CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

N.J.S.A. 54:10A–27.

Source and Effective Date

R.1994 d.186, effective March 14, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Corporation Business Tax Act, expires on March 14, 1999.

Chapter Historical Note

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 7 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 originally filed and 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 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 was readopted as R.1994 d.186. See: Source and Effective Date. As a part R.1994 d.186, Subchapter 6, Valuation, was repealed effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b). See, also, section annotations.

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SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7–1.1 Corporation business tax; general provisions

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

Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added "accounting period before July 1, 1986" to (a). Added "accounting period before April 1, 1983" to (a)1.i and ii. Added (3) to (a). Also added (b).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

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

Case Notes

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

18:7–1.2 Total tax self-assessed

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

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

Cross References

See Section 1.1 (General provisions) of this chapter.

18:7–1.3 Definition of taxpayer

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

(b) Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court to conduct the business or conserve the assets of any corporation shall be subject to the tax imposed in the same manner and to the same extent as a corporation.

Statutory References

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

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

18:7–1.4 Definition of corporation

The term "corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument and includes any corporation created or organized under the laws of New Jersey and any foreign corporation which is authorized to do business, or is doing business, or employs or owns capital or property or maintains an office in New Jersey in a corporate or organized capacity by virtue of creation or organization under laws of the United States or any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of the foregoing, which provided a medium for the conduct of business or the sharing of its gains.

Statutory References

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

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

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

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

Statutory References

N.J.S.A. 54:10A–4(c).

18:7–1.6 Taxable status; how created

(a) Every corporation not expressly exempted is deemed to have or to have acquired a taxable status under the Act and is required to file a return[1] and pay a tax thereunder provided it falls within any one of the following:

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

2. If a foreign corporation,

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

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

iii. Doing business in this State; or

iv. Employing or owning capital in this State; or

v. Employing or owning property in this State; or

vi. Maintaining an office in this State.

[1] For reporting forms, see Section 14.20 of this Chapter.

Statutory References

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

Case Notes

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

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

Presence of property in New Jersey, maintenance of workplace in New Jersey employee's home, employee's encouragement to customers to pay due bills, handling of customer complaints and adjustments by employee and employee's supervision of corporation personnel exceeded the mere solicitation of orders and rendered a Pennsylvania corporation liable for payment of New Jersey corporation business tax. Ringgold Coal Mining Co. v. Taxation Div. Director, 4 N.J.Tax 321 (Tax Ct.1982).

18:7–1.7 Domestic corporations subject to tax

(a) The tax is imposed on every domestic corporation, with specified exceptions, for the mere possession of the privilege of having its corporate franchise.

(b) A domestic corporation not otherwise exempt is subject to tax for every fiscal or calendar accounting period, or part thereof, whether it does business, owns capital or property, maintains an office, or engages in any activity, whether within or without New Jersey.

(c) A domestic corporation is subject to tax even though it carries on its business entirely outside New Jersey.

Statutory References

See N.J.S.A. 54:10A–2 as to domestic corporations subject to New Jersey annual franchise tax.

Case Notes

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

18:7–1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation having a taxable status as described in N.J.A.C. 18:7–1.6 with specified exceptions, and includes every corporation which does business, employs or owns capital or property, or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business in New Jersey.

Example 1

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Example 2

A foreign corporation which operates several retail stores outside New Jersey, leases an office in New Jersey for the convenience of its buyers when they come to New Jersey. It has several employees permanently assigned to such office. Salesmen call at the office to solicit orders from the buyers, and the merchandise is shipped to such office by the sellers. Upon receipt the merchandise is examined, separated by them to the various stores of the corporation outside New Jersey. The corporation is subject to the Tax Act because it maintains an office, is regularly doing business through its constituted representatives, and owns property in New Jersey.

Note: The foregoing examples illustrate conditions giving rise to taxable status without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey. It should be noted that if the corporation holds any certificate of authority, it is subject to the Act by virtue of that fact alone.

(b) Mandatory submission of affidavit; proof of authorization to do business. A foreign corporation which is subject to tax under the Act must submit an affidavit by a duly authorized corporate officer, stating whether or not the corporation at any time prior to the date of admitted subjectivity under the Act held any authorization to do business in New Jersey or carried on in this State any of the activities set forth in N.J.A.C. 18:7–1.6(b).

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

Statutory References

See N.J.S.A. 54:10A–2 as to foreign corporations subject to New Jersey annual franchise tax.

Case Notes

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

Foreign corporation held to be doing business in New Jersey so as to be subject to the corporation business tax; requiring the corporation to file a business tax return was not a violation of due process. Thomson–Leeds Co., Inc. v. Taxation Div. Director, 8 N.J.Tax 24 (Tax Ct.1985).

Corporation's activities in New Jersey held to constitute "doing business" for the purposes of the corporation business tax; corporation business tax not limited to intrastate businesses. Tamko Asphalt Products, Inc. of Maryland v. Glaser, 5 N.J.Tax 446 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 342 (App.Div.1984).

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

Presence of property in New Jersey, maintenance of workplace in New Jersey employee's home, employee's encouragement to customers to pay due bills, handling of customer complaints and adjustments by employee and employee's supervision of corporation personnel exceeded the mere solicitation of orders and rendered a Pennsylvania corporation liable for payment of New Jersey corporation business tax. Ringgold Coal Mining Co. v. Taxation Div. Director, 4 N.J.Tax 321 (Tax Ct.1982).

18:7–1.9 Doing business in New Jersey; definition and rules of construction

(a) The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of men for profit.

1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of this Act.

2. In determining whether a corporation is "doing business", it is immaterial whether its activities result in a profit or a loss.

(b) Whether a foreign corporation is doing business in New Jersey is determined by the facts in each case. Consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;

2. The location of its offices and other places of business;

3. The continuity, frequency and regularity of the activities of the corporation in New Jersey;

4. The employment in New Jersey of agents, officers and employees;

5. The location of the actual seat of management or control of the corporation.

(c) A foreign corporation shall not be deemed to be doing business or employing or owning capital or property in this State for the purposes of the Act by reason of the following:

1. The maintenance of cash balances with banks or trust companies in New Jersey;

2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault or other receptacle rented for the purpose, or pledged as collateral security, or deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;

3. The taking of any action by any such bank or trust company or broker which is incidental to the rendering of safekeeping or custodian service to such corporation;

4. Any combination of the foregoing activities.

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filled by shipment or delivery from a point outside the State, then such corporation is not subject to tax in New Jersey, provided it is not subject to tax by virtue of other contacts. (See P.L. 86–272, 15 U.S.C. § 381.)

1. For the in-State activities of the foreign corporation to be immune from taxation for the purposes of "doing business," such activities must be limited solely to:

i. Speech or conduct that explicitly or implicitly invites an order; and

ii. Activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order.

2. Examples of activities that may be considered non-immune are:

i. Repairs, maintenance, and installations;

ii. Collection or repossession activities;

iii. Credit investigations;

iv. Personnel courses or lectures;

v. Technical assistance;

vi. Customer complaint resolution if the sole purpose is not to ingratiate sales personnel with the customer;

vii. Approving or accepting orders or securing deposits on sales;

viii. Acquiring personnel for other than solicitation activities;

ix. Maintaining a display at a single location in excess of two weeks during the tax year;

x. Carrying samples for sale, exchange or distribution in any manner for consideration or other value;

xi. Owning, leasing, or maintaining in-state facilities such as a warehouse or answering service; and

xii. Consignment of personal property.

3. Examples of immune activities are:

i. Solicitation of orders through advertising;

ii. Carrying samples for display or distribution without charge;

iii. Providing automobiles, owned or leased, registered or not registered in New Jersey, to sales personnel for their use in conducting protected activities.

iv. Checking customer inventories without charge;

v. Maintaining a display at a single location for less than two weeks during the tax year;

vi. Recruitment, training, or evaluating of sales personnel;

vii. A sales employee's in-home work space that is not paid for by the company; and

viii. Mediating customer complaints if just to ingratiate sales personnel with the customer.

(e) Independent contractors may solicit or make sales or maintain an office without the company's loss of immunity. Sales representatives who represent a single principal would not be considered independent contractors. Immunity would be lost if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

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.1995 d. 194, effective April 3, 1995. See: 27 N.J.R. 471(a), 27 N.J.R. 1440(b).

Statutory References

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

Case Notes

Foreign corporation held to be doing business in New Jersey so as to be subject to the corporation business tax; requiring the corporation to file a business tax return was not a violation of due process. Thomson–Leeds Co., Inc. v. Taxation Div. Director, 8 N.J.Tax 24 (Tax Ct.1985).

Corporation's activities in New Jersey held to constitute "doing business" for the purposes of the corporation business tax; corporation business tax not limited to intrastate businesses. Tamko Asphalt Products, Inc. of Maryland v. Glaser, 5 N.J.Tax 446 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 342 (App.Div.1984).

18:7–1.10 Foreign corporations engaged in interstate commerce

(a) A foreign corporation which falls within any of the categories creating a taxable status, as enumerated in N.J.A.C. 18:7–1.6 is subject to the Tax Act notwithstanding its business is wholly or partly in interstate commerce.

(b) Such tax is measured by entire net income allocable to New Jersey, including that derived from or used in interstate commerce.

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

Statutory References

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

18:7–1.11 Foreign corporations stocking goods in New Jersey

A foreign corporation which regularly maintains a stock of goods in New Jersey and makes deliveries to its customers from such stock shall be deemed to be doing business in New Jersey within the meaning of the Act.

Example 1

A foreign manufacturing corporation has its factories and offices located outside New Jersey. Its sole activity in New Jersey consists of holding or storing goods in a public warehouse in this State. It has no employees in New Jersey. The corporation is subject to the Tax Act because it owns property in New Jersey.

Example 2

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Statutory References

N.J.S.A. 54:10A–2.

Case Notes

Foreign corporation's contacts established minimal nexus with New Jersey to allow taxation without violating commerce clause. Mark Andy, Inc. v. Taxation Div. Director, 8 N.J.Tax 593 (1986).

18:7–1.12 Exempt corporations

(a) Corporations exempted from taxation under the Act include:

1. Telegraph, telephone, cable or telecommunications companies subject to tax under N.J.S.A. 54:30A–16 et seq. (including, without limitation, N.J.S.A. 54:30A–18.6); or any statute or law imposing a similar tax or taxes;

2. Railroad companies subject to tax under N.J.S.A. 54:29A–1, et seq.;

3. Energy, gas and electric companies subject to tax under N.J.S.A. 54:30A–49, et seq.; or any statute or law imposing a similar tax or taxes;

4. Corporations subject to a tax upon the basis of gross receipts, or insurance premiums collected;

5. Railroad, canal corporations, savings banks, agricultural cooperative associations incorporated or domesticated under N.J.S.A. 4:13–1 et seq. and exempt under Section 521 of the Federal Internal Revenue Code (26 U.S.C. 521), or building and loan or savings and loan associations;

6. Cemetery corporations not conducted for pecuniary profit of any private shareholder or individual;

7. Nonprofit corporations, associations or organizations not conducted for pecuniary profit of any private shareholder or individual, and established, organized or chartered without capital stock under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes; or a special charter; or any similar general or special law of this or any other state (see N.J.A.C. 18:1–1.4(a) for exemption opinion procedures);

8. Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under Federal law by tenants, but:

i. The exemption under this subsection shall continue only as long as:

(1) The corporations remain subject to rules and regulations of the Federal Housing Authority; and

(2) The Commissioner of the Federal Housing Authority holds membership certificates in the corporations; and

(3) The corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat. 1246) as amended by subsequent Acts of Congress. (See 12 U.S.C.A. § 1701, et seq.)

ii. In order to be exempted under this subsection, corporations shall:

(1) Annually file a report on or before August 15 with the Director, in the form required by the Director, to claim exemption; and

(2) Shall pay a filing fee of $25.00.

9. A corporation not for profit organized under any law of this State where the primary purpose of it is to provide for its shareholders or members housing in a retirement community as defined under the "Retirement Community Full Disclosure Act," N.J.S.A. 45:22A–1, et seq.;

10. Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Insurance pursuant to section 11 of P.L. 1960, c.32 (N.J.S.A. 17:22–6.45) to insure risks within this State; and

11. Corporations exempt from the corporation business tax by virtue of the provisions of another New Jersey statute.

(b) See N.J.A.C. 18:1–1.4 for the procedure to obtain exemption opinion letters.

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–3 as to those corporations declared exempt from the annual New Jersey franchise tax.

Case Notes

Dental service corporation, though entitled to exemption from sales tax, was not tax exempt until it actually applied and was approved for that status; corporation not entitled to refund of sales tax paid prior to status approval. New Jersey Dental Service Plan, Inc. v. Baldwin, 7 N.J.Tax 421 (Tax Ct.1985), affirmed per curiam 8 N.J.Tax 335 (App. Div.1986).

18:7–1.13 Regulated investment company; definition

"Regulated investment company" means any corporation which for a period covered by its return is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended. (See 15 U.S.C.A. § 80a–1 et seq.)

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(g) as to official definition of "regulated investment company".

18:7–1.14 (Reserved)

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

18:7–1.15 Investment company; definition

(a) "Investment company" means any corporation:

1. Whose business for the period covered by its return consisted to the extent of at least 90 percent of "qualified investment activities" which are: investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting therein for its own account. As used in this rule, "qualified investment assets" are stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities and cash on deposit;

2. Which had for the period covered by the return 90 percent or more of its average gross assets in New Jersey, at cost, invested in "qualified investment assets" referred to in (a)1 above;

3. Which meets the numerical tests in (f) below;

4. Which is not a banking corporation as defined by the Act;

5. Which is not a financial business corporation as defined by the act; and

6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities. The receipts, direct and indirect expenses and assets connected with the following will not be included in the numerator of any test:

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;

2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;

3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;

4. The direct day-to-day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;

5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;

6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;

7. The direct investment in collectibles, including but not limited to stamps, pottery, cars, gold coins; or

8. The direct investment in trademarks or similar assets.

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1. For services performed;

2. For the sale or transfer of assets;

3. For income recognized from the liquidation of liabilities; and

4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense nor its recovery should appear on the taxpayer's income statement for Federal purposes. Where taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return, or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7–13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within four years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame prescribed.

(f) In order for a corporation to qualify as an investment company, it must meet the three-part business test and the asset test:

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

(1) Add gross receipts or gross sales adjusted for gross profit (loss) reported for Federal income taxes;

(2) Add gross sales price from the disposition of assets adjusted for capital gain or loss or net gain or loss reported for Federal income taxes;

(3) Add interest on Federal, State, municipal and other obligations included in determining New Jersey new income, but not otherwise included in Federal total income;

(4) Do not add any capital loss carry back or carry forward in computing total income.

ii. (Income unadjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions, as reported for Federal income tax purposes, from cash and/or investment assets plus interest on Federal, State, municipal and other obligations not otherwise included in Federal taxable income and exclusive of any capital loss carryback or carryforward.

(1) A gain resulting from the disposition of an asset and reported on the installment basis for Federal income taxes is considered income for purposes of the investment company statute in the year in which the installment is received under both (c)1i and ii above. Income reported on the installment basis is treated as investment income only if it is generated by the sale of an investment asset. Interest income received in conjunction with each installment is deemed investment income.

iii. (Deductions): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing and reinvesting in cash and/or investment assets.

