

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

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

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

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

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. INTERNATIONAL BANKING FACILITIES

18:7-16.1 Definitions

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

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

cerning their condition to the Comptroller of the Currency as well as to the Federal Reserve Board of Governors.

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

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

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

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

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

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

18:7-16.2 (Reserved)

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

Section was "International Banking Facilities: computation of entire net worth".

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

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

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

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

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

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

18:7-16.5 (Reserved)

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

Section was "Phasing in International Banking Facility tax changes".

SUBCHAPTER 17. PARTNERSHIPS

18:7-17.1 Definitions

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

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

1. Entities that are classified as partnerships for Federal income tax purposes;
2. Entities that are classified as corporations for Federal income tax purposes that:
 - i. Are not corporations exempt from tax pursuant to N.J.S.A. 54:10A-3; or
 - ii. Do not maintain a regular place of business, as defined in N.J.A.C. 18:7-7.2, in New Jersey.

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

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

18:7-17.2 Subjectivity

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

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

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

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

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

In (b)1, amended the N.J.S.A. reference.

18:7-17.3 Due date for return

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

18:7-17.4 Extension of time to file returns

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

18:7-17.5 Calculation of tax

(a) The tax shall be the total of:

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

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

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

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

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

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

regular place of business of the corporate partner. See N.J.A.C. 18:7-17.8(d).

18:7-17.6 Credit or refund

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

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

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

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

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

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

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

18:7-17.7 Estimated return

A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall be required to make installment payments of tax. For privilege periods beginning on January 1, 2007 and thereafter, those partnerships that are required to make tax payments pursuant to N.J.S.A. 54:10A-15.11a.(1) shall make installment payments of 25 percent of that tax on or before the 15th day of each of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period. A partnership required to make such payments shall be deemed to make them subject to the provisions of N.J.S.A. 54:10A-15.4 and shall be liable for any addition to tax provided thereunder.

Repeal and New Rule, R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
Section was "Estimated return".

18:7-17.8 Certain corporate partners; exemption form

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

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

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

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

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

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

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

Added (e) and (f).
Amended by R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

In (e), inserted "or any retirement plan approved by the Internal Revenue Service,;" and deleted (f).

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

Separate accounting apportionment shall be used if a corporate partner and partnership are not in a unitary relationship

in which the apportioned income of the partnership and partner (excluding the partner's distributive share) are added together. When a corporation and a partnership are in a unitary relationship, then a blended or combined allocation factor should be used. It is derived by adding the partnership and corporation allocation fractions together and applying the combined factor to the corporation's entire net income including its distributive share of the partnership's income (see N.J.A.C. 18:7-7.6(g)).

18:7-17.10 Electronic filing

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

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

18:7-18.1 Definitions

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

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

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

"Key corporation" means a single member within an affiliated group designated by the group to act as a "clearing-house" for adjustments to members of the group. For privilege periods commencing after June 30, 2006, key corporations are not permitted for reporting any other tax purposes in New Jersey.

"Member of an affiliated group" means a taxpayer that is part of an affiliated group.

"New Jersey gross profits" means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold.