation shall not be less than $500.00; provided, however, for accounting or privilege periods beginning in calendar year 2002, 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 tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $2,000 and in the case of a foreign corporation shall not be less than $2,000. If the related corporations do not have the same fiscal years, the overlapping portion shall be placed upon the equivalent fiscal basis to arrive at the threshold amount.

(h) The Director shall adjust the minimum tax for accounting or privilege periods beginning in each fifth year following calendar year 2002 and each fifth year thereafter by multiplying the minimum tax for periods beginning in 2002 by an amount equal to one plus 75 percent of the increase, if any, in the annual average United States producer price index for finished goods published by the Federal Department of Labor, Bureau of Labor Statistics, for the year preceding the determination year over such index for calendar year 2001.

(i) If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are required also to file returns with New Jersey. Such returns shall reflect the minimum tax. Entities required to file minimum returns under this subsection include, without limitation thereto, qualified New Jersey Subchapter S subsidiaries, members of a casino consolidated group, and members of a combined group required to file a consolidated return by the director pursuant to N.J.S.A. 54:10A–10c.

Amended by R.1970 d.121, effective Oct. 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Changed "New Jersey" to "domestic" corporation. Added "accounting period before April 1, 1983". Added $250.00 tax for investment, regulated investment and real estate investment companies.
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 "Computation of tax by domestic corporations".
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote (a); in (f), inserted "1998, 1999 and 2000" following "1997"; added new (g) and recodified former (g) as (h); in new (h), substituted "2002" for "1997" throughout and "2001" for "1996"; added (i).
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.

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.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
In (b), rewrote 6i.

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 credits

(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.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

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) The tax credit permitted by this section shall not exceed 50 percent of the taxpayer's liability otherwise due and shall not reduce the total tax liability below the statutory minimum.

(d) 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.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Added new (c), recodified former (c) as (d).

18:7-3.20 Enterprise zone employees tax credits

See N.J.A.C. 18:7-3A 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).
Amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
Updated the N.J.A.C. reference, inserted a period following "zones", and deleted the period following the closing quotation mark at the end.

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.

1995: XYZ Corporation places additional qualified equipment in service during 1995, which was acquired through a lease agreement. The lease agreement required $5,000,000 to be paid over the term of the lease. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is $220,000. The manufacturing equipment portion of the credit is $100,000 ($5,000,000 total lease cost × two percent, not to exceed $1,000,000). The employment investment portion is $25,000 (150 measurement year average − 125 base year average = average increase of 25 × $1,000, not to exceed three percent of the cost of qualified equipment placed in service in New Jersey in 1994). Therefore, the credit is the lesser of $125,000 ($100,000 + $25,000) or $110,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $110,000, the lesser of the two amounts. The difference between the total of the two credit portions ($125,000) and the credit allowable ($110,000), or $15,000 may be carried over for a maximum of seven years.

1996: Qualified equipment is placed in service during 1996 at a cost of $1,000,000. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is $350,000. The manufacturing equipment portion of the credit is $20,000 ($1,000,000 total lease cost × two percent, not to exceed $1,000,000). The employment investment portion is $45,000, based on calculations for the 1994 and 1995 investments (150 measurement year average − 125 base year average = average increase of 25 × $1,000 or $25,000 for the 1994 investment AND 160 measurement year average − 140 base year average = average increase of 20 × $1,000 or $20,000 for the 1995 investment). Therefore, the credit is the lesser of $80,000 ($20,000 + $45,000 + $15,000 carryover from 1995) or $175,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $80,000, the lesser of the two amounts.

New Rule, R.1995 d.460, effective August 21, 1995.
See: 27 N.J.R. 838(a), 27 N.J.R. 3208(a).

18:7–3.22 New jobs investment tax credit

(a) Corporate taxpayers are allowed a credit against the portion of the corporation business tax that is attributable to, and the direct consequence of, the taxpayer's qualified

investment in a new or expanded business facility in this State which results in the creation of new jobs.

1. For a small business taxpayer, as defined in N.J.S.A. 54:10A–5.5, at least five new jobs must be created. For any other taxpayer, at least 50 new jobs must be created. The median annual compensation for the new jobs must be at least $27,000, adjusted for inflation beginning January 1, 1994 as provided in N.J.S.A. 54:10A–5.6e. Notice of the adjustment shall be published in the New Jersey Register. The employer should rank the new employees by annual compensation. If the middle employee has compensation less than $27,000, the lowest ranking jobs should be deleted from the list until the median of the remaining list is at least $27,000. (If there are an even number on the list, the top half must be greater than $27,000.) The number of employees on this revised list is the number of new jobs created for purposes of this credit.

2. For privilege periods beginning on and after January 1, 2002, the eligibility standards for the New Jobs Investment Tax Credit Act have been expanded to include small or mid-size business taxpayers. For tax year 2002 such taxpayers shall have annual payroll of $5,000,000 or less and annual gross receipts of not more than $10,000,000. Such amounts will be adjusted annually for inflation commencing January 1, 2003 by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50.00. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

i. In addition for privilege periods beginning on and after January 1, 2002, for eligible taxpayers the applicable new jobs factor for five new jobs is 0.01. For each five additional new jobs over the additional five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding to it 0.01, up to a maximum new jobs factor 0.20.

(b) The amount of the credit shall be determined by multiplying the amount of the taxpayer's qualified investment, as defined in N.J.S.A. 54:10A–5.8, in property purchased for business relocation or expansion, as defined in N.J.S.A. 54:10A–5.5, by the taxpayer's new job factor determined under N.J.S.A. 54:10A–5.9.

1. The amount of the credit shall be taken over a five year period, at the rate of one-fifth of the amount per tax year, beginning with the tax year in which the taxpayer places the qualified investment into service or use in this State.