2. Assets test: For purposes of the 90 percent requirement provided by (b)2i and ii above, at least 90 percent of the taxpayer's gross assets located in New Jersey, valued at cost, must consist of cash and/or investment assets, during the period covered by its report.

Example No. 1
Corporation A

Adjusted Income Test:			
Sch. A–6 Other Interest	$56,205	Sch. A–11 Total Income	$65,152
Sch. A–29 Interest on Exempt Securities	31,385	Sch. A–29 Interest on Exempt Securities	31,385
Total Investment Income	$87,590	Sch. D–Selling Price $71,000 Less Gain–$8,947	62,053
Sch. A–9(a) Capital gain (*)	8,947		
Total Income	$96,537	Total Income—Adjusted	$158,590

(*)From sale of non-investment type assets.

Ratio of Investment Income ($87,590) to Total Income Adjusted ($158,590) equals 55%

Unadjusted Income Test:			
Sch. A–6 Other Interest	$56,205	Sch. A–6 Other Interest	$56,205
Sch. A–29 Interest on Exempt Securities	31,385	Sch. A–9(a) Capital Gain	8,947
Total Investment Income	$87,590	Sch. A–29 Interest on Exempt Securities	31,385
Sch. A–9(a) Capital Gain (*)	8,947		
Total Income	$96,537	Total Income—Unadjusted	$96,537

(*)From sale of non-investment type assets.

Ratio of Investment Income ($87,590) to Total Income Unadjusted ($96,537) equals 91%

Deduction Test:			
Sch. A–13 Salaries	$24,000	Sch. A–13 Salaries	$24,000
Sch. A–17 Tax (Investment related)	1,000	Sch. A–17 Taxes	1,000
Total related to Investments	$25,000	Sch. A–27 Total Deductions	$25,000
Sch. A–17 Taxes (Real Estate)	1,200		
Sch. A–27 Total Deductions	$26,200		

Ratio of Investment Related Deductions ($25,000) to Total Deductions ($26,200) equals 95%

Assets Test—CBT–100 Schedule B (restated at cost)	
Cash	$21,558
Bonds, Notes & Mortgages	123,821
N.J. State & Local Governmental Obligations	27,140
All Other Governmental Obligations	1,067,874
Total Intangible Personal Property	$1,240,393
Land	5,000*
Buildings	30,000*
Machinery & Equipment	17,000*
Total Real and Tangible Personal Property	$52,000
Total Assets	$1,292,393

(*)Sold during accounting period

Ratio of Total Intangible Assets to Total Assets equals 96%
Corporation A does not qualify since it did not meet the adjusted Income Test.

Example No. 2
Corporation B

Adjusted Income Test:			
Sch. A6 Other Interest	$82,722	Sch. A6 Other Interest	$82,722
Total Income from Investments	$82,722	Sch. A–11 Total Income—Adjusted	$82,722
Ratio of Investment Income to Total Income—Adjusted equals 100%			
Unadjusted Income Test:			
Sch. A6 Other Interest	$82,722	Sch. A6 Other Interest	$82,722
Total Income from Investments	$82,722	Sch. A–11 Total Income—Unadjusted	$82,722
Ratio of Investment Income to Total Income—Unadjusted equals 100%			
Deductions Test:			
Sch. A–17 Taxes	$1,709		
Sch. A–18 Interest Expense	37		
Total Investment related deductions	$1,746	Sch. A–27 Total Deductions	$1,746
Ratio of Investment Related Deductions equals 100%			
Assets Test: CBT–100 Schedule B (restated at cost)			
Cash	$26,482		
Bonds, Notes & Mortgages	365,444		
All Other Governmental Obligations	499,254		
Total Investment Type Assets	$891,180		
Total Real and Tangible Personal Property	–0–		
Total Assets	$891,180		
Ratio of Investment Type Assets to Total Assets equals 100%			
Corporation B qualifies as an investment company since it met each test.			

Example No. 3
Corporation C

Adjusted Income Test:				
Sch. A–5 Interest on Gov't Obligations	$9,000	Sch. A–11 Total Income		$32,000
Sch. A–6 Other Interest	$5,000	Sch. A–2 Cost of Goods Sold		$1,000
Sch. A–8 Gross Royalties	8,000	Sch. A–9(a) Sales Price $10,000		
Sch. A–9(a) Capital Gain	2,000	Gain 2,000 equals	(Basis)	8,000*
Sch. A–29 Interest on Other Obligations	500	Sch. A–29 Interest on Other Obligations		500
Total Income from Investments	$24,500	Total Income—Adjusted		$41,500
Add: Basis of Asset Sold	8,000*			
Gross Investment Income	$32,500			
(*)Investment type asset				
Ratio of Gross Investment Income to Total Income—Adjusted equals 78%				
Unadjusted Income Test:				
Sch. A–11 Total Income	$32,000	Sch. A–11 Total Income		$32,000
Sch. A–3 Gross Profit	(1,000)*	Sch. A–29 Interest on Other Obligations		$500
Sch. A–7 Gross Rents	(6,000)*			
Sch. A–29 Interest on Other Obligations	500			
Total Income—from Investments	$25,500	Total Income—Unadjusted		$32,500
(*)Non-investment income				
Ratio of Investment Income to Total Income—Unadjusted equals 78%				
Deduction Test:				
Sch. A–12 Compensation of Officers	$2,000	Sch. A–12 Compensation of Officers		$2,000
Sch. A–13 Salaries & Wages	10,000	Sch. A–13 Salaries & Wages		10,000
Sch. A–17 Tax	10,000	Sch. A–17 Taxes		12,000*
		Sch. A–21 Depreciation		1,100
Total Investment Related Deductions	$22,000	Sch. A–27 Total Deductions		$25,100
(*)Includes $2,000 real estate tax				
Ratio of Investment Related Deductions to Total Deductions equals 88%				
Assets Test: CBT–100 Schedule B (restated at cost)				
Cash	$5,000			
Bonds, Notes & Mortgages	50,000			
NJ State & Local Gov't Obligations	10,000			
All Other Gov't Obligations	100,000			
Patents & Copyrights	1,000			
Total Investment Type Assets	$166,000			
Land	50,000			
Bldgs. & Improvements	200,000			
Total Real and Tangible Personal Property	$250,000	(non-investment type assets)		

Total Assets	$416,000

Ratio of Investment Type Assets to Total Assets equals 40%
Corporation C does not qualify as an investment company since it did not meet all tests.

Example No. 4
Corporation D

Adjusted Income Test:			
Sch. A–4 Dividends	$14,000		
Sch. A–5 Interest on Gov't Obligations	12,000		
Sch. A–6 Other Interest	11,000		
Sch. A–8 Gross Royalties	11,000	Sch. A–11 Total Income	$48,000
Sch. A–11 Total Income	$48,000	Deduct: Capital loss per Federal Sch. D	(10,050)*
Add: Sales price of assets sold	50,000	Add: Basis of capital asset sold	60,050*
Total Investment Income	$98,000	Total Income—Adjusted	$98,000

(*)Investment type asset sold at a loss

Ratio of Investment Income to Total Income—Adjusted equals 100%

Unadjusted Income Test:			
Total Income from investments	$48,000	Sch. A—11 Total Income Unadjusted	$48,000

Ratio of Total Investment Income to Total Income—Unadjusted equals 100%

Deductions Test:			
Total Investment Related Deductions	$30,250	Investment Related Deductions	$30,250
		Sch. A–17 Real Estate Tax	675
		Sch. A–21 Depreciation	120
		Sch. A–27 Total Deductions	$31,045

Ratio of Investment Related Deductions to Total Deductions equals 97%

Assets Test: CBT–100 Schedule B (restated at cost)	
Cash	$11,000
Accounts & Notes Receivable	12,000
Corporate Stocks	30,000
Bonds, Mortgages & Notes	30,000
NJ State & Local Gov't Obligations	15,000
Patents & Copyrights	20,000
All Other Intangible Personalty	$60,000
Total Investment Type Assets	$178,000
Land	$15,000
Furniture & Equipment	1,200
Total Real and Tangible Property	$16,200
Total Assets	$194,200

Ratio of Investment Type Assets to Total Assets equals 92%
Corporation D qualifies as an investment company since it met each test.

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to O go beyond actual reimbursements

and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of the rule. Where such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

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.1982 d.34, effective February 16, 1982.
See: 13 N.J.R. 684(b), 14 N.J.R. 209(b).
(c) added.
Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(a), 17 N.J.R. 2677(a).
Substantially amended.
Amended by R.1990 d.482, effective October 1, 1990.
See: 22 N.J.R. 1904(a), 22 N.J.R. 3159(a).
Definition of investment company restructured; investment activities and assets, receipts, reimbursements, and timeliness of elections clarified further, pursuant to the holdings of the court in *National Wax Paper Company v. Director, Division of Taxation MC–539–78 (Tax Court 1981)* and *Milton Management, Inc. v. Director, Division of Taxation* MC–386–72 (Division of Tax Appeals, 1975), and *Department of Environmental Protection v. Franklin Township*, 3 *N.J. Tax* 105, 119 (Tax Court 1981), *aff'd* 5 *N.J. Tax* 476 (App.Div.1983).
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(f) as to those corporations included and those not included within the definition of an investment company.

18:7–1.16 Financial business corporation; definition

(a) "Financial business corporation" means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with the object of making profit by its use as money through any of the following:

1. Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt;

2. Buying and selling exchange;

3. Making of or dealing in secured or unsecured loans and discounts;

4. Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;

5. Investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or

6. Dealing in or underwriting obligations of the United States, any state or any political subdivision thereof or of a corporate instrumentality of any of them.

7. Certain leasing transactions which approximate secured loans by meeting each of the following requirements:

i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment.

ii. Lessor may not rely on repetitious leasing of the same property.

iii. The lease must be a net lease.

iv. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property.

(b) For purposes of this section:

1. "Tax benefits" means those benefits derived from depreciation and any investment tax credit related to the financed property.

2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed.

3. "Net lease" means a lease under which the lessor will not, directly, or indirectly, provide or be obligated to provide for:

i. The servicing, repair or maintenance of the leased property during the lease term.

ii. The purchasing of parts and accessories for the leased property; however, the improvements and additions to the leased property may be leased to the lessee upon its request.

iii. The loan of replacement or substitute property while the leased property is being serviced.

iv. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

v. The renewal of any license or registration for the property unless such action by the taxpayer is clearly necessary to protect its interest as an owner or financier of the property.

(c) A financial business corporation shall not include:

1. Any enterprise that is not a corporation;

2. National banks;

3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 91–181 (12 U.S.C. § 2091 et seq.);

4. Stock or mutual insurance companies authorized to transact business in this State;

5. Securities brokers or dealers, investment companies, or investment bankers not employing moneyed capital with the object of making profit by its use as money or in substantial competition with the business of national banks;

6. Real estate investment trusts;

7. Credit unions organized under the laws of this State;

8. Savings banks organized under the laws of this State;

9. Savings and loan or building and loan associations organized under the laws of this State;

10. Pawn brokers organized under the laws of this State; and

11. State banks and trust companies organized under the laws of this State.

(d) A financial business corporation may not qualify as an investment company as that term is used in N.J.A.C. 18:7–1.15.

(e) The business of national bank is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C.A. 21, et seq. (The National Banking Act).

1. "The business of national banks" as used in N.J.S.A. 54:10A–4(m) and this section means the business of the bank itself and does not include bank subsidiaries, holding companies or affiliates.

(f) A corporation may qualify as a financial business corporation provided that 75 percent of its gross income is derived from the activities enumerated in (a)1 through (a)7 above. For purposes of making this computation, gross income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form BFC–1, adjusted as follows:

1. "Gross income" for purposes of this subsection and N.J.A.C. 18:7–5.2(a)7iii means the result of adding the income amounts for gross receipts, or sales, dividends, interest, gross rents, gross royalties, capital gain, net income, net gain or loss from line 14(a), Part II, Federal Form 4797 and other income as adjusted for interest on Federal, state, municipal and other obligations not included in line 5 above and the dividend exclusion;

2. Gross income arrived at (f)1 above is the denominator;

3. The gross income included in (f)2 above resulting from the activities set forth in (a)1 through (a)7 above is the numerator; and

4. If the resulting percentage of (f)2 and 3 above is 75 percent or more, such corporation is a financial business corporation.

(g) A corporation that qualifies as a financial business corporation must file a 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 (Section 38 of the Corporation Business Tax Act).

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Formerly entitled "Motion to report as investment company".
New Rule R.1987 d.335, effective August 17, 1987.
See: 19 N.J.R. 712(a), 19 N.J.R. 1568(b).
Amended by R.1993 d.364, effective July 19, 1993.
See: 25 N.J.R. 1841(a), 25 N.J.R. 3239(a).

18:7–1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return

(a) Pursuant to N.J.S.A. 5:12–148(b), any business conducted by an individual, partnership, corporation, or any other entity, or any combination thereof, holding a license pursuant to the Casino Control Act shall, in addition to all other taxes imposed by that act, file a consolidated corporation business tax return pursuant to the Corporation Business Tax Act and pay the taxes indicated thereon.

(b) The consolidated return to be filed under the Casino Control Act is in addition to, and not in lieu of, any return due under the Corporation Business Tax Act. Provided, however, that where any corporation is a licensee under the Casino Control Act, it may exclude from the return due under the Corporation Business Tax any item of income, loss or deduction appearing on its consolidated return, but which would have been reported on its own separate return under the Corporation Business Tax Act for the year for which that item would otherwise have been reported. Provided further, that where any corporation is a partner in a licensee under the Casino Control Act, it may similarly exclude its share of distributable income or loss attributable to its partnership interest in the licensee which would otherwise have been reported by it on its own separate return under the Corporation Business Tax Act.

1. In no event may the tax reduction arising out of any such exclusion exceed the portion of the tax paid with the consolidated return which is clearly attributable to the net effect of the existence of the amount which is duplicated in entire net income on the separate return filed under the Corporation Business Tax Act.

2. The return filed under the Corporation Business Tax Act shall reflect taxable income before net operating loss deduction and special deductions which is required to be reported to the United States Treasury Department for the purposes of computing its Federal income tax. Claims for exclusion for any duplication shall be separately identified in computing entire net income and be documented and reconciled on the return due under the Corporation Business Tax Act.

3. The amount of net worth reported on the separate return filed under the Corporation Business Tax Act by a corporate member of a consolidated group may be reduced by an amount also reported on the consolidated corporation business tax return of the casino business to the extent that such net worth would have been duplicated on both returns.

(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right under the Corporation Business Tax Act. The rules governing consolidation under the Internal Revenue Code do not apply. The business conducted by each casino hotel shall give rise to an obligation to file a separate consolidated corporation business tax return based on all the business activities conducted with respect to that casino hotel. All licensees subject to common effective control, without respect to their form of organization or the form of license held, except for licenses issued to individuals in their capacity as employees, must join in filing the consolidated return. All transactions between or among them are to be eliminated in consolidation and shall not appear on the consolidated return. Accordingly, where the same licensee is a participant in the business conducted by more than one casino hotel, it must join in filing a consolidated return with each such business. A change in common effective control terminates the fiscal year for purposes of filing the consolidated return.

