

CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

P.L. 1983, c.303, section 22 (N.J.S.A. 52:27H-81)
and 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Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979.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Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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).

Subchapter 17, Partnerships; Subchapter 18, Alternative Minimum Assessment; and Subchapter 19, Filing Fee Payments by Professional Corporations were adopted as special new rules by R.2003 d.135, effective February 27, 2003. Subchapters 17, 18 and 19 were adopted as R.2003 d.370, effective August 22, 2003. See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

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

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

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Recodified from N.J.A.C. 18:7-15.3 by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

18:7-3A.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. 18:7-3A.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. 18:7-3A.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. 18:7-3A.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. 18:7-3A.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 x 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).
Recodified from N.J.A.C. 18:7-15.4 and amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

In (a), substituted "N.J.S.A. 52:27H-78," for "(N.J.S.A. 52:27H-78)", updated the N.J.A.C. references and deleted the comma preceding "et seq.," and in (b) and (c), updated the N.J.A.C. references.

18:7-3A.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. 18:7-3A.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).
Recodified from N.J.A.C. 18:7-15.5 and amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
Updated the final N.J.A.C. reference.

SUBCHAPTER 3B. FILM TAX CREDITS

18:7-3B.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Division of Taxation in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority to implement P.L. 2005, c. 345. That act establishes a corporation business tax and gross income tax benefit and certificate transfer program not in excess of \$10,000,000 per year, for fiscal years 2006 through 2015 for up to 20 percent of certain film production expenses.

18:7-3B.2 Definitions

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

"Authority" means the New Jersey Economic Development Authority.

"Buying business" means a taxpayer with the financial ability to purchase unused tax credits.

"Certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of film tax credit being sold. The certificate shall state that the transferor waives its right to claim the credit shown on the certificate. The certificate shall show the program year to which it is applicable and the vintage year in which the expenses were paid. Certificates may be issued annually.

"Film" means a feature film, a television series or a television show of 15 minutes or more in length, intended for a national audience. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, game show, sports event, award show or other gala event, a production that solicits funds, a production containing obscene material as defined under N.J.S.A. 2C:34-2 and 3, or a production primarily for private, industrial, corporate or institutional purposes.

“Film Commission” means the New Jersey Motion Picture and Television Commission.

“Loan out company” means a personal service corporation that employs an actor or actress, hired by a production company. The loan out company is owned or controlled by the actress or actor being hired. Such production company expenditures paid to a loan out company may appear to be a different type of production expenditure, but some or all of the expenditure may actually constitute a payment for the employment of the actor or actress.

“Post-production costs” means the costs of the phase of production that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects. Such costs include, but are not limited to, insurance, publicity, product placement, general expenses, insurance claims, and completion costs contingency.

“Principal photography” means the filming of major and significant portions of a qualified film that involves the lead actors or actresses.

“Privilege period” means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act. See N.J.S.A. 54:10A-4(j).

“Production phases for an animated film” means generally that time after the preproduction phase when models are drawn on paper and then created in the computer, and the actual production phase begins when the models are finished and the staff begins to choreograph, animate, and render the animations. However, much of the post-production work may be done simultaneously with the work done in the production phase because the two are so interlinked.

“Program” means the Film Production Expenses Tax Certificate Transfer Program.

“Program year” means the fiscal year of the State during which the program is in operation. For example, July 1, 2005 through June 30, 2006 is Program year 2006; July 1, 2006 through June 30, 2007 is Program year 2007.

“Qualified film production expenses” means expenses incurred in New Jersey for the production of a film, including post-production costs incurred in New Jersey. Such expenses shall include, but shall not be limited to:

1. Wages and salaries of individuals employed in the production of a film on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due;
2. The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment;

3. Payments made for the story and other rights, writing, producer and staff, director and staff, talent, and fringe benefits, provided that the seller of the property or service is subject to income or franchise taxation in New Jersey; and/or

4. Payments made to a loan out company, authorized to do business in New Jersey, that are attributable to acting, writing, or directing but not payments made to a loan out company that are attributable to marketing or advertising. In-State loan out companies do qualify, as long as the star is on call within the State. If the star spends any part of the day in-State, that constitutes a day. A business telephone call made from outside the State does not qualify, unless the star also is physically present in the State.

Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

“Selling business” means a taxpayer that has unused tax credits, which it wishes to sell.

“Taxable year” means the calendar or fiscal accounting period for which a tax is payable under the Gross Income Tax Act. See N.J.S.A. 54A:1-2(k).

“Taxation” means the New Jersey Division of Taxation.

“Tax credit vintage year” means the applicant’s last taxable year or privilege period in which the expenses were incurred. Seller’s and Buyer’s vintage years are not equated.

“Total production expenses” means costs for services performed and tangible personal property used or consumed in the production of a film.