(c) The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during a prior tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year.

1. The amount of the credit shall not reduce the tax liability by more than 50 percent of that portion of the taxpayer's tax liability otherwise due for all tax years which is attributable to and the direct result of the taxpayer's qualified investment.

2. 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–5.7b.

3. If the credit exceeds the limitations in (c) through (c)2 above, the amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50 percent of the sum of the amount of property taxes timely paid in the taxable year pursuant to N.J.S.A. 54:4–1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to N.J.S.A. 54:4–1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment. Any excess amount may not be carried forward.

(d) The credit shall only be applied against corporation business tax liability attributable to, and the direct result of, the taxpayer's qualified investment.

1. If the taxpayer's liability for corporation business tax, local property tax, and implicit property tax paid through rental or lease on property subject to local tax and for which taxes another party that is not a related person is liable, are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of tax due under those tax acts for the tax year by the ratio of compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey whose positions are directly attributable to the qualified investment, to total compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey.

2. Any credits allowable under N.J.S.A. 54:10A–5.3 (recycling tax credit), N.J.S.A. 52:27H–78 (urban enterprise zone credit), and N.J.S.A. 55:19–13 (urban development corporation credit) shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under the act for the tax year, unless their application is otherwise prohibited by the applicable credit statutes.

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, non-consolidated 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 x .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 floor-planning 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;

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 and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under IRC Section 856, and N.J.S.A. 54:10A-4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2i above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

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.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under IRC section 856, and N.J.S.A. 54:10-A4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2ii above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

iii. 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;

iv. 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.

v. 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.

vi. 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.

vii. 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.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
In (a), deleted iii, recodified former iv through viii as iii through vii in 2.
Amended by R.2006 d.61, effective February 6, 2006.
See: 37 N.J.R. 4195(a), 38 N.J.R. 1080(a).
In (a)2i, deleted "of this chapter"; added (a)2i(1) and (a)2ii(1).

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.

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).

Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styles perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation, retools and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.

Administrative Correction to (c), added Examples to section.
See: 23 N.J.R. 1024(a).

Case Notes

Surviving corporation could not carryover loss of a merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

Change in 50% or more of ownership of corporation may remove corporation's right to carryover net operating losses. Richard's Auto City, Inc. v. Director. Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

18:7–5.15 Net operating loss

(a) A net operating loss is the excess of allowable deductions over gross income used in computing entire net income.

(b) Neither a net operating loss deduction nor any exclusions from entire net income are allowable deductions in computing a net operating loss.

(c) There is no net operating loss for any year that a Corporation Business Tax Return (CBT–100) is not filed or if filed does not report entire net income as a negative amount.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

18:7–5.16 Effect of audit adjustments

An audit adjustment to entire net income shall serve to revise the amount of any net operating loss for the year of the change and the net operating loss carryover to which it relates.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

18:7–5.17 Suspension of net operating loss carryover

Except as provided below, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subsection, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years. This section shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to N.J.S.A. 34:1B–7.42a and shall not restrict the application of corporation business tax certificates pursuant to N.J.S.A. 54:10A:4–2.

Example 1:

Minnow, Inc. is a calendar year taxpayer. In 2000, it filed a NJ CBT–100 that reported a $1,000,000 net operating loss. In 2001, the taxpayer had the following income:

Operating Income	$100,000
Dividends from wholly owned subsidiary	$ 50,000
Subtotal	$150,000

In 2001, Minnow, Inc. uses an NOL deduction of $150,000 decreasing its prior year NOL to $850,000. It does not use any dividend received deduction (DRD) in 2001.

The Business Tax Reform Act suspended the NOL deduction in tax years 2002 and 2003. Assuming the same facts set forth above, in filing the return after the law changes the use of taxpayer's NOL deduction is suspended.

In 2003, Minnow, Inc. would use a DRD of $50,000 and pay taxes on Entire Net Income of $100,000. The company would continue to have an NOL carryover of $1,000,000 that it could potentially use in 2004.

Example 2:

Striper, Inc. is a calendar year taxpayer. In 2001, it filed a NJ CBT return reporting a $1,000,000 net operating loss. In 2002, Striper, Inc. reported the following items:

Operating Loss	($100,000)
Dividends from wholly owned subsidiary	$40,000

In 2002, as it would have done before the law change, the taxpayer offsets $40,000 of current year loss against the dividend received deduction. The taxpayer secures an additional NOL of $60,000 that will be available in 2004.

Example 3:

In 2001, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program but did not use them in 2001. They can be used in 2002.

Example 4:

In 2002, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program. They can be used in 2002 notwithstanding the general suspension of NOL deductions in 2002 and 2003. Tax Benefit Certificates can be both acquired and applied during the NOL suspension period.

Special New Rule, R.2003 d.135, effective (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.

18:7–5.18 Related party transactions

(a) Interest paid, accrued or incurred to a related member shall not be deducted in calculating entire net income, except that a deduction shall be permitted:

1. To the extent that the taxpayer establishes that:

i. A principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due;

ii. The interest is paid pursuant to arm's length contracts at an arm's length rate of interest; and

iii. The related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, regardless of whether a tax was actually paid on the related member, a measure of the tax includes the interest received from the related member, and the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State;

2. If the taxpayer establishes that the disallowance of a deduction is unreasonable by showing the extent the related party pays tax in New Jersey on the income stream, or the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment; or

3. To the extent that the taxpayer establishes that the interest is directly or indirectly paid, accrued or incurred to:

i. A related member in a foreign nation which has in force a comprehensive income tax treaty with the United States, provided, however, that the taxpayer shall disclose on its return for the privilege period:

(1) The name of the related member;

(2) The amount of the interest;

(3) The relevant foreign nation; and

(4) Such other information as the Director may prescribe; or

ii. An independent lender through a related member as conduit, provided that the taxpayer legally guarantees the debt on which the interest is required;

4. For purposes of this subsection:

i. "Foreign nation" means as an established sovereign government that is recognized as such by the United States Department of State;

ii. "Comprehensive income tax treaty" means as a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information;

iii. "Foreign corporation" means a business entity incorporated or organized under the laws of a foreign nation;

iv. "Domestic subsidiary" means a business entity incorporated under the laws of any state or commonwealth of the United States;

v. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

(1) A related entity;

(2) A component member as defined in subsection (b) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563;

(3) A person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563; or

(4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (a)4v(1) through (3) above of this definition;

(b) Remittance shall be in the form of a single check or money order payable to "Treasurer, State of New Jersey" in the amount of $120.00. This amount represents the formerly separate $25.00 fee to the New Jersey Division of Taxation and the $95.00 dissolution fee to the Division of Revenue. The full payment shall be forfeited if the applicant does not complete the tax clearance procedure.

(c) The applicant's tax eligibility will be deemed ended with the Division of Taxation on the date the application for dissolution or withdrawal is accepted by the Division of Revenue, provided that the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax eligibilities end before the issuance of the Tax Clearance Certificate, all prior tax obligations remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax eligibilities of the taxpayer will be reactivated as if there had been no lapse in subjectivity.

(d) The application procedures to merge or consolidate corporations or reauthorize a foreign corporation remain unchanged.

New Rule, R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. INTERNATIONAL BANKING FACILITIES

18:7-16.1 Definitions

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement Corporation" is defined under USCA Title 12, section 601, et seq. as a national banking association which, under regulation of the Federal Reserve Board of Governors, is authorized to establish foreign branches, or branches in United States dependencies or insular possessions, for the furtherance of United States foreign commerce, or to invest not over 10 percent of its capital in United States domestic corporations which are principally engaged, directly or through controlled institutions, in international or foreign banking or banking in United States dependencies or insular possessions; or to hold stock in banks organized under foreign laws, or United States dependencies or insular possessions laws, which banks are not engaged in United States activity, except incidentally; and to extend credit to such foreign or United States dependencies banks. Agreement Corporations shall operate under an agreement with the Federal Reserve Board of Governors, and shall furnish information concerning their condition to the Comptroller of the Currency as well as to the Federal Reserve Board of Governors.

"Edge Corporation" is defined under USCA Title 12, section 611, et seq. as a corporation organized to engage in international or foreign banking or other financial operations, or to engage in such operations in United States dependencies or insular possessions, either directly or through local institutions. An Edge Corporation is operated under Federal supervision with sufficiently broad powers to be able to compete effectively with similar foreign-owned institutions, in the United States or abroad. The Federal Reserve Board of Governors shall issue regulations to assist an Edge Corporation in providing banking and financial services to foster international trade.

"International Banking Facility" means a separate, segregated set of asset and liability accounts, set apart on the books of a bank, a banking corporation or other depository institution, including a United States bank or agency or foreign bank; or an Edge or Agreement Corporation as defined below. The separate accounts may include only international banking facility time deposits, or international banking facility extensions of credit, as defined below.

If the United States enacts a law, or the Governors of the Federal Reserve System adopt a regulation changing the definitions of international banking facility, international banking facility time deposits or international banking facility extensions of credit set forth in this rule, the New Jersey Commissioner of Banking shall promptly adopt regulations conforming these definitions to the revised United States law or Federal Reserve regulations, and the Banking Commissioner's regulations shall then, under P.L. 1983, c.422, provide the applicable definitions.

"International Banking Facility Extension of Credit" is a loan or deposit by an international banking facility to a deposit account, represented by a promissory note or other credit arrangement, extended only to a foreign office of another United States depository, or an Edge or Agreement Corporation or foreign office of a foreign bank, or another office of the international banking facility, another international banking facility, or an institution exempt from Federal interest rate limitations, or a foreign resident, or a foreign branch or affiliate controlled by a domestic corporation. The funds must be used only to finance the foreign operations of the borrower, or its foreign affiliates.

"International Banking Facility Time Deposit" is defined, in (United States Federal) 12 CFR 204.8(a)(2). It is a deposit or Federal obligation represented by a promissory note or other obligation or instrument, not in negotiable or bearer form. The deposit must remain in the depository at least over night, and be issued to either an office outside of the United States of another depository, or an office of an Edge or Agreement Corporation, or a foreign office of a foreign bank, or any office anywhere of the establishing international banking facility, or of another international banking facility, or an

institution exempt from Federal interest rate limitations. The obligation must be payable no sooner than two business days later, and must represent funds deposited to the credit of a foreign resident, or a foreign branch or affiliate of a domestic corporation. The funds must be used for foreign operations of the depositor or its foreign affiliate, and deposits or withdrawals must be at least $100,000.00, except when closing an account.

18:7-16.2 (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 "International Banking Facilities: computation of entire net worth".

18:7-16.3 International Banking Facilities: computation of entire net income

For computation of entire net income, see N.J.A.C. 18:7-5.2(a)2vii.

Administrative correction.
See: 32 N.J.R. 717(a).

18:7-16.4 International Banking Facilities: business allocation factor

Regarding the business allocation factor, see N.J.A.C. 18:7-8.16.

Administrative correction.
See: 32 N.J.R. 717(a).

18:7-16.5 (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 "Phasing in International Banking Facility tax changes".

SUBCHAPTER 17. PARTNERSHIPS

Authority

P.L. 2002, c.40, § 25, N.J.S.A. 54:10A-27, 54:50-1 and 54A:9-17(a).

Source and Effective Date

R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Subchapter Expiration Date

Subchapter 17, Partnerships, expires on March 12, 2004.