1. Common effective control is the power exercisable by any person or entity arising out of ownership or a contractual arrangement which joins more than one licensee and permits domination in the management of more than one licensee for the purpose of engaging in a single casino hotel business. Common effective control also occurs where a contractual arrangement permits more than one licensee to operate jointly a single casino hotel business. For example, where the same persons or entities simultaneously control voting stock, boards of directors or serve as or nominate managing partners or are employed as managers or executives in more than one licensee which participates in the business activities conducted by the same casino hotel, or where a licensee executes a sale and leaseback of its property with another licensee and reserves by contract the option to recover its property, all such licensees shall join in filing the consolidated return. Notwithstanding an absence of common ownership, licensees joined in the operation of the business conducted by a casino hotel by management contract or partnership arrangement shall join in filing the return.

2. Consistent with N.J.A.C. 18:7–11.15(a), the separate return due under the Corporation Business Tax Act may not be consolidated.

(d) Where a licensee is engaged in a business wholly unrelated to the casino hotel, or is engaged in the operation of more than one casino hotel, common costs must be apportioned in a reasonable manner consistently applied. The method of apportionment shall be disclosed on the consolidated return and may be adjusted by the Director where it shall appear to him to result in a distortion of tax liability.

(e) Where the licensees joining in filing the consolidated return do not have a common fiscal year, the return may be based upon the fiscal year of the casino operator as defined at N.J.A.C. 19:54–1.2 where all licensees join in making such an election. The other licensees may then include their respective financial condition and operations on the basis of their own fiscal years within which the consolidated year ends. Separate schedules reconciling timing differences in elimination of balance sheet items and items of entire net income attributable to the lack of a common fiscal year must be submitted as part of any such consolidated return. In the absence of this election, the return shall be based on a calendar year ending December 31. The reporting method, once adopted, is effective for all future returns unless the prior consent of the Director is obtained for a change.

(f) A legend shall be prominently displayed on the face of any return filed under this section identifying the return as a casino business consolidated return.

EXAMPLE

	Hotel Entity 1		Management Co. Entity 2		Eliminations		Consolidated		Duplications Entity 1		Duplications Entity 2	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
Gaming Revenue	$	$1000	$	$–0–	$	$	$	$1000	$	$1000	$	$–0–
Other Income		200		–0–				200		200		–0–
Management Fees		–0–		500	500			–0–		–0–		–0–
Total Income		1200		500				1200		1200		–0–

	Hotel Entity 1		Management Co. Entity 2		Eliminations		Consolidated		Duplications Entity 1		Duplications Entity 2	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
Management Fees	500		–0–			500	–0–		–0–		–0–	
Payroll Deductions	–0–		200				200		–0–		200	
Other Deductions	200		–0–				200		200		–0–	
Total Deductions	700		200				400		200		200	
Net Income	500		300				800					
Duplications									1000			(200)

Entity #1
Net Income .....$ 500
Adjustment for duplication .....(1000)
Tax Base .....$ –0–

Entity #2
Net Income .....$ 300
Adjustment for duplication .....(200)
Tax Base .....$ 300
Entity #2 may elect not to exclude duplications

New Rule, R.1985 d.453, effective September 3, 1985.
See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).

18:7–1.18 (Reserved)

SUBCHAPTER 2. NATURE OF TAX

18:7–2.1 Nature of tax; in general

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

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

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

Statutory References

See N.J.S.A. 54:10A–2 as to those domestic and foreign corporations deemed to have acquired a taxable status.

18:7–2.2 Calendar and fiscal years; definitions

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

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

Statutory References

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

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

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

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

18:7–2.4 Proof of Federal accounting period

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

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

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

A subject corporation which is not required to file a Federal income tax return shall also submit proof to the Division of Taxation, within 90 days of the date of incorpo-

ration or the date of acquisition of a taxable status, of the accounting period on the basis of which to report for purposes of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

18:7–2.10 Period of application of tax

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

Statutory References

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

Case Notes

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

18:7–2.11 Component factors of tax base

The tax for the period or partial period prescribed in N.J.A.C. 18:7–2.10 is measured by taxpayer's allocable entire net income.

As amended, R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

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. 18:7–1.16.

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

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 (Reserved)

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. The minimum tax for other corporations is set forth in (b) through (g) 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 year 1997, 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) The Director shall adjust the minimum tax for accounting or privilege periods beginning in each fifth year following calendar year 1997 and each fifth year thereafter by multiplying the minimum tax for periods beginning in 1997 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 1996.

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".

Statutory References

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

Case Notes

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

18:7–3.5 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1982 d.395, effective November 1, 1982.
See: 14 N.J.R. 826(b), 14 N.J.R. 1221(b).
Added (c).
Amended by R.1983 d.219, effective June 20, 1983.
See: 15 N.J.R. 320(a), 15 N.J.R. 1038(e).
Deleted and reserved (a). In (b), added 2–4. Also deleted old (c).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax by short tax table".

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

(a) For all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent, for a corporation that is not a New Jersey S corporation.

(b) For a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980 and filing its New Jersey return Form CBT–100 on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

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

(d) For a New Jersey S corporation whose taxable year begins on or after January 1, 1994 but before January 1, 1995 the tax rate for a New Jersey S corporation is 2.350 percent.

(e) For a New Jersey S corporation whose taxable year begins on or after January 1, 1995 the tax rate for a New Jersey S corporation is 2.42 percent.

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

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

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

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

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

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1980 d.146, effective April 9, 1980.
See: 12 N.J.R. 159(b), 12 N.J.R. 293(b).
Repeal and New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Method of computing part two of tax; net income base".
Amended by R.1995 d.134, effective March 6, 1995.
See: 27 N.J.R. 57(a), 27 N.J.R. 935(c).

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 self-assessed and payable by an investment company entitled and electing to report as such is a tax measured by 25 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.

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".

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) The tax payable by a regulated investment company, entitled and electing to report as such, is $250.00.

(b) This rule is applicable to regulated investment companies whose accounting periods end on or after December 31, 1982.

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).

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 accounting period 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) When the tax liability for the preceding tax year is less than $500.00 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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 limited partnership associations.

(g) 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).

18:7–3.14 (Reserved)

New Rule, R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
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 "Equitable relief from certain otherwise mandatory installment payments of corporation business tax".

18:7–3.15 Interest on underpayment of installment payments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18:7–3.16 Banking corporations and financial business corporations

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

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

18:7–3.17 Coordination of tax credit

(a) The priority of credits for a taxpayer under the Corporation Business Tax Act shall be the priority of statutory credits set forth in this section. The tax imposed for a fiscal or calendar accounting year pursuant to section 5 of P.L. 1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 3 of P.L. 1993, c.170 (N.J.S.A. 54:10A–5.6), then by any credit allowed pursuant to section 19 of P.L. 1983, c.303 (N.J.S.A. 52:27H–78), then by any credit allowed pursuant to section 12 of P.L. 1985, c.227 (N.J.S.A. 55:19–13), then by any credit allowed pursuant to section 42 of P.L. 1987, c.102 (N.J.S.A. 54:10A–5.3), then by a credit allowed under section 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 credit allowed pursuant to section 1 of P.L. 1993, c.175 (N.J.S.A. 54:10A–5.24), then by any credit allowed pursuant to section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A–15), the ride share tax credit. 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.

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).

Historical Note

A former N.J.A.C. 18:7–3.17 was recodified as N.J.A.C. 18:7–3.20, effective August 21, 1995.

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 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. 16:50–15 for information on the employer trip reduction program tax credit.

(b) The taxpayer may only claim a credit for expenditures for providing commuter transportation benefits provided the taxpayer has submitted a compliance plan or a revised compliance plan which includes the expenditures to the Department of Transportation in accordance with N.J.A.C. 16:50–15.1 through 15.5. 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 to have registered with the Department of Transportation or have an approved compliance plan or an approved amended compliance plan.

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

New Rule, R.1995 d.148, effective March 20, 1995.
See: 26 N.J.R. 4976(a), 27 N.J.R. 1201(a).

18:7–3.20 Enterprise zone employees tax credits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. See N.J.A.C. 18:7–3.20.

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

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

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

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

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

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

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

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, 1995 as provided in N.J.S.A. 54:10A–5.6e. 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.

(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.

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due to fire, flood, storm or other casualty, pursuant to the provisions of N.J.S.A. 54:10A–5.10 and 5.11. Except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years pursuant to the calculation under N.J.S.A. 54:10A–5.10b. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law.

1. If the average number of employees attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit was based, the credit shall be redetermined and the excess forfeited for the current tax year and for each succeeding year pursuant to the calculations required under N.J.S.A. 54:10A–5.10c.

(f) N.J.S.A. 54:10A–5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT–100 or CBT–100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT–200T. The record-keeping requirements of N.J.S.A. 54:10A–5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in 1994 purchases and installs the following at location D in New Jersey:

1. A newly constructed building for $1,000,000;
2. Equipment with three year life for $100,000;
3. Equipment with five year life for $200,000; and
4. An airplane for $100,000.

At location E in New Jersey, the corporation makes repairs on existing facilities for $250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for $500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

ABC in 1993 had 50 employees, all at location E, with annual payroll of $2,000,000 and gross receipts of $5,000,000. In 1994 ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above $30,000, and has gross receipts of $10,000,000 and payroll of $5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of $3,000,000. The corporation business tax liability for ABC in 1994 is $10,000.

ABC should compute its 1994 New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1–95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

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

The investment base is $1,175,000.

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

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

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

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

The new jobs factor is .005.

Third, calculate the maximum annual credit:

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

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

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

Fifth, arrive at the allowable credit:

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

New Rule, R.1995 d.461, effective August 21, 1995.
See: 27 N.J.R. 840(a), 27 N.J.R. 3209(a).

18:7–3.23 Research credit

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

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

1. In–house research expenses; and

2. Contract research expenses.

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

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

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

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

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

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

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

1. Land or improvements to land; and

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

(f) The term "wages" means:

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

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

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

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

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

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

1. Of the taxpayer; or

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

(i) Base amount requirements are as follows:

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

i. The fixed-base percentage; and

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

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

3. Fixed–base percentage requirements are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The term "qualified research" means research:

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

ii. Which is undertaken for the purpose of discovering information

(1) Which is technological in nature; and

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

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

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

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

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

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

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

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

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

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

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

(1) A new or improved function;

(2) Performance; or

(3) Reliability or quality.

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

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

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

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

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

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

(1) Efficiency survey(s);

(2) Activity relating to management function or technique;

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

(4) Routine data collection; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Any in-house research expenses; and

(B) Any contract research expenses; or

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

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

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

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

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a taxpayer to any qualified organization described in (k)6i below:

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

(2) In which was not taken into account:

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

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

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

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

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

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

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

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

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

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

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

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

(3) Is not a private foundation.

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

(1) Is described in:

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

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

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

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

(4) Currently expends:

(A) Substantially all of its funds; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The term "corporation" shall not include:

i. An S corporation;

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

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

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

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

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

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

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

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

1. Research conducted after the beginning of commercial production;

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

3. Duplication of an existing product or process;

4. Survey or studies;

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

6. Research conducted outside the State of New Jersey;

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

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

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

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

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

Example:

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

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

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

Example:

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

3. Then, compute current qualified research expenses.

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

Then compute the research tax credit.

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

(t) Credit for increased research activities shall take priority as specified by N.J.S.A. 54:10A–5.246. If any amount of property or expenditures is included in the calculation of the research credit, or for which a credit is allowed, then no such amounts can be allowed for the recycling credit, manufacturing and employment investment credit, and the new jobs credit.

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

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

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

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

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

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

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

SUBCHAPTER 4. ENTIRE NET WORTH

18:7–4.1 (Reserved)

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

18:7–4.2 (Reserved)

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

18:7–4.3 (Reserved)

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

18:7–4.4 (Reserved)

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

18:7–4.5 Indebtedness owing directly or indirectly

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

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

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

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

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

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

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

Example 1: A corporation owns 100 percent of the stock of B Corporation and C Corporation, and these subsidiaries are engaged in their respective businesses. B Corporation has generated unneeded cash from its operation or has sold some of its securities to third persons (other than to the parent corporation) and the proceeds are available for loans. B Corporation then advances some of that money to C Corporation. C Corporation's indebtedness is not indirectly owed to A Corporation.

Example 2: D Corporation owns 100 percent of the stock of E Corporation and F Corporation and these subsidiaries are engaged in their respective businesses. D Corporation sold securities and advanced the proceeds to E Corporation, which in turn made loans to F Corporation. This indebtedness would be indirectly owed to D Corporation.

Example 3: G Corporation owns 100 percent of the stock of H Corporation and K Corporation and these subsidiaries are engaged in their respective businesses. G Corporation made advances to H Corporation that had also obtained funds by borrowings from non-related creditors. K Corporation borrows from H Corporation. It is presumed that K Corporation's indebtedness is indirectly owed to G Corporation. However, the presumption is not conclusive. To the extent that K Corporation can establish that its indebtedness to H Corporation is in no way funded by the advances from G Corporation to H Corporation, that indebtedness would not be owing indirectly to the parent G Corporation.

(f) For the purpose of determining the degree of stock ownership of a corporate creditor, the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary, or affiliate of the corporate creditor shall not be aggregated.

Example: L corporation owns 100 percent of M corporation which in turn owns 100 percent of N corporation. M corporation has a valid business purpose. L corporation made loans or otherwise provided funds directly to N corporation. The source of such funds is not from M corporation. The indebtedness from N corporation to L corporation is not indebtedness owing directly or indirectly to a 10 percent stockholder.

Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(a), 17 N.J.R. 2677(a).
Substantially amended.
Amended by R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Examples 1 and 2 added to (f).
Amended by R.1992 d.289, effective June 20, 1992.
See: 24 N.J.R. 175(a), 24 N.J.R. 2628(b).
Revised (f).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

N.J.S.A. 54:10A–4(d), (e).

Case Notes

Taxpayer was entitled to exclude from its net income calculation interest expense paid on notes. Rollins Leasing Corp. v. Director, Div. of Taxation, 14 N.J.Tax 289 (A.D.1994).

Indebtedness was direct, not indirect, and under Corporation Business Tax Act taxpayer had to include loan in its net worth and could not deduct interest on loan to extent prohibited by the Act. Rollins Leasing Corp. v. Director, Div. of Taxation, 13 N.J.Tax 359 (1993), reversed 14 N.J.Tax 289.

Corporation was not holder of taxpayer's stock, and, thus, debt owed to owner did not affect taxpayer's net worth. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Rule governing corporate debt for net worth purposes was ultra vires. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Division of taxation can not make inquiry to determine loan is loan or contribution to capital. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Inquiry may be made into source of funds, for purposes of calculating net worth. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

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 700 (1986).

Liability owed by taxpayer to sister corporation was includable in the taxpayer's net worth for purposes of determining the amount of franchise tax, notwithstanding the fact that the indebtedness originated prior to affiliation; ninety percent of the interest on the indebtedness could not be excluded as a deduction in net worth base tax computation. Skyline Industries, Inc. v. Taxation Div. Director, 3 N.J.Tax 612 (Tax Ct.1981).

Liability owed by taxpayer to affiliate was not includable in the taxpayer's net worth tax base where the affiliate was a mere conduit through which indebtedness was owed and paid to unrelated real creditor third parties and where opportunities for balance sheet manipulations were minimal; ninety percent of interest paid was not disallowable for computing corporation business tax liability (also cited as N.J.A.C. 18:7–5(a)(7)). Mobay Chemical Corp. v. Taxation Div. Director, 3 N.J.Tax 597 (Tax Ct.1981), affirmed per curiam 6 N.J.Tax 445 (App.Div.1982).

