

Statutory References

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

18:7-8.11 Receipts; rents and royalties

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

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

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

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

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

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. B licenses those trademarks to affiliated entities, and the affiliates pay B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10 percent of its sales revenue from the use of a trademark within New Jersey and 90 percent in other jurisdictions, 10 percent of the royalty paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

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

Statutory References

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

18:7-8.12 Other business receipts

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

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

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

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

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

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

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

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

Cross References

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

Statutory References

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

18:7-8.13 Business allocation factor; payroll fraction

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

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

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

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

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

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A-6(c) as to treatment of wages, salaries and other personal service compensation of taxpayer's employees.

18:7-8.14 Definition of officers and employees

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

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

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

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

Statutory References

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

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

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

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

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

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

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

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

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

Statutory References

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

18:7-8.16 Allocation: International Banking Facilities

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