Subchapter Historical Note

Subchapter 17, Partnerships, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a).

The concurrent proposal of Subchapter 17, Partnerships, was adopted by R.2003 d.370, effective August 22, 2003. See: Source and Effective Date. See, also, section annotations.

18:7-17.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Nonresident corporate partner" means a partner that is not an individual, estate or trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Nonresident corporate partners include:

1. Entities that are classified as partnerships for Federal income tax purposes;

2. Entities that are classified as corporations for Federal income tax purposes that:

i. Are not corporations exempt from tax pursuant to N.J.S.A. 54:10A-3; or

ii. Do not maintain a regular place of business, as defined in N.J.A.C. 18:7-7.2, in New Jersey.

"Nonresident noncorporate partner" means an individual, an estate, or a trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that Act.

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

18:7-17.2 Subjectivity

(a) For privilege periods beginning on or after January 1, 2002, a partnership, including any entity that is classified as a partnership for Federal income tax purposes, and regulations of any election under IRC 761, except a qualified investment partnership as defined herein (see N.J.A.C. 18:7-1.21) and except a partnership listed on a United States national stock exchange, shall file a return on a form prescribed by the director and remit tax under these rules.

(b) Entities that meet the requirements of N.J.S.A. 54A:5-8(c) are commonly referred to as "hedge funds." Income received by a nonresident individual, estate or trust from a "hedge fund" is exempt from tax under the New Jersey gross income tax because it is not deemed to be carrying on from a trade or business.

1. In those situations in which partnerships do not meet the definition of qualified investment partnerships in N.J.S.A. 54:10A-4(r) (which would automatically exempt them from partnership payments under N.J.S.A. 54:10A-15.11a), and if all of the income derived from the hedge fund partnership by the partners is not subject to New Jersey gross income tax, the partnership is not required to remit a payment of tax on behalf of its nonresident, noncorporate partners, since the income to the nonresidents is not considered subject to tax in New Jersey.

iii. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, P.L. 97–300 (29 United States Code 1501 et seq.). Section 1503(8) of that Act defines the term as follows:

"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, state or local welfare program; (B) has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."

For purposes of the corporation business tax credits, the "qualified business" must be a corporation.

"Enterprise zone" or "zone" means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H–60, et seq.

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which the municipality makes application for enterprise zone designation, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the state average annual unemployment rate; except that any municipality which qualifies for state aid pursuant to P.L. 1978, c.14 (C.52:27D–178, et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the state average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor. For purposes of P.L. 1983, c.303 (N.J.S.A. 52:27H–60 et seq.), the seven municipalities in which the six enterprise zones are to be designated pursuant to criteria according priority consideration for designation of these zones pursuant to section 7 of P.L. 1983, c.303 (N.J.S.A. 52:27H–66) shall be deemed qualifying municipalities.

Amended by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In "qualified business", deleted the last sentence in the last paragraph of 2iii.
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.

18:7–15.3 (Reserved)

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Repealed by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

18:7–15.4 Credits against total tax for new employees and investments in urban enterprise zones

(a) Section 19 of the Urban Enterprise Zones Act (N.J.S.A. 52:27H–78) is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 19 applicable when the enterprise zone was designated. Under section 19, any qualified business (as defined in N.J.A.C. 18:7–15.2) which is actively engaged in the conduct of a business from a location within an enterprise zone (as defined in N.J.A.C. 18:7–15.2), which business in that location consists primarily of manufacturing or other business which is not primarily considered as a retail sales business, or as a warehousing business, shall receive an enterprise zone employees tax credit against the amount of tax imposed under N.J.S.A. 54:10A–5 (N.J.S.A. 54:10A–1, et seq., the Corporation Business Tax Act). The credit shall only be available for new employees hired on or after the date of designation of the enterprise zone, or the date of commencement of business in the enterprise zone, whichever is later.

(b) A one-time credit against the tax of $1,500 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7–15.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who was, immediately before employment by the taxpayer, unemployed for at least 90 days, or dependent upon public assistance as the primary source of income. Further qualifications for this benefit are in (e) and (f) below.

(c) A one-time credit against the tax of $500.00 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7–15.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who does not meet the requirements of (b) above, and who was not, immediately before employment by the taxpayer, employed at a location within the qualifying municipality in which the qualified business is located. Further qualifications for this credit are in (e) and (f) below.

(d) See N.J.S.A. 52:27H–78c for alternate tax benefit. The statute allows a corporation tax credit to qualified small businesses (under 50 employees) that were in business in the zone prior to designation of the zone and that make an investment in the zone. These businesses may obtain an eight percent investment credit, to be applied against corporation business tax, by entering into an agreement, approved by the Urban Enterprise Zone Authority, with the zone city, to make an investment in the zone which contributes substantially to the economic attractiveness of the zone. These expenditures may include improvement of the appearance or customer facilities of its place of business or improvements in landscaping, recreation, police and fire protection, etc., in the zone.

(e) The enterprise zone employee tax credits provided in (b) and (c) above, shall be allowed in the tax year immediately following the tax year in which the new full-time, permanent employee was first employed by the taxpayer, but shall only be allowed if the employee for whom credit is claimed was employed by the taxpayer for at least six continuous months during the tax year for which the credit is claimed. The credit shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or in any tax year of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the corporation business tax under N.J.S.A. 54:10A–1 et seq., whichever is later. The termination of designation as an enterprise zone at the end of the 20 year designation period shall not terminate the eligibility period under this section.