Liability owed wholly-owned subsidiary by taxpayer which was a wholly-owned subsidiary of another corporation was includable in the taxpayer's net worth base for purposes of the franchise tax; 90 percent of the interest paid to the subsidiary by the taxpayer was not deductible (citing former rule). Fedders Financial Corp. v. Taxation Div. Director, 3 N.J.Tax 576 (Tax Ct.1981), affirmed per curiam 6 N.J.Tax 444 (App.Div.1982), reversed.

18:7–4.6 Receivables offset against indebtedness owing directly or indirectly

(a) The taxpayer may offset against includible indebtedness owed to any creditor the amount of any receivable due from that creditor.

Example 1: P Corporation owns 100 percent of the capital stock of S Corporation. S Corporation has indebtedness owing directly or indirectly to P Corporation as well as a lesser receivable due from them. Indebtedness owing directly or indirectly to P Corporation is the amount of the indebtedness reduced by the receivable due from that creditor.

Example 2: P Corporation owns 100 percent of the capital stock of both S1 Corporation and S2 Corporation. S1 Corporation has indebtedness owing directly or indirectly to P Corporation. S1 Corporation also has a receivable due from S2 Corporation which, had it been a debt, would also have been indebtedness owing directly or indirectly to P Corporation. S1 Corporation may not offset the receivable due from S2 Corporation from its indebtedness owing directly or indirectly to P Corporation since it is not a receivable due from that creditor.

Example 3: P Corporation owns 100 percent of the capital stock of S1 Corporation. S1 Corporation owns 100 percent of the capital stock of S2 Corporation. S1 Corporation has indebtedness owing directly or indirectly to P Corporation and has a receivable due from S2 Corporation which, had it been a debt, would also have been indebtedness owing directly or indirectly to P Corporation. S1 Corporation may not offset the receivable due from S2 Corporation from its indebtedness owing directly or indirectly to P Corporation since it is not a receivable due from that creditor.

Amended by R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Examples 1 through 3 added.

18:7–4.7 Governmental obligations and securities

In the determination of net income, interest and other income from governmental obligations and securities are includible.

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)(2)(B) as to interest and income from securities includible in determination of net income.

18:7–4.8 (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 "Treasury stock; when includible in net worth".

18:7–4.9 (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 "Treasury stock; certified rider required".

18:7–4.10 (Reserved)

Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Changed "total" to "the average value of" real and tangible personal property. Added real estate investment trust. Added 3, to (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 "Total property base; alternate method of computing net worth tax".

18:7–4.11 Subsidiary corporations; definition

(a) A subsidiary is defined as any corporation in which the taxpayer is the owner of:

1. At least 80 percent of the total combined voting power of all classes of stock of the subsidiary entitled to vote; and

2. At least 80 percent of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends.

3. The investment shall be determined only with reference to investment in capital stock and shall exclude any loans or advances to any such subsidiaries.

(b) An entity organized under the laws of a foreign country shall be considered a subsidiary if the foregoing requisite degree of ownership is met and if the entity is considered a corporation for any purpose under the United States Federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed-paid foreign tax credits or purpose of status as a controlled foreign corporation.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(b), 17 N.J.R. 2677(b).
Substantially amended.
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–9 as to definition of a "subsidiary."

18:7–4.12 (Reserved)

Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
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 "Subsidiary deductions from net worth".

18:7–4.13 (Reserved)

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

18:7–4.14 (Reserved)

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

18:7–4.15 (Reserved)

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

Case Notes

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

18:7–4.16 (Reserved)

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

18:7–4.17 (Reserved)

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

18:7–4.18 (Reserved)

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

18:7–5.1 Entire net income; definition

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

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

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

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

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

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

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

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

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

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).

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).

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 mea-

sured 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. 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.

vii. The amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written instrument. 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 or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder which owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or $1,000, whichever is larger. Thus, if the amount of such interest is $1,000 or less, then none of said amount need be added back. (For definition of and guidance in determining "directly" and "indirectly" see N.J.A.C. 18:7–4.5(d), (e) and (f).) However, there shall be allowed as a deduction:

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

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

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

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

viii. 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;

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

x. 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.

xi. 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.

xii. 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.

xiii. 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.

xiv. 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.

2. Deduct from Federal taxable income:

i. 100 percent of all dividends 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 (Subsidiary corporations; definition) of this Chapter and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;

ii. Fifty percent of all other dividends included in Federal taxable income or added to Federal taxable income in accordance with (a) above. Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

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

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

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

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

iv. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993 on which ACRS or MACRS has been disallowed under (a)1x above using any method, life and salvage value which would have been allowable under the Federal Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal

Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Federal Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Federal Internal Revenue Code at December 31, 1980.

v. 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).

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) Where the taxpayer claims deduction for a tax paid to a foreign country or possession of the United States on a dividend received from a source without the United States this tax is deductible only if:

1. The tax was paid by the taxpayer itself, except that in the case of foreign taxes included in income pursuant to Section 78 of the Internal Revenue Code, subsection (b) of the Section shall apply; and

2. Such tax was not deducted in computing Federal taxable income; and

3. 100 percent of the dividend received is not deductible under paragraph 1 of subsection (b) of Section 5.2 of this Chapter; and

4. To the extent that the portion deducted shall not exceed 50 percent of the gross dividend.

(b) 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 paragraph 1 of subsection (b) of Section 5.2 of this Chapter.

1. However, if 100 percent of the foreign tax amount is not deductible from federal taxable income as dividends received under paragraph 1. subsection (b) of Section 5.2 of this Chapter then 50 percent of it may be deducted from federal taxable income; and

2. In addition, 50 percent of the foreign tax amount may be deducted from federal taxable income, even though these foreign taxes were not paid by the taxpayer itself.

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 compu-

tation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

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

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

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

Ownership equity of Corporation A in Corporation C:

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

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

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

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

Ownership equity of Corporation D in Corporation F:

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

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

Cross References

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

Statutory References

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

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

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

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

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

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

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

Statutory References

N.J.S.A. 54:10A–17.

18:7–5.7 Right of Director to independently determine net income

If in the opinion of the Director the method employed in N.J.A.C. 18:7–5.6 does not properly reflect the taxpayer's net income properly apportionable to New Jersey under the Act for the period covered by its New Jersey return, the Director may determine entire net income solely on the basis of the taxpayer's income during such period.

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

Statutory References

N.J.S.A. 54:10A–17(a).

18:7–5.8 (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 "Procedure for computing short period return".

18:7–5.9 (Reserved)

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Formerly entitled "Procedure for computing when taxpayer alters corporate identity".

18:7–5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, or net income of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his or her discretion and in whatever manner he or she may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1. Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor; or

2. Any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the Director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from the transaction.

3. For purposes of this section, "fair and reasonable tax" is the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests.

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of 20 percent or more of the outstanding shares of any class of stock. For purposes of arriving at this level of ownership the stock attribution rules of IRC section 318 will be used.

5. Under N.J.S.A. 54:10A–10(b) interest should be charged on loans or advances made by one related party to another from the day after the debt arises until the debt is satisfied. With respect to intercompany trade receivables of related taxpayers, interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month.

i. If the creditor is regularly engaged in the business of making loans or advances, the arm's length interest rate should be charged. Upon failure to do so, the Division of Taxation can determine what interest should have been charged. Where the creditor is not in the business of loaning money or making advances, either an arm's length rate based on the facts and circumstances or a safe haven rate is acceptable. However, the safe haven rule does not apply to any loan or advance in which the interest or principal amount is expressed in a currency other than U.S. dollars.

ii. For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100 percent and 130 percent of the Applicable Federal Rate (AFR) as determined under Internal Revenue Code Section 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100 percent of the AFR and adjustments for excessive interest would be made at 130 percent of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110 percent of the AFR. In determining the rate of interest actually charged on a written loan or advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

6. Where a service by one member of a group to another member is rendered for less than an arm's length charge, the Division of Taxation may make appropriate allocations to reflect an arm's length charge for that service. The arm's length charge is equal to the costs or deductions incurred by the member performing the service, except in cases where the service is an integral part of the business activity of either member.

7. If tangible property is made available by one member of the group to another, the latter should be charged the arm's length rental charge.

8. Where one member of a group of controlled entities sells or otherwise disposes of tangible property to another at other than an arm's length price, a proper allocation will be made between the seller and the buyer using the following methods.

i. Comparable uncontrolled price method: This method must be used if there are comparable uncontrolled sales (sales between outsiders or a member and an outsider where the property sold and the circumstances involved are identical, or nearly identical, to those in the controlled sale). To the extent they are not identical, adjustments are made.

ii. Resale price method: If there are not comparable uncontrolled sales, the resale price method must be used if the standards for its application are met. A

typical situation where this method is required is where a manufacturer sells products to a related distributor which, without further processing, resells the products to unrelated parties.

iii. Cost plus method: If the standards for application of the resale price method are not satisfied, either that method or the cost plus method is used, depending on which is more feasible and will produce a more accurate arm's length price. Normally, the cost plus method is appropriate where a manufacturer sells products to a related entity which performs substantial manufacturing, assembly, or other processing of the product or adds significant value by use of its intangible property (trademark, for example) before resale.

9. Under both the comparable uncontrolled price method and the resale price method, market conditions faced by the affiliate are taken into account. Thus, goods may be sold, for a period, at a price which is below the full cost of manufacture in order to establish or maintain a market.

i. Assuming that the requirements of one of the three methods in (a)8 are met, it must be used unless the taxpayer can show that some other method is clearly more appropriate. Where none of the three methods can reasonably be applied, some other appropriate method can be used.

ii. Where a taxpayer makes controlled sales of many different products or many sales of the same product and it is impractical to calculate an arm's length price for each product or sale, it is permissible to apply the proper method of pricing to product lines or other groupings. Also, the Division of Taxation may use statistical sampling techniques to verify or determine the arm's length price of all sales to a related entity.

10. The Division will apply equitable principles to prevent unjust situations from occurring.

(b) The application of this section is not limited to an agreement, understanding or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance are not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports or any other factor in determining the appropriate transfer price for goods, services, intangibles or other dispositions made to related parties. Where the Director determines that there is an adjustment to net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c) Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, the Director may adjust and redetermine items on any affected taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey. The following example is an illustration only and in no way shall be interpreted as a standard for calculating wages in a particular case.

Example: Corporation D entered into an employment agreement with its sole shareholder's spouse for the performance of services as an accounting clerk. The agreement called for the shareholder's spouse to monitor 10 accounts. For the service performed, the spouse is to receive an annual salary of $100,000 along with a substantial benefit package. The Director, upon audit, learns that the spouse works only five hours per week in completely performing the duties. The Director, based upon the going wage for such services, determines that the total compensation package would not exceed $10,000 a year and adjusts the taxpayer's expense to determine properly the net income and the taxpayer's wage fraction of the allocation factor and to provide dividend treatment for the disallowed wage compensation.

(d) Where any taxpayer, 20 percent or more of whose capital stock is owned either directly or indirectly by or through the same interests as those of the taxpayer, conducts any activity, transaction, or business with such interests which either directly or indirectly creates an artificial loss, net income, or allocation factor, the Director may adjust and redetermine such items on any taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey.

Example 1: Corporation E, the great grandparent of the taxpayer, borrows $1 million from the taxpayer. The agreement calls for the principal and interest at the rate of two percent per annum to be paid at the end of one year. Upon audit, the Director determines that a market interest rate given the economic conditions at the time of the loan and the circumstances of the borrower is 13 percent per annum. Therefore, he adds the additional income to the taxpayer's net income as reported, and adjusts the expense on the great grandparent's return, if it files in New Jersey.

Example 2: Corporation F is the parent company of over 10 subsidiaries and provides all administrative services for the 10 subsidiaries. Corporation F receives dividend income from its subsidiaries, interest income from other investments, and service fee income from the subsidiaries for the administrative services it performs on their behalf which are an integral part of the business activity of the parent. All costs incurred by the parent are charged to the subsidiaries based solely upon the total assets of each subsidiary. Upon audit, the Director determines that the service fee includes no profit element and that the allocation of the costs of the administrative services bears no relationship to the services provided to each subsidiary. Accordingly, the Director imputes an element of profit, and assigns the charges to each subsidiary by a method reflecting the actual costs incurred in providing the services to each subsidiary.

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price which might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price which might have been paid or received.

Example 2: L Corporation is the parent corporation in a vertically integrated oil company. Its marketing subsidiary is a taxpayer. The marketing corporation reports a significantly lower gross profit than other taxpayers selling the same generic products in volume.

L Corporation has set its transfer prices to its marketing subsidiary at a price $0.02 per gallon higher than published New York tanker port prices for its product because it deems, in good faith, that its brand name value and economies of scale are more properly attributable to the parent corporation. It also uses this transfer price to sell its product to all its independent retailers.

The fair price which might have been paid for the product sold by the marketing subsidiary would not be based upon "New York tanker prices" plus the lesser of representative contract carrier costs or the actual costs incurred for delivery. The Director would recognize the $0.02 per gallon higher price since that is the same price used for comparable sales to all uncontrolled entities for the audit period.

(f) Whenever the Director deems it necessary, in order properly to reflect entire net income of the taxpayer, he or she may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him or her to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.

Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).
Revised section.

Statutory References

See N.J.S.A. 54:10A–4(k)(3) as to right of Director to determine the year in which an item of income or a deduction shall be included without regard to taxpayer's method of accounting, and 54:10A–10 as to Director's right to redetermine tax due when taxpayer's business records appear distorted.

Case Notes

Rule that a corporation's "net income" can be reduced by only 10 percent of the interest on indebtedness to a person or entity which owns 10 percent or more of the corporation's capital stock held applicable to corporate indebtedness owed to a corporation's parent; Division Director held without authority to recompute corporation's taxes to exclude such indebtedness from income; 10 percent rule held not violative of due process or equal protection; statutory amendments eliminating the 10 percent rule could not be applied retroactively. GATX Terminals Corp. v. Taxation Div. Director, 5 N.J.Tax 90 (Tax Ct.1982), affirmed in part, remanded in part per curiam 7 N.J.Tax 659 (App.Div.1985), certification denied 102 N.J. 337, 508 A.2d 213.

18:7–5.11 (Reserved)

New Rule, R.1978 d.30, effective January 27, 1978.
See: 10 N.J.R. 40(b), 10 N.J.R. 128(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 "New jobs credit; salaries deduction".

18:7–5.12 Net operating loss deduction

A taxpayer may deduct a New Jersey net operating loss carryover as defined in N.J.A.C. 18:7–5.13 in computing its entire net income before exclusions and before the net operating loss deduction.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–5.13 New Jersey net operating loss carryover

(a) A New Jersey net operating loss as defined in N.J.A.C. 18:7–5.15 for any taxable year ending after June 30, 1984 becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss year.

(b) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise.

(c) Corporations acquired under Internal Revenue Code Section 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7–5.14.

Example 1: A domestic corporation dissolves pursuant to laws of the State of New Jersey and incorporates in another state. This newly formed corporation of another state is a new legal entity for corporation business tax purposes and the net operating loss carryover of the domestic corporation is not available to the new entity.

Example 2: The example below illustrates the net operating loss carryover for the full term of seven years and demonstrates the application of net operating loss deductions in the proper sequence.

