

CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

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

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

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

Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979.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

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

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

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

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

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Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1999 d.116, effective March 12, 1999. See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

- 18:7-1.1 Corporation business tax; general provisions
- 18:7-1.2 Total tax self-assessed
- 18:7-1.3 Definition of taxpayer
- 18:7-1.4 Definition of corporation
- 18:7-1.5 Limited partnership associations subject to the Act
- 18:7-1.6 Subjectivity to tax; how created
- 18:7-1.7 Domestic corporations subject to tax
- 18:7-1.8 Foreign corporations subject to tax
- 18:7-1.9 Doing business in New Jersey; definition and rules of construction
- 18:7-1.10 Foreign corporations engaged in interstate commerce
- 18:7-1.11 Foreign corporations stocking goods in New Jersey
- 18:7-1.12 Exempt corporations

- 18:7-1.13 Regulated investment company; definition
- 18:7-1.14 Subjectivity of foreign banks and foreign national banks
- 18:7-1.15 Investment company; definition
- 18:7-1.16 Financial business corporation; definition
- 18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return
- 18:7-1.18 Definition of S corporation
- 18:7-1.19 Definition of New Jersey S corporation
- 18:7-1.20 Definition of public utility
- 18:7-1.21 Definition of qualified investment partnership
- 18:7-1.22 Definition of savings institution
- 18:7-1.23 Definition of partnership

SUBCHAPTER 2. NATURE OF TAX

- 18:7-2.1 Nature of tax; in general
- 18:7-2.2 Calendar and fiscal years; definitions
- 18:7-2.3 Federal calendar or fiscal year for reporting
- 18:7-2.4 Proof of Federal accounting period
- 18:7-2.5 Proof of accounting period other than Federal basis
- 18:7-2.6 Subject corporations must file on basis of calendar year period unless otherwise permitted
- 18:7-2.7 Effect of failure by a corporation to establish accounting period
- 18:7-2.8 Effect of failure by a corporation to submit proof of an established fiscal year accounting period
- 18:7-2.9 Effect of proof of established fiscal year accounting period submitted late
- 18:7-2.10 Period of application of tax
- 18:7-2.11 Component factors of tax base
- 18:7-2.12 Application of State franchise tax to corporations
- 18:7-2.13 Conditions destroying franchise and franchise tax
- 18:7-2.14 Allocation of payments received with CAR-100

SUBCHAPTER 3. COMPUTATION OF TAX

- 18:7-3.1 General bases for computation of tax
- 18:7-3.2 (Reserved)
- 18:7-3.3 (Reserved)
- 18:7-3.4 Minimum tax
- 18:7-3.5 (Reserved)
- 18:7-3.6 Tax rates—corporations, S corporations and surtax
- 18:7-3.7 (Reserved)
- 18:7-3.8 Investment company; tax self-assessed and payable
- 18:7-3.9 (Reserved)
- 18:7-3.10 Regulated investment company; tax payable
- 18:7-3.11 (Reserved)
- 18:7-3.12 Method of accounting
- 18:7-3.13 Estimated tax
- 18:7-3.14 Estimated payment for fourth quarter 2002
- 18:7-3.15 Interest on underpayment of installment payments
- 18:7-3.16 Banking corporations and financial business corporations
- 18:7-3.17 Coordination of tax credits
- 18:7-3.18 Recycling tax credit
- 18:7-3.19 Smart moves for business program (formerly employer trip reduction program) tax credit
- 18:7-3.20 Enterprise zone employees tax credits
- 18:7-3.21 Manufacturing equipment and employment investment tax credit
- 18:7-3.22 New jobs investment tax credit
- 18:7-3.23 Research credit
- 18:7-3.24 Effluent equipment tax credit
- 18:7-3.25 Economic recovery tax credit
- 18:7-3.26 HMO assistance fund tax credit
- 18:7-3.27 Neighborhood revitalization State tax credit
- 18:7-3.28 Redevelopment authority project tax credit

SUBCHAPTER 4. ENTIRE NET WORTH

- 18:7-4.1 through 18:7-4.4 (Reserved)
- 18:7-4.5 Indebtedness owing directly or indirectly
- 18:7-4.6 Receivables offset against indebtedness owing directly or indirectly

- 18:7-4.7 Governmental obligations and securities
- 18:7-4.8 through 18:7-4.10 (Reserved)
- 18:7-4.11 Subsidiary corporations; definition
- 18:7-4.12 through 18:7-4.18 (Reserved)

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

- 18:7-5.1 Entire net income; definition
- 18:7-5.2 Entire net income; how computed
- 18:7-5.3 Tax paid to foreign country or United States possession; when deductible from net income
- 18:7-5.4 Factors not adjustable to Federal taxable income
- 18:7-5.5 Entire net income; determining stock ownership
- 18:7-5.6 Adjustment of entire net income to period covered by return; how computed
- 18:7-5.7 Right of Director to independently determine net income
- 18:7-5.8 Calculation of gain in certain instances
- 18:7-5.9 (Reserved)
- 18:7-5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations
- 18:7-5.11 Right of Director to require consolidated filing, and certain disclosures
- 18:7-5.12 Net operating loss deduction
- 18:7-5.13 New Jersey net operating loss carryover
- 18:7-5.14 Limitations to the right of a net operating loss carryover
- 18:7-5.15 Net operating loss
- 18:7-5.16 Effect of audit adjustments
- 18:7-5.17 Suspension of net operating loss carryover
- 18:7-5.18 Related party transactions