(f) The employee tax credit is available only for new full-time, permanent employees who have been employed by the qualified business for at least six continuous months during the year for which the credit is claimed. For a new employee to be considered a full-time, permanent employee, the total number of full-time, permanent employees, including the new employee, employed by the qualified business during the calendar year must exceed the greatest number of full-time, permanent employees employed in the zone by the qualified business during any prior calendar year since the zone was designated. "Calendar year" means the year the new employees are hired. The comparison is made to the peak employment on any date during the calendar years prior to the calendar year in which the new employees are hired, not the employment level on the last date of prior calendar years. The new employees must then continue to be employed during the following year in which the credit is claimed for six continuous months.

Example 1: ABC Company is a qualified business. The highest number of full-time permanent employees the company has employed in any prior calendar years since the zone was designated was 100. ABC Company employs 100 employees in 1985 and hires five new employees in June 1995. The five new employees reside in the qualifying municipality in which the zone is located and, immediately prior to employment by the qualified business, were unemployed for at least 90 days. The five new employees remain with the company through June 30, 1996. ABC may claim the employee tax credit for the 1996 tax year for the employees hired in 1995. The employees remained employed by ABC Company for at least six continuous months during the year for which the credit is claimed (1996). The five new employees are considered full-time permanent employees because the total number of full-time permanent employees, including the new employees, employed by ABC during the 1995 calendar year (105) exceeded the greatest number of full-time permanent employees employed in the zone by ABC in prior calendar years (100). The total credit is $7500 ($1500 × 5).

Example 2: Same facts as above except that in March 1996 ABC Company terminated two of the employees hired in 1995, and in April 1996 hires three new employees. The new employees reside in the qualifying municipality in which the zone is located and, although they were not unemployed for at least 90 days prior to employment by the qualified business or on public assistance, they were not employed, immediately prior to employment by the qualified business, within the qualifying municipality in which the qualified business is located. The new employees remained with ABC through December 1997. ABC may claim the $1,500 credit for tax year 1996 only for the three employees hired in 1995 who were not terminated, since the two terminated employees would not have worked for six continuous months during the year for which the credit is claimed. ABC may claim the $500.00 credit for tax year 1997 for each of the three employees hired in 1996 since they remained with ABC for six continuous months in 1997 and the highest number of employees in 1996 (106) exceeded the highest number of full-time permanent employees (105) in prior calendar years. The $1,500 credit could not be claimed for the three employees hired in 1996 because they were not unemployed or on public assistance.

(g) Enterprise zone employee tax credits or enterprise zone investment tax credits under this section shall not reduce the taxpayer's tax liability under N.J.S.A. 54:10A–1 et seq. in any tax year by more than 50 percent or the amount otherwise due, but any unused employee or investment tax credits may be carried forward by the taxpayer to the next succeeding tax year and be applied against 50 percent of that year's tax, but not beyond the 20 year totals set forth in (e) above.

(h) The credit shall not exceed an amount which would reduce the total tax liability below the statutory minimum. For minimum tax see N.J.A.C. 18:7–3.4.

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.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

18:7–15.5 Qualification for benefits

There is no formal procedure for registration as a qualified business for the purpose of obtaining the corporation tax benefits. However, each annual CBT–100 Corporation Business Tax Return which claims any urban enterprise zone corporation tax benefits must include proof that it is a qualified business. This proof may consist of a certificate or other proof of status as a qualified business for sales tax purposes under N.J.A.C. 18:24–31. If a sales tax certificate or some other form of proof has not been obtained, the taxpayer should attach a statement setting forth how it qualifies as a "qualified business" as defined in N.J.A.C. 18:7–15.2, with sufficient detail to permit verification by the Division of Taxation.

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.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

SUBCHAPTER 16. INTERNATIONAL BANKING FACILITIES

18:7–16.1 Definitions

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"Edge Corporation" is defined under USCA Title 12, section 611, et seq. as a corporation organized to engage in international or foreign banking or other financial operations, or to engage in such operations in United States dependencies or insular possessions, either directly or through local institutions. An Edge Corporation is operated under Federal supervision with sufficiently broad powers to be able to compete effectively with similar foreign-owned institutions, in the United States or abroad. The Federal Reserve Board of Governors shall issue regulations to assist an Edge Corporation in providing banking and financial services to foster international trade.

"International Banking Facility" means a separate, segregated set of asset and liability accounts, set apart on the books of a bank, a banking corporation or other depository institution, including a United States bank or agency or foreign bank; or an Edge or Agreement Corporation as defined below. The separate accounts may include only international banking facility time deposits, or international banking facility extensions of credit, as defined below.

If the United States enacts a law, or the Governors of the Federal Reserve System adopt a regulation changing the definitions of international banking facility, international banking facility time deposits or international banking facility extensions of credit set forth in this rule, the New Jersey Commissioner of Banking shall promptly adopt regulations conforming these definitions to the revised United States law or Federal Reserve regulations, and the Banking Commissioner's regulations shall then, under P.L. 1983, c.422, provide the applicable definitions.

"International Banking Facility Extension of Credit" is a loan or deposit by an international banking facility to a deposit account, represented by a promissory note or other credit arrangement, extended only to a foreign office of another United States depository, or an Edge or Agreement Corporation or foreign office of a foreign bank, or another office of the international banking facility, another international banking facility, or an institution exempt from Federal interest rate limitations, or a foreign resident, or a foreign branch or affiliate controlled by a domestic corporation. The funds must be used only to finance the foreign operations of the borrower, or its foreign affiliates.

"International Banking Facility Time Deposit" is defined, in (United States Federal) 12 CFR 204.8(a)(2). It is a deposit or Federal obligation represented by a promissory note or other obligation or instrument, not in negotiable or bearer form. The deposit must remain in the depository at least over night, and be issued to either an office outside of the United States of another depository, or an office of an Edge or Agreement Corporation, or a foreign office of a foreign bank, or any office anywhere of the establishing international banking facility, or of another international banking facility, or an institution exempt from Federal interest rate limitations. The obligation must be payable no sooner than two business days later, and must represent

funds deposited to the credit of a foreign resident, or a foreign branch or affiliate of a domestic corporation. The funds must be used for foreign operations of the depositor or its foreign affiliate, and deposits or withdrawals must be at least $100,000.00, except when closing an account.