Amounts From Returns									
Return Year	1984	1985	1986	1987	1988	1989	1990	1991	1992
Fiscal Year Ended	31-Dec-84	31-Dec-85	31-Dec-86	31-Dec-87	31-Dec-88	31-Dec-89	31-Dec-90	31- Dec-91	31-Dec-92
Line 28	($100,000)	(6,000)	(8,000)	(10,000)	50,000	8,000	(5,000)	2,000	10,000
NJ Adjustments	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ENI before NOL ded. or exclusions	(95,000)	(1,000)	(3,000)	(5,000)	55,000	13,000	0	7,000	15,000
NOL Deduction	NA	0	0	0	55,000	13,000	0	7,000	9,000
ENI before exclusions	0	0	0	0	0	0	0	0	6,000
Dividend exclusion & IBF exclusion	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Entire Net Income	0	0	0	0	0	0	0	0	4,000
NOL Carryovers Applied									
1985	0								
1986	0	0							
1987	0	0	0						
1988	55,000	0	0	0					
1989	13,000	0	0	0	0				
1990	0	0	0	0	0	0			
1991	7,000	0	0	0	0	0	0		
1992		1,000	3,000	5,000	0	0	0	0	0
1993			0	0	0	0	0	0	0
1994				0	0	0	0	0	0
1995					0	0	0	0	0
1996						0	0	0	0
1997							0	0	0
1998								0	0
1999									0
Unused	20,000	0	0	0	0	0	0	0	0
Total	95,000	1,000	3,000	5,000	0	0	0	0	0

(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's 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. NJ Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax.

1. "ENI" means entire net income as defined in the Act and in these rules.

2. "NOL" means net operating loss.

i. Exclusions are the exclusions from entire net income for dividends received and the eligible net income of an international banking facility.

3. "IBF" means the eligible net income of an international banking facility.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
Administrative Correction to (c), removing Examples 1:B and 2:C from Code.
See: 23 N.J.R. 1024(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

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Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

Taxes. Steven P. Bann, 136 N.J.L.J. No. 8, 53 (1994).

Case Notes

Successor corporation; net operating losses of merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Regulation governing net operating loss carryovers was not authorized. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

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, certification granted 137 N.J. 167, 644 A.2d 614.

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, certification granted 137 N.J. 167, 644 A.2d 614.

18:7–5.14 Limitations to the right of a net operating loss carryover

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all its capital stock redemptions and sales after June 30, 1984 is a 50 percentage point change in the ownership of its voting stock and the corporation changes from the business giving rise to the loss. For this purpose the exchange of stock is a sale. Further, solely for this purpose and no other purpose in the Act, a business is defined in terms of the economic factors of production. The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover.

(b) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:

1. Whether the physical location or other fixed assets of the loss corporation were used in a new business;

2. The extent of the termination of the existing work force of the loss corporation;

3. A price paid for the loss corporation in excess of the market value of the assets; and

4. Any other material deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.

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, certification granted 137 N.J. 167, 644 A.2d 614.

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, certification granted 137 N.J. 167, 644 A.2d 614.

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).

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. ALLOCATION

18:7–7.1 General instructions regarding allocation of net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State.

(b) In the absence of a regular place of business, 100 percent of its entire net income must be allocated to New Jersey.

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's net income to New Jersey.

(d) Where the taxpayer does not maintain a regular place of business outside New Jersey and its allocation factor is 100 percent and the taxpayer in fact pays a tax based on or measured by income to another state, see N.J.A.C. 18:7–8.3 which provides for the eligibility and method in computing a reduction in the tax for such taxpayer.

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).
"Corporation" substituted for "taxpayer" and added "or real estate investment trust."

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

Statutory References

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

Case Notes

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

18:7–7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following will assist in the determination of what is a regular place of business.

1. Bona fide office: An office in which an employee in attendance performs significant duties related to the business of the taxpayer. A token office, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.

2. Space of the taxpayer: The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building and being listed in the taxpayer's name in a telephone book.

3. Regularly maintained, occupied and used by the taxpayer in carrying on its business: The taxpayer must regularly maintain, occupy and use the premises by employing one or more regular employees who are in attendance during normal working hours. Premises are not regularly maintained, occupied and used in the event employees are in attendance only on a part time basis and, in their absence, telephone messages are received by an answering service or recording device.

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

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

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

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

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

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

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

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

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).
(a)1–2 deleted and new text (a)1–4 substituted; (c) added.

Statutory References

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

Case Notes

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

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

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

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

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

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

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

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

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

Statutory References

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

Case Notes

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

18:7–7.4 Allocation factor; definition

"Allocation factor" means the proportionate part of a taxpayer's entire net income used to determine a measure of its tax under the Act.

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

Statutory References

See N.J.S.A. 54:10A–4(b) as to definition of "allocation factor."

18:7–7.5 Allocation factor; application

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

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

Historical Note

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

Statutory References

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

18:7–7.6 (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 "Optional short tax table in lieu of allocation of net worth".

18:7–7.7 (Reserved)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

18:7–8.1 Business allocation factor; computation

(a) The business allocation factor is computed on the basis of the average percentage resulting from the following three fractions:

1. Average value of real and tangible personal property in New Jersey over the average value of such property both within and without New Jersey (this is usually referred to as the property fraction);

2. Receipts allocable to New Jersey over receipts both within and without New Jersey (this is usually referred to as the receipts fraction);

3. Payrolls allocable to New Jersey over payrolls within and without New Jersey (this is usually referred to as the payroll fraction).

(b) The business allocation factor is computed by adding together the percentages derived from the foregoing three fractions for the period covered by the return, and dividing the total of the percentages by three.

(c) However, if one of the fractions (property, receipts or payroll) is missing, the other two percentages are added and the sum is divided by two, and if two of the fractions are missing, the remaining percentage may be used as the business allocation factor. A fraction is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.

Statutory References

See N.J.S.A. 54:10A–6 as to how to compute business allocation factor.

Case Notes

Change in interpretation of safe harbor leasing provision did not require administrative rule making. Reuben H. Donnelley Corp. v. Director, Div. of Taxation, 128 N.J. 218, 607 A.2d 1281 (1992).

Corporate taxpayer was entitled to credit for corporate income tax paid in another state. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Net worth determination that did not result in unfair or unreasonable tax would not be modified on judicial review. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Interpretation of amendment to corporate tax governing safe harbor leasing provisions did not constitute rulemaking. 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 include the property in the 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.

18:7–8.2 Method of arithmetic computation required

In computing allocation percentages, division must be carried to six decimal places, for example .201614 or 20.1614 per cent.

Statutory References

N.J.S.A. 54:10A–8.

18:7–8.3 Right of Director to independently compute allocation factor

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A–8 and this rule—100 percent allocation factor:

1. Eligibility:

i. Where the Business Allocation Factor under Section 6 of the Act is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, it may, under Section 8 of the Act, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7–1.6 as if the New Jersey Corporation Business Tax Act were the law of that foreign state.

Example: S corporation does not maintain a regular place of business outside New Jersey, other than a statutory office. It was not a domestic corporation in State X, nor did it meet any of the other criteria described at N.J.A.C. 18:7–1.6 in that State which would have created a taxable status in New Jersey. Although it was not itself doing business in State X, it was a member of an affiliated group of corporations which conducted a unitary business in that State and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, it did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. It must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions and the computation of the tax paid to the foreign state. It must also submit a schedule apportioning all property, receipts and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

(1) It may be based upon only so much of adjusted entire net income appearing on its Corporation Business Tax Return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the Business Allocation Factor as determined under Section 6 of the Act and these rules;

(3) It must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1:

Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, its Business Allocation Factor is 100 percent. It sold land for $250,000 which had a tax basis and book value of $100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to that State and is taxed at an eight percent rate. It may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	$ 500,000	
Net gain on sale of land	+ 150,000	$ 150,000
Total income	650,000	
Deductions	− 447,778	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments—N.J. Corporation Business Tax Deducted—add back	+ 20,000	
Entire net income	$ 222,222	
Tax at 9%—before reduction	$ 20,000	
Formula apportionment not used in State Y		100%
Duplication of income		150,000
Reduction—may not exceed 9%		× .08
Tax paid to State Y		$ 12,000
Reduction	− 12,000	
Paid with return	$ 8,000	

Example 2:

Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Its Business Allocation Factor is 100 percent. It did however start and complete a construction job in State Z and paid an income tax to that State at a ten and one-half percent rate. It may determine the portion of its Corporation Business Tax measured by net income as follows:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$ 227,500	$ 227,500
Add ACRS	$15,000		
Less, NJ Depreciation	12,000	3,000	–0–
Taxes imposed on or measured by income from State Z return	28,800		22,500
N.J.C.B.T. paid or accrued—add back	22,500	22,500	
Municipal bond interest—add back		+ 7,000	+ –0–
		$ 260,000	250,000
Dividend exclusion—			
NJ	10,000	− 10,000	− 10,000
State Z	–0–		
Entire Net Income		$ 250,000	
Portion of entire net income duplicated			240,000

	New Jersey Tax Income Base	Duplicated in State Z
Apportionment (computed below)		× .25
Tax @ 9%	22,500	60,000
Tax @ 10½%		$ 6,300
Reduction 60,000 @ 9%	− 5,400	
Reduced Tax	$ 17,100	

Corporation B computed its apportionment on its State Z return as follows:

	State Z		Everywhere		%
Property					
Owned	$140,000		$500,000		
Leased (at 8 annual rentals)	+ 40,000		+ 100,000		
	180,000	÷	600,000		.30
	200,000	÷	1,000,000		.20
Receipts double weighted					
Payroll	90,000	÷	300,000	+	.30
Total					1.00
Average 1.0 ÷ 4					.25

The formula apportionment had it been determined in State Z consistent with the Corporation Business Tax Act would have been:

	State Z		Everywhere		
Property owned	$ 140,000	÷	$ 500,000		.28
Receipts	200,000	÷	1,000,000		.20
Payroll	90,000	÷	300,000	+	.30
					.78
Business Allocation Factor .78–3					.26

Since the apportionment fraction (.25) used in State Z does not exceed the Business Allocation Factor as it would have been determined under the Act and these Rules, it is used for purposes of determining the reduction.

Amended by R.1984 d.594, effective January 7, 1985.
See: 16 N.J.R. 3001(a), 17 N.J.R. 115(c).
(b) added.

Statutory References

See N.J.S.A. 54:10A–8 as to right of Director to independently adjust a taxpayer's allocation factor.

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

Corporate taxpayer was entitled to credit for income tax paid in another state. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Redetermination of net worth tax which was not unreasonable or unfair would not be disturbed. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Statutory three-factor was appropriate for corporate taxpayer that had paid taxes in another state. Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

18:7–8.4 "Tangible personal property"; definition and scope

(a) The term "tangible personal property" shall mean corporeal personal property, such as machinery, fixtures, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest in property and evidences of debt.

(b) Tangible personal property within New Jersey.

1. Tangible personal property is within New Jersey if and so long as it is physically situated or located here, even though it may be stored in a bonded warehouse in this State.

2. Property of the taxpayer held in New Jersey by an agent, consignee or factor is (and property held outside New Jersey by an agent, consignee or factor is not) situated or located within New Jersey.

3. Mobile or movable property, such as construction equipment or trucks, is within New Jersey based on the ratio of time the property is used within the state to the time the property is used everywhere during the period covered by the return.

4. Ships are within New Jersey based on the ratio of time the vessels are in operation in New Jersey to the time the vessels are in operation everywhere, and including all sailing days, days in port for loading, unloading, ordinary repairs, refueling or provisioning as operation.

5. Aircraft used by airlines are within New Jersey based on the ratio of takeoffs in regular scheduled or charter flights that occur during revenue service from points in New Jersey to the total of all such takeoffs everywhere. Aircraft used other than by airlines in revenue service are within New Jersey based on the ratio of takeoffs from points in New Jersey to the total of all takeoffs everywhere when the aircraft are in use.

6. Consistent with N.J.S.A. 54:10A–6(b), satellites used in the communications industry are included in the denominator of the property fraction but the numerator shall include a portion of such property based upon the ratio of ground stations serviced in New Jersey to the number of all such ground stations.

(c) Tangible personal property in transit.

1. Property in transit from a point in New Jersey to another point in New Jersey is situated or located in New Jersey.

2. Property in transit from a point outside New Jersey to another point outside New Jersey is situated or located without New Jersey.

3. Property, while in transit from a point outside New Jersey to a point in New Jersey or vice-versa does not have a fixed situs either within or without the State and, therefore, will not be deemed to be "situated" or "located" either within or without New Jersey and accordingly, such property while so in transit should be omitted from both the numerator and the denominator of the property fraction.

4. Property ceases to be in transit when it is delivered to or becomes subject to actual possession by the owner at the point of destination.

Amended by R.1987 d.137, effective March 16, 1987.
See: 18 N.J.R. 627(a), 19 N.J.R. 464(a).
(b)3.–6. added.

Statutory References

See: N.J.S.A. 54:10A–6(A) as to computation of the property fraction.

Case Notes

Tax benefits obtained through safe harbor leases do not constitute "real intangible personal property" for purposes of Corporation Business Tax Act which permits corporation to include only its real and tangible personal property in the property fraction of the formula used for determining that portion of the corporation's net income and net worth attributable to its activity within the state. Reuben H. Donnelley Corp. v. Director, Div. of Taxation, 128 N.J. 218, 607 A.2d 1281 (1992).

18:7–8.5 Business allocation factor; property fraction derived from average values

(a) The percentage of the taxpayer's real and tangible personal property within New Jersey is determined by dividing the average value of such property within New Jersey by the average value of real and tangible personal property within and without New Jersey.

1. Average values in both the numerator and denominator shall be determined without deduction of any encumbrance.

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

(c) The average values used in determining the property fraction of the allocation factor are normally based on book value with respect to property owned, including property on consignment (consignor). Leased or rented property is valued at eight times its annual rent, including any amounts (such as taxes) paid or accrued in addition to or in lieu of rent during the period covered by the return. Subrents do not reduce annual rents, but rather enter into the determination of the receipts fraction. Property that is used which is neither owned, leased or rented should be valued at book value but if the books do not disclose a fair value or disclose a minimal value then that property should be shown at fair value, which for this purpose would be market value, including, but not limited to, loaned property, bailments, etc. Property on consignment held by the consignee is considered property used. Leasehold improvements are treated as owned by the taxpayer. The numerator and the denominator shall take into account depreciation disallowed at N.J.A.C. 18:7–5.2 where the taxpayer accounts for its property on a Federal income tax basis on its books.

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented or used in this state.

Example 1: Taxpayer is the lessor of equipment. Consistent with generally accepted accounting principles it accounts for its capital leases as completed sales. Consistent with principles of tax accounting, it accounts for that same leasing as net rental income which is reported as entire net income.

That entire net income is apportioned by use of the allocation factor which must include the property fraction. That property fraction must reflect the percentage of the taxpayer's real and tangible personal property within New Jersey, including the leased property, despite the fact that the property no longer appears on the books of the corporation in order to effect a fair and reasonable apportionment of entire net income.

Example 2: Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the state and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

As amended, R.1983 d.62, eff. March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added 3. to (a).
Amended by R.1986 d.284, effective July 21, 1986.
See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).
Substantially amended.

Law Review and Journal Commentaries

Taxes. Steven P. Bann, 136 N.J.L.J. No. 15, 78 (1994).

Case Notes

Regulation adjusting calculation of franchise taxes on corporations doing business in state was authorized. Brunswick Corp. v. Director, Div. of Taxation, 135 N.J. 107, 638 A.2d 805 (1994).

Regulation governing computations from property leased by multistate corporate taxpayer did not exceed Director's authority. Brunswick Corp. v. Director, Div. of Taxation, 13 N.J.Tax 136 (A.D.1993), certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Delegation to Director of Division of Taxation authority to compute interstate income applicable to New Jersey was not improper. Brunswick Corp. v. Director, Div. of Taxation, 11 N.J.Tax 530 (1991), affirmed 13 N.J.Tax 136, certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Tax imposed on multistate corporate taxpayer was not limited to owned property. Brunswick Corp. v. Director, Div. of Taxation, 11 N.J.Tax 530 (1991), affirmed 13 N.J.Tax 136, certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Determination of constitutionality of allocation corporate income to various states requires examination of evidence. Silent Hoist & Crane Co., Inc. v. Taxation Div. Director, 9 N.J.Tax 178 (1987).

Administrative fairness in allocation of corporate income requires determination of whether allocation property reflects corporation's activities. Silent Hoist & Crane Co., Inc. v. Taxation Div. Director, 9 N.J.Tax 178 (1987).

Evidence that allocation of corporate income to state is required to invalidate allocation. Silent Hoist & Crane Co., Inc. v. Taxation Div. Director, 9 N.J.Tax 178 (1987).

Lack of rational relationship between corporation's New Jersey presence through a real estate operation and its out-of-state manufacturing operations which the State sought to tax precluded taxation of the latter; no rational relationship found between the corporation's New Jersey presence and its securities portfolio to permit taxation of the portfolio's income; other factors of corporation's operation held insufficient indicia to warrant taxation of the corporation as a unitary business. Silent Hoist & Crane Co., Inc. v. Director, Div. of Taxation, 5 N.J.Tax 242 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 348 (App.Div.1984), reversed and remanded 100 N.J. 1, 494 A.2d 775 (1985) certiorari denied 106 S.Ct. 409, 474 U.S. 995, 88 L.Ed.2d 359, on remand 9 N.J.Tax 178.

18:7–8.6 Average value; computation period

(a) Average value is generally computed on a quarterly basis where the taxpayer's usual accounting practice permits such computation.

(b) At the option of the taxpayer or the Director, a more frequent basis (monthly, weekly or daily) may be used. Where the taxpayer's usual accounting practice does not permit computation of average value on a quarterly or more frequent basis, a semi-annual or annual basis may be used where no distortion of average value results. If any basis other than quarterly is used on the return, such basis and the reasons therefor must be fully explained on a separate rider.

Case Notes

Provision in N.J.A.C. 18:7–3.4 for computation of tax based upon number of shares authorized compared to real and personal property alternative tax as mean average value on a quarterly basis. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–8.7 Business allocation factor; determination of receipts fraction

(a) The percentage of the taxpayer's receipts within New Jersey is determined by ascertaining the taxpayer's receipts allocable to New Jersey during the period covered by the return and dividing the sum of the receipts by the taxpayer's total receipts within and without New Jersey during such period.

(b) The receipts of the taxpayer are to be computed on the cash, accrual or other method of accounting used in computation of its net income for Federal income tax purposes. However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return.

Example 1:

Taxpayer is engaged in long-term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting whereby it recognizes the net income on its contracts in their entirety in the year of completion.

The composition of the receipts fraction must be determined in harmony with the entire net income to which it relates. The numerator and denominator of the receipts fraction must reflect the entire contract revenues on completed contracts recognized in entire net income during the period covered by the return.

Example 2:

Taxpayer recognizes income on a sale for tax purposes on the installment method. The numerator and denominator of the receipts fraction should include the same proportion of the sale as is prorated as recognized income to the year covered by the return.

(c) Entire net income shall be included or excluded as follows:

1. All income which is included in entire net income enters into the numerator and denominator of the receipts fraction.

2. Any income which is excluded from entire net income is also excluded from the numerator and denominator of the receipts fraction, except for banking corporations with international banking facilities as provided in P.L.1983, c.422. See N.J.S.A. 54:10A–6.

Example:

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under Section 4(k)(1) of the law must also be excluded in computing the receipts fraction.

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(b) substantially amended and Examples added.

Statutory References

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

18:7–8.8 Scope of allocable receipts

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

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

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

Example:

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

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

Example:

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

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

Example:

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

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

Example:

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

2. Services performed in New Jersey;

3. Rentals from property situated in New Jersey;

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

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

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

Statutory References

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

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

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

ILLUSTRATION
FACTS

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

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

Example 1:

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

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

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

Example 2:

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

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

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

Example 3:

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

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

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

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

Statutory References

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

Case Notes

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

18:7–8.10 Receipts; compensation for services

(a) Receipts from services performed within New Jersey are allocable to New Jersey.

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

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

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

Example

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

(c) Where a lump sum is received by the taxpayer in payment for services within and without New Jersey, the amount attributable to services performed within New Jersey is to be determined on the basis of the relative values of, or amounts of time spent in the performance of those services within and without New Jersey, or by some other reasonable method which should reflect the trade or business practice and economic realities underlying the generation of the compensation for services. Full details must be submitted with the taxpayer's return.

Example 1:

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

Example 2:

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

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

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

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

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

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

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

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

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

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

Illustration

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

$$\$1{,}000{,}000 \times \frac{225{,}000}{750{,}000} \times \frac{100{,}000}{500{,}000} = \$60{,}000$$

$$\$1{,}000{,}000 \times \frac{525{,}000}{750{,}000} \times \frac{450{,}000}{1{,}000{,}000} = \$315{,}000$$

Receipts from services performed within New Jersey $375,000

Assuming no other receipts enter into the computation, the receipts fraction is $\frac{\$\ 375{,}000}{1{,}000{,}000}$ or .375000

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

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

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

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

(e) Receipts arising from the sale of management, administration or distribution services to a regulated investment company shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the procedure prescribed in this subsection.

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

2. For the purposes of this section:

i. "Administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for a regulated investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined herein, to such company.

ii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the Federal Investment Company Act of 1940, as amended.

iii. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1–2m in the case of an individual and under N.J.S.A. 54A:1–20 in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the shareholder's mailing address on the records of the regulated investment company. In the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

iv. "Management services" means the rendering of investment advice to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of a regulated investment company, or the selling or purchasing of securities constituting assets of a regulated investment company, and related activities but only where such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to section 15(a) of the Federal Investment Company Act of 1940, as amended.

v. "Receipts" shall include amounts received directly from a regulated investment company as well as amounts received directly from the shareholders of such regulated investment company in their capacity as such.

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

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(c) substantially amended and examples and illustration added.
Amended by R.1989 d.439, effective August 21, 1989.
See: 21 N.J.R. 1106(a), 21 N.J.R. 2527(a).
Added subsection (e)1–2vi.
Administrative Correction to (c).
See: 21 N.J.R. 3477(a).
Administrative Correction to (c) and Example 1.
See: 22 N.J.R. 363(a).

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.

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 includibility of all business receipts earned within New Jersey in receipts fraction.

18:7–8.13 Business allocation factor; payroll fraction

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

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

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

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

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

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

Statutory References

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

18:7–8.14 Definition of officers and employees

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

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

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

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

Statutory References

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

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

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

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

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

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

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

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

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

Statutory References

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

18:7–8.16 Allocation: International Banking Facilities

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

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

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

18:7–8.17 Non-operational income

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

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

18:7–8.18 (Reserved)

SUBCHAPTER 9. (RESERVED)

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

SUBCHAPTER 10. SECTION 8 ADJUSTMENTS

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

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

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

1. Excluding one or more of the fractions therein;

2. Including one or more other elements, such as expenses, purchases, contract values (minus subcontract values);

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

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

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

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

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

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

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

Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Addition of form number to requirements at (c)3.

Statutory References

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

Case Notes

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

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

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

18:7–10.2, 18:7–10.3 (Reserved)

SUBCHAPTER 11. RETURNS

18:7–11.1 Returns; corporations required to file

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

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

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

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

Statutory References

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

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

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

Statutory References

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

18:7–11.3 Effect of deficiency notice

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

to the judgment of the court of last resort, is the final determination.

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

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

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

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

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

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

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1990 d.102, effective February 5, 1990.
See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).
Added subsections (c) and (d) and example.

Statutory References

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

18:7–11.4 Amended return

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

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

Statutory References

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

Case Notes

Circumstances exist where changes in a taxpayer's taxable income for Federal tax purposes require the taxpayer to file an amended State corporation business tax return; taxpayer's refund claims filed beyond two-year limit; additional assessments unrelated to years for which refunds claimed did not extend claim time limit. Bristol–Myers Co. v. Taxation Div. Director, 3 N.J.Tax 451 (Tax Ct.1981), affirmed 9 N.J. Tax 88, certiorari denied 107 N.J. 121, 526 A.2d 189.

18:7–11.5 Change of accounting period

(a) A taxpayer will not be permitted to change its accounting period for purposes of the Act unless it has first obtained the permission of the Commissioner of Internal Revenue for Federal Income tax purposes where permission is required under the Internal Revenue Code. A copy of such permission must be filed with the Division of Taxation.

(b) The taxpayer will also be required to file a short period return and remit the amount of its tax liability for the period from the close of its last accounting period for which a return was filed to the beginning of its newly authorized accounting period.

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

Statutory References

See N.J.S.A. 54:10A–4 as to definition of "fiscal year" and "privilege period"; and 54:10A–17 as to right of Director to determine a taxpayer's net worth, net income if the period covered by its report is other than the period covered by the Federal income tax report.

Case Notes

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

Filing of consolidated returns for parent corporation and subsidiary prohibited; in determining net worth of investments in subsidiaries, Director was not required to accept corporation's claim as to precise method of accounting used in corporation's books; Director authorized to use equity method of accounting where corporation's books used both cost and equity methods; use of equity method not required to be promulgated as a rule. Bristol–Myers Co. v. Taxation Div. Director, 8 N.J.Tax 133 (Tax Ct.1986), affirmed 9 N.J.Tax 88, certification denied 107 N.J. 121, 526 A.2d 189.

18:7–11.6 Forms of returns

(a) Returns are required to be made on forms prescribed by the Director.

1. In the case of all taxpayers, annual returns are required to be filed on Form CBT–100 or CBT–100S. As used in these rules, references to CBT–100 may be interpreted to include CBT–100S, as the context may require.

2. In the case of all taxpayers entitled and electing to allocate entire net income, the supplemental sheet, to be used in conjunction with Form CBT–100 and containing the allocation schedules, must be completed and annexed to Form CBT–100.

(b) The Director may require any taxpayer to file any other reports and submit any further information he may require in the administration of the provisions of the Act.

(c) Every return shall have annexed to it a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained in the return are true.

1. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation;

2. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of the corporation;

3. Annual return forms are supplied by the Division of Taxation but failure to receive a form does not relieve any taxpayer from the obligation to file a return under the provisions of the Act.

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

Statutory References

See N.J.S.A. 54:10A–18 as to the required forms for returns and any additional statements.

18:7–11.7 Time for filing returns

(a) The appropriate annual Corporation Business Tax return together with payment of the tax, including the required prepayment, must be filed with the Division of Taxation on or before the 15th day of the fourth month after the close of each fiscal or calendar accounting period.

(b) A return is timely filed and deemed delivered on the date of the United States postmark stamped on the envelope. See N.J.S.A. 54:49–3.1.

(c) A return is timely filed when it is mailed to the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday or State holiday.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(b), 17 N.J.R. 2677(b).
(b) and (c) added.
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
N.J.A.C. 18:7–11.7 cite corrected.
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 Corporation tax prepayments; amounts due, N.J.A.C. 18:7–3.7.

Statutory References

See N.J.S.A. 54:10A–15 as to due dates for filing returns under the Act.

18:7–11.8 Time to report change or correction in Federal net income

(a) The report of change or correction in Federal taxable income as the result of an Internal Revenue Service audit must be reported to the Division of Taxation within 90 days of issuance of the report.

(b) Any taxpayer which files an amended return with the United States Treasury Department must file an amended New Jersey Corporation Business Tax return within 90 days thereafter.

(c) After the filing of a report of change or correction on an IRA–100, or CBT–100–X, the Director may, within the time prescribed by law, audit the return and compute and assess the tax based upon the issue or issues set forth in the revenue agent report, but neither the Director nor the taxpayer may change the allocation of entire net income within and without New Jersey as theretofore computed.

(d) If the Division of Taxation assesses and bills a deficiency to a taxpayer resulting from a Federal change and if the taxpayer pays the deficiency in full within the 90 day period from the issuance of the report, then no separate return need be filed by the taxpayer reflecting the Federal change.

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.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
N.J.A.C. 18:7–11.8 cite corrected.
Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Deletion of text at (a) and addition of text regarding reporting changes resulting from IRS audit. Clarification of text at (c).
Amended by R.1990 d.102, effective February 5, 1990.
See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).
Added subsection (d), upon adoption.
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

For definition of "final determination", see N.J.A.C. 18:7–11.2 (Returns where Federal net income is changed) of this chapter.

Statutory References

See N.J.S.A. 54:10A–13 as to requirement that taxpayer report any amended return for his Federally taxable income to New Jersey, Division of Taxation within 90 days.

Case Notes

Interest on deficiency. Texaco, Inc. v. Director, Div. of Taxation, Dept. of Treasury, 13 N.J.Tax 572 (1994).

Limitations period for seeking refund of New Jersey corporate tax was not extended by furnishing amended tax return to IRS. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Second corporate return was "final return" commencing limitations period for refund. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Limitations period for seeking refund of corporate taxes was not extended due to equitable considerations. 26 U.S.C.A. § 338; N.J.S.A. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

18:7–11.9 Time for filing returns for unauthorized foreign corporations doing business in New Jersey

(a) A foreign corporation which does business, employs or owns capital or property or maintains an office in New Jersey without authorization or after its withdrawal from the State, is subject to tax for each calendar or fiscal accounting period or part thereof during which it has engaged in any such activity. The corporation is subject to the same requirements with respect to filing returns and paying taxes as a duly authorized corporation.

(b) In this connection see N.J.S.A. 14A:13–11 under which every foreign corporation transacting any business, directly or indirectly, in New Jersey without having first obtained a Certificate of Authority to do business shall for each offense forfeit to the State the sum of $200.00 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State.

Statutory References

See N.J.S.A. 14A:13–11 as to every foreign corporation which shall transact any business in New Jersey, directly or indirectly, without first having obtained a Certificate of Authority to do business forfeiting to the State for each offense the sum of $200.00 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State. See N.J.S.A. 54:10A–4 as to definitions of "fiscal year" and "privilege period". See N.J.S.A. 54:10A–15 as to due dates for filing returns under the Act.

18:7–11.10 Failure to file return or make payment when due

See N.J.A.C. 18:7–14.1 (Penalties) of this chapter.

18:7–11.11 Returns required to be filed by corporation ceasing to be subject to tax

(a) A domestic corporation which ceases to possess its franchise is required to file a return covering each year or period for which no return was previously filed.

(b) A foreign corporation which surrenders its authority to do business or otherwise ceases to have a taxable status in New Jersey is required to file a return covering each year or period for which no return was filed.

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

Statutory References

See N.J.S.A. 54:10A–2, 15, 17 as to requirements for filing short period returns.