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. ALLOCATION

- 18:7-7.1 General instructions regarding allocation of net income
- 18:7-7.2 Regular place of business; definition
- 18:7-7.3 "Allocating" and "non-allocating" companies; definition
- 18:7-7.4 Allocation factor; definition
- 18:7-7.5 Allocation factor; application
- 18:7-7.6 Corporate partners and partnerships
- 18:7-7.7 (Reserved)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

- 18:7-8.1 Business allocation factor; computation
- 18:7-8.2 Method of arithmetic computation required
- 18:7-8.3 Right of Director to independently compute allocation factor
- 18:7-8.4 Property fraction; "tangible personal property"; definition and scope; special situations
- 18:7-8.5 Business allocation factor; property fraction derived from average values
- 18:7-8.6 Average value; computation period
- 18:7-8.7 Business allocation factor; determination or receipts fraction
- 18:7-8.8 Scope of allocable receipts
- 18:7-8.9 Receipts from sales of capital assets; when includible
- 18:7-8.10 Receipts; compensation for services; allocation for certain special industries
- 18:7-8.11 Receipts; rents and royalties
- 18:7-8.12 Other business receipts
- 18:7-8.13 Business allocation factor; payroll fraction
- 18:7-8.14 Definition of officers and employees
- 18:7-8.15 Compensation of officers and employees within New Jersey
- 18:7-8.16 Allocation: International Banking Facilities
- 18:7-8.17 Non-operational income
- 18:7-8.18 (Reserved)

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. SECTION 8 ADJUSTMENTS

- 18:7-10.1 Discretionary adjustments of business allocation factor by Director
- 18:7-10.2 through 18:7-10.3 (Reserved)

SUBCHAPTER 11. RETURNS

- 18:7-11.1 Returns; corporations required to file
- 18:7-11.2 Returns where Federal net income is changed
- 18:7-11.3 Effect of deficiency notice
- 18:7-11.4 Amended return
- 18:7-11.5 Change of accounting period
- 18:7-11.6 Forms of returns
- 18:7-11.7 Time for filing returns
- 18:7-11.8 Time to report change or correction in Federal net income
- 18:7-11.9 Time for filing returns for unauthorized foreign corporations doing business in New Jersey
- 18:7-11.10 Failure to file return or make payment when due
- 18:7-11.11 Returns required to be filed by corporation ceasing to be subject to tax
- 18:7-11.12 Extension of time to file return; interest and penalty
- 18:7-11.13 Place for filing returns and payment of tax
- 18:7-11.14 Secrecy of returns
- 18:7-11.15 Consolidated returns
- 18:7-11.16 Return to be filed by an S Corporation
- 18:7-11.17 Copies of tax returns or other information required
- 18:7-11.18 Reproduction of forms
- 18:7-11.19 through 18:7-11.21 (Reserved)

SUBCHAPTER 12. SHORT PERIOD RETURN

- 18:7-12.1 Short period returns; when required
- 18:7-12.2 Short period returns; proration procedures
- 18:7-12.3 Short period returns; allocation
- 18:7-12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

- 18:7-13.1 Assessment and reassessment
- 18:7-13.2 Hearing; protest
- 18:7-13.3 Appeal
- 18:7-13.4 Service of notice on taxpayers
- 18:7-13.5 Closing agreements
- 18:7-13.6 Time for payment of tax
- 18:7-13.7 Additional tax; change in Federal tax; interest to be charged
- 18:7-13.8 Claims for refund; when allowed
- 18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments
- 18:7-13.10 Refund for erroneous payments
- 18:7-13.11 Lien of tax
- 18:7-13.12 Release of property from lien
- 18:7-13.13 Certificate as to lien for unpaid corporation franchise taxes
- 18:7-13.14 (Reserved)

SUBCHAPTER 14. PENALTIES, MISCELLANEOUS

- 18:7-14.1 Penalties
- 18:7-14.2 Extension of time; failure to file or pay on time
- 18:7-14.3 Arbitrary assessment where taxpayer withholds return
- 18:7-14.4 Arbitrary assessment where taxpayer intends absconding; concealment, immediate payment demanded
- 18:7-14.5 Forfeiture of charter; conditions warranting
- 18:7-14.6 Forfeiture of charter; procedure
- 18:7-14.7 (Reserved)
- 18:7-14.8 Reinstatement of voided domestic corporation; conditions warranting
- 18:7-14.9 Reinstatement of voided domestic corporation; procedure
- 18:7-14.10 Revocation of authority of foreign corporation to do business in New Jersey
- 18:7-14.11 New certificate of authority for a foreign corporation
- 18:7-14.12 Personal liability of officers or directors for unpaid taxes
- 18:7-14.13 through 18:7-14.16 (Reserved)
- 18:7-14.17 Tax Clearance Certificate
- 18:7-14.18 Actions not requiring the prior issuance of a Tax Clearance Certificate
- 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