18:7–16.2 (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 "International Banking Facilities: computation of entire net worth".

18:7–16.3 International Banking Facilities: computation of entire net income

For computation of entire net income, see N.J.A.C. 18:7–5.2(a)2vii.

Administrative correction.
See: 32 N.J.R. 717(a).

18:7–16.4 International Banking Facilities: business allocation factor

Regarding the business allocation factor, see N.J.A.C. 18:7–8.16.

Administrative correction.
See: 32 N.J.R. 717(a).

18:7–16.5 (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 "Phasing in International Banking Facility tax changes".

SUBCHAPTER 17. PARTNERSHIPS

Authority

P.L. 2002, c.40, § 25, N.J.S.A. 54:10A–27, 54A:9–17(a) and 54:50–1.

Source and Effective Date

R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Subchapter Expiration Date

Subchapter 17, Partnerships, expires on March 12, 2004.

Subchapter Historical Note

Subchapter 17, Partnerships, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a).

The concurrent proposal of Subchapter 17, Partnerships, was adopted by R.2003 d.370, effective August 22, 2003. See: Source and Effective Date. See, also, section annotations.

18:7–17.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Nonresident noncorporate partner" means an individual, an estate, or a trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1–1 et seq., that is not a resident taxpayer or a resident estate or trust under that Act.

"Nonresident corporate partner" means a partner that is not an individual, estate or trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1–1 et seq. Nonresident corporate partners include:

1. Entities that are classified as partnerships for Federal income tax purposes;

2. Entities that are classified as corporations for Federal income tax purposes that:

i. Are not corporations exempt from tax pursuant to N.J.S.A. 54:10A–3; or

ii. Do not maintain a regular place of business, as defined in N.J.A.C. 18:7–7.2, in New Jersey.

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

18:7–17.2 Subjectivity

(a) For privilege periods beginning on or after January 1, 2002, a partnership, including any entity that is classified as a partnership for Federal income tax purposes, and regulations of any election under IRC 761, except a qualified investment partnership as defined herein (see N.J.A.C. 18:7–1.21) and except a partnership listed on a United States national stock exchange, shall file a return on a form prescribed by the director and remit tax under these rules.

(b) Entities that meet the requirements of N.J.S.A. 54A:5–8(c) are commonly referred to as "hedge funds." Income received by a nonresident individual, estate or trust from a "hedge fund" is exempt from tax under the New Jersey gross income tax because it is not deemed to be carrying on from a trade or business.

1. In those situations in which partnerships do not meet the definition of qualified investment partnerships in N.J.S.A. 54:10A–4(r) (which would automatically exempt them from partnership payments under N.J.S.A. 54:10A–15.11a), and if all of the income derived from the hedge fund partnership by the partners is not subject to New Jersey gross income tax, the partnership is not required to remit a payment of tax on behalf of its nonresident, noncorporate partners, since the income to the nonresidents is not considered subject to tax in New Jersey.

(c) P.L. 2001, c.136, applies to privilege periods beginning on and after January 1, 2001 and before January 1, 2002.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In (b)1, changed N.J.S.A. reference.

18:7–17.3 Due date for return

The return and payment of tax shall be due on or before the 15th day of the fourth month succeeding the close of the privilege period.

18:7–17.4 Extension of time to file returns

No extension will be granted unless the request is made on Partnership Tentative Return and Application for Extension of Time to File Form PART–200T and the form is actually received by the Division or is postmarked on or before the due date of the return. (See N.J.A.C. 18:7–11.12 for additional standards for extension of time to file.)

18:7–17.5 Calculation of tax

(a) The tax shall be the total of:

1. The share of entire net income of the partnership for that privilege period of all nonresident noncorporate partners multiplied by an allocation factor determined pursuant to corporation business tax principles under N.J.S.A. 54:10A–6 and using the partnership's allocation fractions and multiplied by the tax rate of.0637; plus

2. The share of entire net income of the partnership for that privilege period of all nonresident corporate partners multiplied by an allocation factor determined pursuant to corporation business tax principles under N.J.S.A. 54:10A–6 and using the partnership's allocation fractions and multiplied by the tax rate of.09.

Example: If a partnership is the owner of a partnership interest, then tax payment is required at the rate of nine percent for that interest because a partnership is defined as a "nonresident corporate partner."

3. As used in this subsection, the term "entire net income" as applied to partnerships means distributive share of partnership income for Federal purposes plus tax exempt interest income as shown on the Federal K–1.

(b) A partnership shall not claim credit or take into account estimated tax payments made by nonresident partners in determining how much tax to pay on behalf of any corporate partner.

(c) A partnership must have a regular place of business as defined under N.J.A.C. 18:7–7.2 outside the State of New Jersey in order to allocate a portion of its income outside New Jersey. For purposes of this subchapter, each regular place of business of a partnership which is unitary with a corporate partner who is filing a return in this State is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7–17.8(d).

18:7–17.6 Credit or refund

(a) As of the date the Division receives the payment, the amount of tax paid by a partnership pursuant to N.J.A.C. 18:7–17.5 shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the rate for that partner class set forth in N.J.A.C. 18:7–17.5.

(b) Each payment amount credited will be deemed to have been paid by the respective partner for the privilege period of the partner.

(c) A nonresident noncorporate partner and a nonresident corporate partner may claim a credit on their own New Jersey return for the amount of tax allocated to them by the partnership. Any excess tax payments may be refunded to the partner.

(d) Since partners may wish to claim a credit or refund for tax payments made on their behalf by a partnership, there may be an advantage if certain partnerships issue NJ–K1's as soon as possible after the close of the tax period.

(e) Example: A partnership has a fiscal year ending on January 31. The partnership tax payment on behalf of foreign partners is due May 15. The amount of payment on behalf of partners will not be credited to the accounts of partners until the date received by the Division.

1. Accordingly a calendar year partner, whose first quarter estimated payment is due April 15 cannot take a credit against its April 15 estimated payment, for the partnership's May 15 tax payment which has not yet been received by the Division.

(f) Payments remitted on unauthorized or improperly prepared returns will be credited on the date the Division is able properly to post the payment.

18:7–17.7 Estimated return

Partnerships are not required to make estimated payments or installment payments of corporation business tax. They are, however, required to make an installment of the per partner partnership filing fee imposed pursuant to N.J.S.A. 54A:8–6(b)(2).

18:7–17.8 Certain corporate partners; exemption form

(a) In order for a nonresident corporate partner to establish that the partnership is not required to pay tax on its behalf, the partner must file annually with the partnership a statement making its claim for exemption. The claim shall be on a form specified by the Director. It must be filed annually and must be received by the partnership on or before the 15th day of the fourth month succeeding the close of the privilege period, or on or before the filing date of the return, if that occurs earlier.

(b) If a partnership erroneously makes a tax payment to the State on behalf of an entity that is exempt, the exempt entity must establish that the money has actually been paid to the State by the partnership, and the entity is actually exempt, in order to qualify for a refund from the State.

(c) If a New Jersey S corporation, that does not have a place of business in New Jersey is a partner in a partnership, a tax payment is made on its behalf at the nine percent rate, since it does not have a regular place of business in New Jersey.

(d) For purposes of this subchapter, each regular place of business of a partnership which is unitary with a corporate partner is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7–7.6(g) and (h)1.

(e) If a partner in a partnership is a qualified IRC 501(c)(3) charity, it may file the form 1065E with the partnership to relieve the partnership from making a payment measure by its share. At present, New Jersey does not impose a tax on unrelated business income.

(f) If a composite return (NJ–1080) is filed and the estimated quarterly payments connected with it have been made on a timely basis, then the partnership itself is not required to remit a tax at the close of its taxable period with its NJ–1065 with respect to the New Jersey sourced income of the nonresident, noncorporate return whose estimates were paid quarterly.

Example: A New Jersey general partnership has a unitary relationship under the criteria set forth at N.J.A.C. 18:7–7.6(g)3 with a corporate partner located in Illinois. As a result of this relationship the corporate partner is considered to have a regular place of business in the State and is not a "nonresident corporate partner." Such partner may file a 1065E with the partnership so that no tax payments will be made by the partnership on its behalf.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Added (e) and (f).

18:7–17.9 Allocation of tax for partners that are corporations

Separate accounting apportionment shall be used if a corporate partner and partnership are not in a unitary relationship in which the apportioned income of the partnership and partner (excluding the partner's distributive share) are added together. When a corporation and a partnership are in a unitary relationship, then a blended or combined allocation factor should be used. It is derived by adding the partnership and corporation allocation fractions together and applying the combined factor to the corporation's entire net income including its distributive share of the partnership's income (see N.J.A.C. 18:7–7.6(g)).

18:7–17.10 Electronic filing

A partnership subject to the provisions of the corporation business tax shall file its return and make payment of its liability by electronic means, if it has 10 or more partners.

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

Authority

P.L. 2002, c.40, § 25, N.J.S.A. 54:10A–27, 54A:9–17(a) and 54:50–1.

Source and Effective Date

R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Subchapter Expiration Date

Subchapter 18, Alternative Minimum Assessment, expires on March 12, 2004.

Subchapter Historical Note

Subchapter 18, Alternative Minimum Assessment, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a).

The concurrent proposal of Subchapter 18, Alternative Minimum Assessment, was adopted by R.2003 d.370, effective August 22, 2003. See: Source and Effective Date. See, also, section annotations.

18:7–18.1 Definitions

The following words and terms, when used in this subchapter, shall have the meanings, unless the context clearly indicates otherwise.

"Affiliated group" means a group of corporations defined as an affiliated group by section 1504 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1504, or any successor Federal law, that files a consolidated Federal income tax return for the privilege period pursuant to sections 1501 through 1504 of the Federal Internal Revenue Code of 1986.

"Cost of goods sold" means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its Federal income tax (including, for example, and without limitation, IRC Section 263A) multiplied at the taxpayer's election by either the allocation factor computed pursuant to N.J.S.A. 54:10A–6 or the receipts fraction of the allocation factor (c.f. N.J.A.C. 18:7–10.1 regarding discretionary adjustments of the allocation factor by the Director). In a particular case, the Director may use another input or expenditure that is necessary to measure equally the business activity of the taxpayer.

"Key corporation" means a single member within an affiliated group designated by the group to act as a "clearinghouse" for adjustments to members of the group.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In (d), added 1 through 4.

18:7-18.5 Alternative Minimum Assessment credits

(a) If the Alternative Minimum Assessment (AMA) for a taxpayer exceeds the amount of tax computed under N.J.S.A. 54:10A-5 for a privilege period, that excess amount shall be permitted to the taxpayer as a credit unless such taxpayer is also entitled to a credit pursuant to N.J.S.A. 54:10A-5b (for certain air carriers pursuant to 49 U.S.C. § 40102).

(b) The credit may be carried forward to subsequent privilege periods, including periods when the Alternative Minimum Assessment is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the Alternative Minimum Assessment provided that:

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the alternative minimum assessment for that period;

2. The credit applied shall not reduce the amount of tax otherwise due by more than 50 percent; and

3. The credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

(c) If a corporation having AMA carryforward credits is liquidated or merged into another corporation, the carryforward credits are lost to the corporation that does not survive such reorganization.