18:7–11.12 Extension of time to file return; interest and penalty

(a) No extension will be granted unless request is made on Tentative Return Form CBT–200T and is actually received by the Division or postmarked on or before the due date of the return. The Tentative Return must:

1. Show the information required, including the exact name, address, New Jersey serial number, the Federal employer identification number, if any, and the amount of the estimated tax liability;

2. Be accompanied by a remittance to cover the unpaid balance of the estimated tax due for the accounting year for which an extension of time to file the return is requested; and

3. Be accompanied by the payment on account of its tentative tax which is due on or before the original due date for filing of the return for which an extension is requested.

(b) Taxpayers using the New Jersey Corporation Business Tax Return Form CBT–100 may request an extension for a period not exceeding six months and will receive automatic approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return Form CBT–200T, and has paid any unpaid balance of its estimated tax.

1. In general, extension requests shall not be granted for any period exceeding six months from the original due date.

2. Initial extensions will be confirmed in writing by the Division.

3. If the final return is not submitted within the extended period, penalties for delinquent filing will be applied as if no extension has been granted.

(c) Banking and financial corporations may request an extension of time to file return subject to the following conditions.

1. No extension will be granted unless request is actually received by the Division or postmarked on or before the due date of the return;

2. The extension shall be made on a copy of page 1 of Form BFC–1, including the exact name, address, New Jersey Serial number, if applicable, the Federal employer identification number, if any, and the amount of tentative tax liability.

3. Be accompanied by a remittance to cover the unpaid balance of the tentative tax due for the accounting year for which an extension of time to file the return is requested; and

4. Be accompanied by a completed copy of Schedule L from Form BFC–1, and a copy of the taxpayer's Federal extension request.

5. In general, extension requests shall not be granted for any period exceeding five months from the original due date.

6. Where the taxpayer has requested a Federal extension, the Division shall grant the taxpayer an extension for a period not exceeding five months. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a two month extension for filing the return if sufficient cause is submitted. Sufficient cause should be interpreted so that it is impossible or wholly impracticable to file a return within two months from the original due date of the return.

(d) Extensions may be confirmed in writing by the Division, if necessary.

(e) If the original return is not submitted within the extended period, penalty for delinquent filing will be applied as if no extension has been granted.

(f) Interest and penalty are chargeable as follows:

1. The total amount of the tax due must be paid on or before the original due date for filing the return.

2. Any unpaid portion of the tax on the final return which is in excess of the amounts paid shall bear interest at the rate of one and one-half percent per month, or fraction thereof from the original due date of the return to the date of actual payment or December 8, 1987. On and after December 9, 1987 the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment. On and after July 1, 1993, the unpaid portion of the tax shall bear interest at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

3. In addition, if the amounts paid up to and including the time for filing of the tentative return total less than the lesser of 90 percent of the amount of tax due, or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a tax liability equal to the tax computed at the rates applicable to the current accounting year applied to the facts shown on the return for and the law applicable to the preceding accounting year, the taxpayer shall be liable for a penalty of five percent per month, or fraction thereof, on the amount of underpayment. In this context, "filing of the return" means filing its tentative return incident to its request for extension, "the time for filing" means the original due date for filing the return, and "amount of underpayment" means the difference between 100 percent of the tax shown on the final return and the total of all installments of estimated tax paid on or before the original due date for filing the return, as well as any amount paid with the tentative return.

(g) Where taxpayer makes an election on Federal form 8023, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that a CBT–200T has been properly filed in accordance with these rules.

(h) Warning:

1. No request for extension will be considered unless taxpayer has complied with all the filing requirements for extensions set forth in the rule.

Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended on an emergency basis, R.1981 d.163, effective May 11, 1981.
Expired July 10, 1981, without readoption.
See: 13 N.J.R. 377(a).
Rule substantially amended to provide for the imposition of interest and penalties on Corporation Business Tax payments made during additional extended period for which an additional extension was granted.
As amended, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Section substantially amended.
Amended by R.1983 d.497, effective November 7, 1983.
See: 15 N.J.R. 1366(a), 15 N.J.R. 1872(c).
Text 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).
Added text to (f) "or December 8, 1987. On ...".
Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (g), recodified old (g).
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–15 as to the requirement to file an annual return; 10A–17 as to penalties for late filing of returns; 10A–15 as to

necessity of certification of taxpayer's return by an authorized corporate officer; 10A–19 as to extension of the due date and interest to be assessed during such extension period; and 49–6 as to right of Director to issue deficiency assessments or reassessments after final return is filed.

18:7–11.13 Place for filing returns and payment of tax

(a) The return together with remittance payable to "State of New Jersey" must be forwarded to the New Jersey Division of Taxation, CN666, Trenton, New Jersey 08646.

(b) A separate remittance is required to be made with each return.

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

Statutory References

See N.J.S.A. 54:10A–15, 18 as to manner and form of tax payment.

18:7–11.14 Secrecy of returns

The returns are deemed secret and confidential and New Jersey law prohibits the unauthorized disclosure of information obtained from the returns or the records pertaining thereto.

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

Statutory References

See N.J.S.A. 54:50–8 as to prohibition against Director or any employee of the Division of Taxation divulging, disclosing, or permitting another to inspect any records or files pertaining to the administration of the tax under the Act.

18:7–11.15 Consolidated returns

(a) Corporations are not permitted to file consolidated returns. Provided, however, any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof holding a license pursuant to the Casino Control Act shall file a consolidated corporation business tax return as described at N.J.A.C. 18:7–1.17.

(b) Except as provided in (a) above, where a taxpayer has filed a consolidated return with the Internal Revenue Service for Federal income tax purposes, it must complete its return under the act and must reflect its entire net income and entire net worth as if it had filed its Federal return on its own separate basis.

(c) A taxpayer under (b) above shall also file a copy of the Affiliations Schedule Form 851, which is filed with Form 1120 for Federal income tax purposes.

(d) For New Jersey purposes, a selling parent in a consolidated group may not exclude gain on the sale of target stock pursuant to a Federal election under IRC 338(h)(10). Each corporation is required to report income on a separate entity basis under N.J.A.C. 18:7–5.1(c).

(e) Where a target corporation recognizes gain as the result of an IRC 338(h)(10) election, the target reports and pays tax on such gain pursuant to N.J.A.C. 18:7–5.1(a).

Amended by R.1985 d.453, effective September 3, 1985.
See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).
Added text to (a): "Provided, however, any ... at N.J.A.C. 18:7–1.17."
Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (d) and (e).

Statutory References

See N.J.S.A. 54:10A–2 as to requirement for annual payment of tax and 10A–14 as to right of Director to require copies of pertinent extracts of its Federal income tax return or other records if taxpayer has filed a consolidated Federal income tax return.

Case Notes

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

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).

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

The term "books of the corporation" includes financial statements prepared in accordance with applicable regulations in the sense encompassed by the term "financial reporting"; definition of the term by rule not necessary due to adequate legislative standard; Director's equity method of accounting in valuation of corporation's investments and subsidiaries not demonstrated to be unfair. Cities Service Co. v. Director, Div. of Taxation, 5 N.J.Tax 257 (Tax Ct.1983).

18:7–11.16 Return to be filed by an S Corporation

(a) Except as may be provided otherwise by this Section, an S corporation, that is, one which has made an election under Section 1361 et seq. of the Internal Revenue Code of 1954 as amended and supplemented, must complete its New Jersey Corporation Business Tax Return on its own separate basis as though no election had been made under the Federal Statute.

(b) Except as may be provided otherwise by this section, in preparing its Corporation Business Tax Return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey Corporation Business Tax purposes, when the taxpayer has elected Federal S corporation treatment. Certain amounts not necessarily limited to I.R.C. Section 179 expenses, and 1120–S dividends that qualify for the dividend exclusion are not included as part of the S corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K–1 Schedule. For Corporation Business Tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C corporation and no Federal S corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of $100,000. However, not included in computation of such amount is a $5,000 Federal I.R.C. Section 179 expense and $10,000 of S Corporation dividends received from a different corporation which qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT–100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

$100,000	Federal Taxable Income
(5,000)	I.R.C. Section 179 Expense
10,000	Qualifying S Corporation Dividends
$105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. Section 337. When disposing of its real property during the 12 month distribution period, the corporation recaptures for Federal tax purposes $5,000 of I.R.C. Section 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the Federal I.R.C. Section 337 election and the I.R.C. Section 1363(b) election. Since the S Corporation is treated as a C Corporation for State tax purposes, the I.R.C. Section 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT–100.

(c) With respect to tax years beginning after July 7, 1993, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. The filing of an election form CBT–2553 with the Division to be recognized as a New Jersey S corporation is required. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided in N.J.S.A. 54:10A–5(c)(2) and (3) and to report and pay its tax liability on Form CBT–100S.

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.1986 d.464, effective November 17, 1986.
See: 18 N.J.R. 1686(b), 18 N.J.R. 2332(a).
(b) added.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–2 as to requirement for annual filing of return under this Act despite other arrangements for filing a Federal return.

Case Notes

Foreign S corporation's distribution to New Jersey taxpayer would be treated as if received from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166.

Absent other evidence, distribution from foreign S corporation to New Jersey taxpayer would be treated as from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166.

Pass-through losses and gains are to be excluded when calculating net gains and losses. Walsh v. State, Dept. of the Treasury, Div. of Taxation, 10 N.J. Tax 447 (1989), affirmed and remanded 240 N.J.Super. 42, 572 A.2d 222.

18:7–11.17 Copies of tax returns or other information required

(a) The Director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return made to any agency of the Federal Government, or of this or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or securities exchange regulation.

(b) The Director may require all taxpayers to keep whatever records he may prescribe, and he may require the production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the tax and its enforcement and collection.

(c) The Director may, also by general rule or special notice, require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax pursuant to such regulations, at whatever times and in whatever form or manner and to whatever extent he may prescribe under law.

Statutory References

See N.J.S.A. 54:10A–14 as to right of the Director to require taxpayer to submit pertinent extracts for its Federal income tax return, other returns to government agencies, or other records.

18:7–11.18 Reproduction of forms

(a) Subject to conditions and requirements of this section, the Director will accept for filing purposes reproductions of the New Jersey Corporation Business Tax Return Forms CBT–100, CBT–100–X, and CBT–200T in lieu of the official forms printed and furnished by the Director. Anyone contemplating the use of reproduced forms is cautioned to observe that the conditions herein stated may vary from the Federal regulations relating to reproduction of Federal tax forms.

(b) In order to be acceptable for filing purposes, reproduction of Forms CBT–100, CBT–100–X, and CBT–200T must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official form, produced by photo-offset, photo-engraving, photo-copying or other similar reproduction processes;

2. Reproductions must be on paper of substantially the same color, weight and texture and of a quality at least as good as that used in the official form;

3. Reproductions must be of the same size as that of the official form, both as to overall dimensions of the paper and the imagery produced;

4. Format of pages shall adhere to following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable.

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each individual page and the fold must be the same as on the official form.

iii. Separate pages must be fastened together in numerical order.

iv. Each separate page must be clearly identified, by listing at the top of the page the corporate name and New Jersey serial number.

5. The color and quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible;

6. The taxpayer's full and correct name and address and identifying serial number as it appears on the pre-stenciled form furnished by the Director must be typed or printed on the reproduction;

7. All filled-in information on Page 1 of the Return must be typed or printed;

8. Reproductions of forms may be made after insertion of the tax computations and the other required information;

9. All signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process;

10. The Director does not undertake to approve or disapprove the specific equipment or process in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostats do not meet all the above conditions;

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

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

Statutory References

See N.J.S.A. 54:10A–18 as to authority of Director to design tax return forms and determine the information to be required thereon.

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

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7–12.1 Short period returns; when required

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

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

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

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

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

4. A corporation which changes its accounting period.

(c) A corporation that has elected Federally to utilize the provisions of IRC 338(h)(10) shall be required to file for New Jersey purposes a one-day return under IRC 338 as if the (h)(10) election had not been made Federally.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Cross References

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

Statutory References

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

Case Notes

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

18:7–12.2 Short period returns; proration procedures

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

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

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

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

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

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

Statutory References

See N.J.S.A. 54:10A–2 as to requirement to file a return under Act for each year taxpayer holds franchise; 10–4 as to definition of allocation factor, net worth, and net income; 10A–5 as to how taxpayer shall compute the amount of tax payable; 10A–6 as to how taxpayer maintaining place of business outside New Jersey shall compute his entire net income and entire net worth; 10A–15 as to fiscal or calendar accounting periods required; and 10A–17 as to right of Director to independently determine entire net worth and entire net income of taxpayer making short period report.

18:7–12.3 Short period returns; allocation

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

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

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

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–6 as to how taxpayer maintaining regular place of business outside New Jersey shall compute his entire net income, entire net worth, and 10A–17 as to right of Director to independently determine entire net income, entire net worth of taxpayer making short period return.

18:7–12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7–13.1 Assessment and reassessment

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

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

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

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

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

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five

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

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

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

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

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

(d) If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in the taxable income, or if a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer shall file a report of the change or correction or an amended return within 90 days after the final determination of any change, correction, renegotiation, computation, or recomputation.

(e) For reports or returns filed prior to July 1, 1993, and within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, but without changing the allocation of entire net income within and without New Jersey as previously computed, and shall so notify the taxpayer. For tax liabilities accruing on and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date of filing the report of change or correction or an amended return. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added text in (a)3 "December 8, 1987. On ..."; changed percentage points in (a)4 from "three quarters of one percent per month" to "three percentage points above the prime rate, compounded daily."
Administrative Correction: Incorporated (d)1 into (d) and deleted (d)2–3.
See: 22 N.J.R. 3504(a).
Amended by R.1992 d.404, effective October 19, 1992.
See: 24 N.J.R. 3275(a), 24 N.J.R. 3733(a).
Revised (a)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.1995 d.499, effective September 5, 1995.
See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Cross References

See Additional tax; change in Federal tax, N.J.A.C. 18:7–11.2, 18:7–11.3, 18:7–11.4, 18:7–11.6, 18:7–13.7.

Statutory References

See N.J.S.A. 54:10A–13 as to requirements and time limits for filing amended tax returns under the Act should a change, correction, or recomputation of Federally taxable income occur, and 49–6 as to Director's right to recompute and reassess any such deficiency assessment filed by taxpayer.

Case Notes

Computation of interest mitigated by absence of fraud. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–13.2 Hearing; protest

(a) Rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 90 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:1–1.8, and may request a hearing;

2. Thereafter the Director shall grant an informal hearing to the taxpayer, if requested.

(b) Hearings before the Division of Taxation are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

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.1991 d.23, effective January 22, 1991.
See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).
Reference to N.J.A.C. 18:1–1.8 added; (b), regarding powers of Director, deleted; (c) recodified to (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. 54:49–18 as to procedures and time limits for filing a protest against any assessment under the Act, and taxpayer's right to a hearing thereon.

18:7–13.3 Appeal

Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A–13 et seq.).

Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Reference to State Tax Uniform Procedure Law added. Text at (b) and (c) deleted in entirety.

Case Notes

Time and security requirements for Corporation Business Tax Act appeal (citing former rule as N.J.A.C. 17:18–1.23); failure to post security did not deprive Division of Tax Appeals of jurisdiction. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–13.4 Service of notice on taxpayers

(a) Any notice required to be given by the director pursuant to the State Tax Uniform Procedure Law, N.J.S.A. 54:48–1 et seq., may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by that person pursuant to the provisions of the State Tax Uniform Procedure Law, or of any State tax law, or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. A notice may at the prescription of the director include on its face a designation which shall identify the notice for purposes of communication.