- 18:7-14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate
 18:7-14.21 Streamlined dissolution or withdrawal procedure

SUBCHAPTER 15. URBAN ENTERPRISE ZONES ACT

- 18:7-15.1 General
 18:7-15.2 Definitions
 18:7-15.3 (Reserved)
 18:7-15.4 Credits against total tax for new employees and investments in urban enterprise zones
 18:7-15.5 Qualification for benefits

SUBCHAPTER 16. INTERNATIONAL BANKING FACILITIES

- 18:7-16.1 Definitions
 18:7-16.2 (Reserved)
 18:7-16.3 International Banking Facilities: computation of entire net income
 18:7-16.4 International Banking Facilities: business allocation factor
 18:7-16.5 (Reserved)

SUBCHAPTER 17. PARTNERSHIPS

- 18:7-17.1 Definitions
 18:7-17.2 Subjectivity
 18:7-17.3 Due date for return
 18:7-17.4 Extension of time to file returns
 18:7-17.5 Calculation of tax
 18:7-17.6 Credit or refund
 18:7-17.7 Estimated return
 18:7-17.8 Certain corporate partners; exemption form
 18:7-17.9 Allocation of tax for partners that are corporations
 18:7-17.10 Electronic filing

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

- 18:7-18.1 Definitions
 18:7-18.2 Alternative minimum assessment
 18:7-18.3 Taxpayers not subject to the alternative minimum assessment
 18:7-18.4 Calculation of the Alternative Minimum Assessment
 18:7-18.5 Alternative Minimum Assessment credits
 18:7-18.6 Gross receipts calculation; agency businesses

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

- 18:7-19.1 Definitions
 18:7-19.2 Payment of filing fee
 18:7-19.3 Installment payment
 18:7-19.4 Penalty and interest

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7-1.1 Corporation business tax; general provisions

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

Amended by R.1970 d.121, effective October 5, 1970.
 See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
 Amended by R.1979 d.45, effective February 6, 1979.
 See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
 Amended by R.1983 d.62, effective March 7, 1983.

See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).

Added "accounting period before July 1, 1986" to (a). Added "accounting period before April 1, 1983" to (a)1.i and ii. Added (3) to (a). Also added (b).

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

Statutory References

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

Case Notes

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

18:7-1.2 Total tax self-assessed

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

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

Cross References

See Section 1.1 (General provisions) of this chapter.

18:7-1.3 Definition of taxpayer

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

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

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

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).

See: 35 N.J.R. 1573(a).
 Added (c).

Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Provisions of R.2003 d.135 adopted without change.

Statutory References

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

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

18:7-1.4 Definition of corporation

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

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

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

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).

See: 35 N.J.R. 1573(a).

In (a), added 1 and 2.

Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Provisions of R.2003 d.135 adopted without change.

Statutory References

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

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

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

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

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

Statutory References

N.J.S.A. 54:10A-4(c).

Case Notes

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

18:7-1.6 Subjectivity to tax; how created

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

1. Existing under the laws of the State of New Jersey; or
2. If a foreign corporation:
 - i. Holding a general certificate of Authority to do business in this State issued by the Secretary of State; or
 - ii. Holding a certificate, license or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or
 - iii. Doing business in this State; or
 - iv. Employing or owning capital in this State; or
 - v. Employing or owning property in this State; or
 - vi. Maintaining an office in this State; or
 - vii. Deriving receipts from sources within this State; or
 - viii. Engaging in contacts within this State.

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

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

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

Amended by R.1996 d.518, effective November 4, 1996.

See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).

See: 35 N.J.R. 1573(a).

In (a)2, added vii and viii; added (b).

Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Provisions of R.2003 d.135 adopted without change.

Statutory References

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

Case Notes

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

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

18:7-18.5 Alternative Minimum Assessment credits

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

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

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the alternative minimum assessment for that period;
2. The credit applied shall not reduce the amount of tax otherwise due by more than 50 percent; and
3. The credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

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

18:7-18.6 Gross receipts calculation; agency businesses

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

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

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

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

Authority

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

Source and Effective Date

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

Subchapter Expiration Date

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

Subchapter Historical Note

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

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

18:7-19.1 Definitions

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

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

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

18:7-19.2 Payment of filing fee

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

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

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

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

1. The number of resident professionals multiplied by \$150.00; plus
2. The number of nonresident professionals with physical nexus to New Jersey multiplied by \$150.00; plus
3. The number of nonresident professionals without physical nexus to New Jersey multiplied by \$150.00, and the resulting product multiplied by the corporate allocation factor of the professional corporation.

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

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

The professional corporation fee is calculated as follows:

0 Resident professionals = 0

Three nonresident professionals with physical nexus to New Jersey:

$3 \times \$150.00 = \450.00

97 nonresident professionals without physical nexus

$97 \times \$150.00 = \$14,550$

$14,550 \times 0.05 = \$727.50$

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

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

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

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

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

18:7-19.3 Installment payment

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

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

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

18:7-19.4 Penalty and interest

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