18:7-18.6 Gross receipts calculation; agency businesses

(a) Under the applicable accounting principles for several industries, cash flow relating to the underlying product is not considered a receipt of the taxpayer. Using this approach, a taxpayer in such a business may report as its gross receipts for Federal purposes fees it receives from its customers. This methodology enables certain high volume, low margin industries to achieve an accurate reflection of their tax liability when calculating the AMA.

1. For example, a professional employer organization (PEO), which serves as a co-employer with its customers, may use this "agency approach" in calculating its New Jersey gross receipts. Using that approach, the PEO may report as its gross receipts for Federal purposes the administrative fees it receives from its customers. The customers' payments of the fixed obligations and costs relating to the employees, such as wages, taxes and benefits, are then reported as reimbursed expenses, namely, direct expenses without profit or indirect cost reimbursement.

2. This approach is also applicable to other entities such as real estate and insurance agencies, where cash flow relating to the underlying product is not considered a receipt of the taxpayer.

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

Authority

P.L. 2002, c.40, § 25, N.J.S.A. 54:10A-27, 54:50-1 and 54A:9-17(a).

Source and Effective Date

R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Subchapter Expiration Date

Subchapter 19, Filing Fee Payments by Professional Corporations, expires on March 12, 2004.

Subchapter Historical Note

Subchapter 19, Filing Fee Payments by Professional Corporations, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a).

The concurrent proposal of Subchapter 19, Filing Fee Payments by Professional Corporations, was adopted by R.2003 d.370, effective August 22, 2003. See: Source and Effective Date. See, also, section annotations.

18:7-19.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Licensed professional" means, and is limited to, persons rendering professional services in the following professional capacities: certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, veterinarians and, subject to the Rules of the Supreme Court, attorneys-at-law.

"Professional corporation" means a corporation which is organized under The Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., or a similar act of another state for the purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within the State to render such professional service.

18:7-19.2 Payment of filing fee

(a) For privilege periods beginning on or after January 1, 2002, each professional corporation filing a corporation business tax return that has more than two licensed professionals shall make a payment of a filing fee of $150.00 for each licensed professional of the corporation, provided that the payment shall not exceed $250,000.

(b) If a professional corporation includes non-resident professionals, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the professional corporation filing fee may

be used, provided that the professional corporation has an office outside New Jersey.

(c) The total apportioned professional corporation fee is equal to the sum of:

1. The number of resident professionals multiplied by $150.00; plus

2. The number of nonresident professionals with physical nexus to New Jersey multiplied by $150.00; plus

3. The number of nonresident professionals without physical nexus to New Jersey multiplied by $150.00, and the resulting product multiplied by the corporate allocation factor of the professional corporation.

(d) Example: A professional corporation has an office in Washington, D.C. It has 100 professionals in that office. Three of the attorneys travel from Washington to Newark, N.J. for a trial. As the result of their legal work in New Jersey, the firm receives a $1,000,000 legal fee. The professional corporation's New Jersey allocation factor for 2002 is 0 property, 0 payroll, $1,000,000 New Jersey receipts over $10,000,000 receipts everywhere which equals

$$\left(0 + 0 + \frac{1}{10} + \frac{1}{10}\right) \div 4 = 0.05.$$

The professional corporation fee is calculated as follows:

0 Resident professionals = 0

Three nonresident professionals with physical nexus to New Jersey:

3 x $150.00 = $450.00

97 nonresident professionals without physical nexus

97 x $150.00 = $14,500

14,550 x 0.05 = $727.50

total of 0 + $450 + $727.50 = $1,177.50 total professional fee of the corporation for 2002.

(e) In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners and regardless of the nature of the licensed profession that they practice.

Example 1: A law firm has eight partners and 16 associates. It also employs one registered nurse and two certified public accountants. Since the firm has 27 licensed professionals, its professional fee payment is $4,050 (27 x $150.00) plus an installment payment of $2,025 (50 percent of $4,050) creditable against the succeeding year's payment.

Example 2: A nursing home which is a professional corporation has 10 physicians and 10 licensed registered nurses, half of which are nonresidents which have no physical nexus in New Jersey. The professional corporation has a New Jersey business allocation factor of 50 percent. The professional fee payment is $2,250 ((5 + 5) x $150.00 plus ((5 + 5) x $150.00) x 50 percent) plus an installment payment of $1,125 (50 percent of $2,250).

(f) In the event of a period shorter than a year, the fee and fee cap may be prorated by months. A fraction of a month is deemed to be a month.

18:7-19.3 Installment payment

(a) Each professional corporation required to make a payment of the professional corporation filing fee, shall on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the present fiscal year.

(b) The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period. If the amount exceeds the fee due for the succeeding return period, the excess shall be credited against the amount for succeeding return periods.

(c) If a professional corporation dissolves, the corporation is not required to make a prepayment of the fee for the succeeding taxable period.

18:7-19.4 Penalty and interest

For purposes of tax administration, the filing fee and installment payments are subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Collection of the filing fee and installment payments shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

SUBCHAPTER 20. TREATMENT OF S CORPORATIONS

Authority

N.J.S.A. 54:10A-27, 54:50-1 and 54A:9-17(a).

Source and Effective Date

R.2005 d.230, effective July 18, 2005.
See: 37 N.J.R. 739(a), 37 N.J.R. 2688(a).

18:7-20.1 S corporations

(a) The following words and terms, when used in this subchapter, shall have the following meanings:

1. "Federal S corporation" means a corporation making a valid election under Federal law (section 1361 of the Internal Revenue Code of 1986, 26 U.S.C. § 1361), to be an