(b) An assessment notice pursuant to N.J.S.A. 54:49–5, N.J.S.A. 54:49–6 or N.J.S.A. 54:49–7 shall contain the statements required pursuant to subsections a, b, and f of N.J.S.A. 54:48–6.

(c) An assessment notice pursuant to N.J.S.A. 54:49–5, 54:49–6 or 54:49–7 shall include a statement of the reason for the assessment sufficient to inform a reasonable lay person of the statutory requirements which in the opinion of the Director require the assessment, the actions or omissions of the taxpayer which require the assessment, or the nature of the insufficient documentary evidence, if any, which has prompted the assessment, including:

1. In the case of an underpayment or failure of payment, a statement of the corresponding alleged correct amount and correct date of payment; and

2. In the case of a failure to file a return, a statement of the alleged required filing date.

(d) A refund determination notice pursuant to N.J.S.A. 54:49–15 shall include the statements required pursuant to subsections b, d and f of N.J.S.A. 54:49–6.

(e) A final determination notice pursuant to N.J.S.A. 54:48–18 shall include the statements required pursuant to subsections c and f of N.J.S.A. 54:48–6.

(f) The lack of any statement otherwise required to be included with a notice pursuant to this section or the lack of any description otherwise required pursuant to (c) of above shall not invalidate such notice.

(g) All notices of assessment related to final audit determination and "Notice and Demand for Payment of Tax" letters will be sent by registered or certified mail.

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).

Statutory References

See N.J.S.A. 54:50–6 as to form of service of notice required of the Director to be given to the taxpayer.

18:7–13.5 Closing agreements

(a) The Director is authorized to enter into a written agreement with any taxpayer relating to the liability of such taxpayer in respect to any tax, fee, penalty or interest imposed by the Act, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

1. The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this State; and

2. In any suit, action or proceeding, the above agreement, or any determination, assessment, collection, payment, cancellation, refund, abatement or credit made in accordance with it shall not be annulled, modified, set aside or disregarded.

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. 54:53–1 through 54:53–6 as to effect of closing agreements between Director and taxpayer.

18:7–13.6 Time for payment of tax

(a) The annual franchise tax must be paid to the Director in full on or before the due date of the return. For accounting periods ending on or after December 31, 1980, the annual franchise tax, including any estimated or installment payments required to be made pursuant to N.J.A.C. 18:7–3.13 must be paid to the Director in full on or before the due date of the return.

1. For due dates of returns see N.J.A.C. 18:7–11.7;

2. For penalties upon failure to file returns or pay taxes when due, see N.J.A.C. 18:7–14.1 and 2.

(b) Installment payments are due on or before the respective due dates as set forth in N.J.A.C. 18:7–3.13.

(c) A taxpayer which ceases to be subject to tax under the Act must pay the entire tax for each fiscal or calendar accounting period or part of a period during which it had a taxable status. See N.J.A.C. 18:7–11.11.

Amended by R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
(a): Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "For accounting periods ending on or after December 31, 1980 ... return".
(b) added.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–15 as to requirements for use of fiscal or calendar year accounting periods and due dates thereunder.

18:7–13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment on December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of five percentage points above the prime rate to be compounded daily from the date such tax was originally due to the date of actual payment, and on or after July 1, 1993 at the rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year, from the date such tax was originally due to the date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act and its provision, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

(c) For penalties in case of failure to pay tax when due see N.J.A.C. 18:7–14.1 and 14.2.

Amended by R.1986 d.284, effective July 21, 1986.
See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).
(a) 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 (a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
At (a) annual percentage rate changed from five to three percentage points above prime; at (b) language added in parentheses regarding exception on or after December 9, 1987.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49–6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

18:7–13.8 Claims for refund; when allowed

(a) For claims accruing prior to July 1, 1993, the two year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For claims accruing on and after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. All claims barred by the two year statute of limitations on July 1, 1993 shall continue to be barred. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:7–11.7(b)).

(b) For claims accruing prior to July 1, 1993, the two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For claims accruing on and after July 1, 1993, the refund claim period is four years.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT–200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (CBT–100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA–100) (or a CBT–100–X) is an amended return.

(d) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7–11.8(a) that results in a diminution of entire net income for any year, the two year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA–100 is filed with the Division. For claims accruing on and after July 1, 1993, the limitation period is four years from the date that the timely filed Form IRA–100 is filed with the Division. Unless the IRA–100 or CBT–100–X is filed in a timely fashion under N.J.A.C. 18:7–11.8(a), the refund claim will not be considered.

(e) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7–11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT–100). For claims accruing on and after July 1, 1993, the claim for refund must be filed within four years.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7–13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49–16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49–14.

(g) Where the Director assesses additional tax by way of a deficiency assessment or final determination and the taxpayer pays the deficiency, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A–8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7–8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed return its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7–10.1. In addition, a copy of form CBT–100–X, Claim for Refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the director is made on Form CBT–100–X and is addressed to:

Audit Adjustment Branch
50 Barrack Street, CN 019
Trenton, NJ 08646–0019

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent CBT–100. A penalty for late filing of the CBT–100 may be imposed under N.J.S.A. 54:49–4.

Example 2: One year after filing a CBT–100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files a Form CBT–100–X claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days. N.J.S.A. 54:10A–13. If the CBT–100–X claiming a refund had not been filed within 90 days of filing the Form 1120X (see N.J.S.A. 54:10A–13), the refund would not be granted regardless of whether the claim was received prior to the expiration of the applicable refund statute of limitation period.

Example 3: Taxpayer receives a deficiency assessment with which it disagrees. It does not contest the assessment with the Division or in Tax Court within 90 days. It pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within four years of having made its payment of the assessment. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:10A–19.2, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49–5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA–100) or CBT–100–X relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Repeal and New Rule, R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Amended by R.1993 d.660, effective December 20, 1993.
See: 25 N.J.R. 1842(a), 25 N.J.R. 5943(a).
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.1995 d.499, effective September 5, 1995.
See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Statutory References

See N.J.S.A. 54:49–14 as to claims for refunds.

Case Notes

Limitations period for seeking refund of corporate taxes was not extended by furnishing IRS with extended return. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Second corporate business tax return triggered limitations period for seeking refund of corporate taxes paid. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Equitable considerations did not entitle corporate taxpayer to extension of limitations period for seeking refund of corporate taxes. 26 U.S.C.A. § 338; N.J.S.A. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

18:7–13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

(b) If there is no liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

(c) If the Director shall reject the claim for refund in whole or in part, he shall make an order accordingly and serve a notice upon the taxpayer.

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than $1.00. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

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. 54:49–15 as to procedures required of the Director should he determine subsequent to the taxpayer's filing of a claim for refund, either that an overpayment has been made or that the claim should be rejected, and 54:49–15.1 as to interest on overpayments.

18:7–13.10 Refund for erroneous payments

(a) Where no questions of fact or law are involved and it appears from the records of the Director that any moneys have been erroneously or illegally collected from any taxpayer or have been paid by any taxpayer under a mistake of fact or law, the Director may at any time within two years of payment, upon making a record in writing of his reasons therefor, certify to the State Treasurer that the taxpayer is entitled to a refund.

(b) The Treasurer shall then authorize payment from the appropriation for this purpose.

Statutory References

See N.J.S.A. 54:49–16 as to right of Director to order a refund of tax overpaid at any time within two years of overpayment.

18:7–13.11 Lien of tax

(a) The tax imposed by the Act, including the required tax prepayment for accounting periods ending March 31, 1968 and thereafter, shall constitute a lien on all the taxpayer's property and franchises on and after January 1 of the year next succeeding the year in which it is due and payable.

1. All interest, penalties and costs of collection which fall due or accrue shall be added to and become a part of this lien;

2. The lien date is not affected by an extension of time which may be granted for filing the return.

(b) Notwithstanding the provisions of any other law, all such taxes, interest, penalties and costs imposed or incurred under the Act, whether levied or assessed or not, shall unless sooner paid continue and remain a lien on all of the taxpayer's property and franchises until the expiration of ten years after January 1 of the year in which they become due and payable.

Statutory References

See N.J.S.A. 54:10A–15 as to requirement for annual payment of tax under the Act, and 10A–16 as to liability of delinquent taxpayer to lien for overdue taxes, interests, penalties, and costs of collection.

18:7–13.12 Release of property from lien

(a) The Director may release any property from the lien of any tax, interest or penalty imposed upon any corporation in accordance with the provisions of the Act, or of any certificate, judgment or levy procured by him, upon written application made to him and upon payment of a $5 fee, provided:

1. Payment be made to the Director of such sum as he shall deem adequate consideration for release; or

2. Deposit be made of whatever security or bond the Director shall deem proper to secure payment of any debt evidenced by any tax, interest, penalty, cost of collection, certificate, judgment or levy, the lien of which is sought to be released; or

3. The Director is satisfied that payment of the tax is otherwise provided for.

(b) The application for release shall be in such form as shall be prescribed by the Director and shall contain an accurate description of the property to be released together with whatever other information the Director may require. The release shall be given under the seal of the Director and may be recorded in any office in which conveyances of real estate may be recorded.

Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added "cost of collection" to (a)2.

Statutory References

See N.J.S.A. 54:10A–30 as to requirements taxpayer must meet to obtain release of his property from lien for overdue corporation franchise taxes.

18:7–13.13 Certificate as to lien for unpaid corporation franchise taxes

(a) Upon the receipt of a written application accompanied by the fee provided for in subsection (b) of this Section, the Director shall issue to the applicant a certificate certifying with respect to the corporation or corporations listed in the application one of the following:

1. That there are no liens in favor of the State for corporation franchise taxes due pursuant to the provisions of the Act; or

2. That there are liens as stated in the certificate; or

3. That there exists some other status which the Director's records disclose.

(b) The fee for a tax lien status certificate shall be $25.00 for each corporation listed in the application for which a certificate is requested.

(c) The form of the application prescribed by the Director requires that it shall contain a concise and reasonably definite description of the property and of the type of transaction in connection with which the application is made, as well as certain other specified pertinent information.

(d) Any person who shall acquire for a valuable consideration an interest in lands covered by such a certificate in reliance thereon shall hold his interest free from any lien held by the State for unpaid corporation franchise taxes due pursuant to the provision of the Act and not shown on the certificate.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Raised the fee for a tax lien status certificate from "$5.00" to "$25.00".

Statutory References

See N.J.S.A. 54:20A–29 as to right to taxpayer to apply for and obtain certificate declaring its status in regard to liens for unpaid corporate franchise taxes.

18:7–13.14 (Reserved)

SUBCHAPTER 14. PENALTIES, MISCELLANEOUS

18:7–14.1 Penalties

(a) Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law (N.J.S.A. 54:48–1, et seq.) and N.J.A.C. 18:2–2.1 et seq.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Deleted text and substituted new.

Statutory References

See N.J.S.A. 54:10A–15 as to due dates for taxes under the Act, and 10A–17(b) as to daily penalties and monthly interest imposed upon delinquent taxpayers.

18:7–14.2 Extension of time; failure to file or pay on time

See N.J.A.C. 18:7–11.12.

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).
Text deleted and replaced by "See N.J.A.C. 18:7–11.12".

Statutory References

See N.J.S.A. 54:10A–19 as to rate of interest imposed upon taxpayer for when granted period of extension to file a return.

18:7–14.3 Arbitrary assessment where taxpayer withholds return

(a) The law provides that if any taxpayer shall fail to file a return as required by law, the Director may make an estimate of the taxable liability of that taxpayer from any information he may obtain; and

(b) According to the estimate so made by him, the Director shall:

1. Assess the taxes, fees, penalties, cost of collection and interest due the State from the taxpayer;

2. Give notice of the assessment to the taxpayer;

3. Make demand upon the taxpayer for payment.

Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added "cost of collection".

Statutory References

See N.J.S.A. 54:49–5 as to right to make an independent assessment of tax liability for taxpayer who fails to report under the Act.

Case Notes

Estimation of corporate business tax procedures applied to examination and audit of filed returns. Peoples Exp. Co., Inc. v. Director, Div. of Taxation, 10 N.J.Tax 417 (1989).

18:7–14.4 Arbitrary assessment where taxpayer intends absconding; concealment, immediate payment demanded

(a) If the Director finds that a taxpayer plans to depart this State or to remove its property or any property subject to the lien of the Corporation Business Tax, from this State or to conceal its property, or such other property, or to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffectual proceeding to assess or collect the tax for which it is liable under the Act, and thus it becomes important that such proceedings be brought without delay, the Director may immediately make an arbitrary assessment as provided in N.J.S.A. 54:49–5 whether or not any report is then due by law.

(b) The Director may proceed under such arbitrary assessment to collect the tax, or compel security for the same, and thereafter shall cause notice of such finding to be given to such taxpayer, together with a demand for an immediate return and immediate payment of the tax.

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

Statutory References

See N.J.S.A. 54:49–7 as to right of Director to make an arbitrary assessment should the taxpayer conceal himself or his property, or abscond.

18:7–14.5 Forfeiture of charter; conditions warranting

(a) If a corporation created under any law of this State shall for two consecutive years fail to pay the State a tax which has been or shall be assessed against it under the Corporation Business Tax Act, the charter of such corporation shall be declared void.

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

Statutory References

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

18:7–14.6 Forfeiture of charter; procedure

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

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

Statutory References

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

18:7–14.7 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substituted "crime of the fourth degree" for "misdemeanor".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Acting under voided charter a crime of the fourth degree".

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

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

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

Statutory References

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

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

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

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

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

Statutory References

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

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

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

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

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

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

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

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

Statutory References

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

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

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

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

Statutory References

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

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

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

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

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

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

Amended by R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
(a)1 and (a)2 added.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:50–18 as to conditions creating personal liability of corporation officials for unpaid taxes.

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

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

18:7–14.17 Tax Clearance Certificate

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

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

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

"Certification" means a writing on behalf of a corporation making an undertaking executed under oath of its president, vice president or treasurer which represents that the corporation making the undertaking has a net worth not less than ten times the amount of all taxes paid by a corporation applying for a Tax Clearance Certificate during the last

complete year in which it filed tax returns with the State of New Jersey. Net worth, for this purpose, is net worth defined in the conventional accounting sense determined consistent with generally accepted accounting principles and not as defined at Section 4(d) of the Corporation Business Tax Act nor at N.J.A.C. 18:7–4.1.

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

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

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

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

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

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

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

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

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

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

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

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

3. Solely in the case where:

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

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

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

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

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

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

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

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

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

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

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

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

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
Added (b), corporate dissolution before commencing business and (c), dissolution of a corporation without assets.

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

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

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

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

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

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

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

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

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

SUBCHAPTER 15. URBAN ENTERPRISE ZONES ACT

Authority

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

18:7–15.1 General

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

(b) No business can obtain tax benefits under this subchapter unless it meets the definition of a "qualified business" in N.J.A.C. 18:7–15.2.

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

18:7–15.2 Definitions

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

A "qualified business" means either:

1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Resident within the zone, within another zone, or within a qualifying municipality;

ii. Either unemployed, while residing in New Jersey, for at least six months prior to being hired, or recipients of New Jersey public assistance programs, for at least six months prior to being hired;

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. The credits shall not be passed through a partnership doing business in a zone to an unqualified corporation which is a partner in the partnership.

"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).

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

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 (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 income".

18:7–16.4 (Reserved)

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "International Banking Facilities: business allocation factor".

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".