18:7-3B.3 Eligibility

(a) A taxpayer shall be eligible to apply to the program if the Authority finds that:

1. The taxpayer will incur qualified film production expenses during a privilege period, provided that at least 60 percent of the total production expenses, exclusive of post-production costs, will be incurred for services performed and goods used or consumed in New Jersey; and
2. Principal photography within 150 days after the approval of the application for the credit.

18:7-3B.4 Application to the program

(a) Applications shall be submitted to the Authority and shall be considered for approval on a first in time basis.

(b) A completed application shall include, but not be limited to, the following:

1. A projected budget for the film project with a break-out of costs, including post-production costs;

2. A breakout of costs, including post-production costs, to be incurred for services performed and goods used or consumed in New Jersey;

3. A breakout of costs, including post-production costs, to be incurred in New Jersey;

4. If a film project will extend to more than one privilege period or taxable year, applications shall be submitted with the information required in (b)1, 2, and 3 above for each such privilege period or taxable year;

5. A description of the project, which must include:

- i. A plot summary;
- ii. The genre and subject matter;
- iii. The anticipated film rating, if applicable;
- iv. Principals;
- v. Actors; and
- vi. Filming locations;

6. The filming schedule;

7. The anticipated or actual date of commencement of principal photography;

8. If the applicant is a partnership or limited liability company, a list of members or owners applying for a tax credit under this program, including the percentage of ownership interest of each; and

9. The applicant's New Jersey privilege period or taxable year.

(c) The overestimation of qualified production expenses will decrease the credit by the amount of the overestimation.

18:7-3B.5 Award of tax credits

(a) Film production tax credits shall be awarded subsequent to the occurrence of each and all of the following:

1. Receipt by the Authority of written confirmation from the Film Commission that principal photography commenced within 150 days of approval;

2. Receipt by the Authority of actual budgets and proof of qualified film production expenses, including a listing of the name of the company or person paid, his, her or its Federal identification number and a certified public accountant's certification that expenses claimed by the applicant were incurred in New Jersey;

3. Verification by Taxation of partners or members of pass through entities such as partnerships or LLCs; and

4. Final approval of the credit by Taxation and the Board of the Authority, taking into account the applicant's full compliance with applicable tax laws and with the law and rules relating to the application process.

(b) Taxation shall issue tax credit certificates within 30 days of receipt from the Authority evidencing its final approval.

1. In the case of entities taxed as partnerships for New Jersey purposes, the certification shall be issued to the entity, and the names of the partners will appear on the certificate. The credit shall be allocated to the partners based on profit and loss sharing agreements. Each partner shall claim its proportionate share of its credit on its own tax return.

(c) Only the members of the Authority can deny an applicant's eligibility for the program established by P.L. 2005 c. 345. (Eligibility criteria for the Program are set forth in N.J.A.C. 18:7-3B.2.)

(d) When the members of the Authority deny a request, the minutes of the meeting at which such denial occurs are submitted to the Governor.

(e) The members' action is effective 10 working-days after the Governor's receipt of the minutes, provided no veto has been issued.

(f) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation of how the applicant has met the program criteria. The Authority cannot consider any new information about the project developed after the June 30 submission deadline. Only that information that clarifies the application filed shall be reconsidered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

(g) The amount of the credit applied under N.J.S.A. 54:10A-5.39 against the corporation business tax for a privilege period, when taken together with any other credits allowed against that tax, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c. 162.

(h) The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be determined by the Director of the Division of Taxation.

(i) The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of the section or under other provisions of the corporation business tax, may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

18:7-3B.6 Transfer of tax credits; evaluation process

(a) When all of the required information is received, the Authority shall perform its review based on the following minimum criteria:

The balance of \$2.5 million will be carried forward to FY 2008.

The excess application amounts above the \$10 million cap for FY 2007 are carried forward to FY 2008. Companies A, B, C, D, and E remain in their same sequence in FY 2008 as they occupied in FY 2007. Each of these companies will receive the balance of their credits in FY 2008 totaling \$10 million. Any applications received in FY 2008 will be approved in the order received, but the tentative credits approved will not be available until FY 2009.

Example 5 A corporation that operates on a fiscal reporting period ending November 30 applies for a film credit of \$5 million and receives tentative approval from the Authority on April 1, 2007, for a FY 2007 credit of \$1.5 million and a FY 2008 credit of \$3.5 million. Filming begins May 1, 2007, and is completed on November 1, 2007. The project meets the 60 percent test and eligible expenses for the project exceed \$5 million.

The corporation on its New Jersey CBT-100 for tax year ending November 30, 2007 can claim a film credit of up to \$5 million, since its tax year bridges both FY 2007 and FY 2008.

Example 6 A corporation that operates on a fiscal reporting period ending April 30 applies for a film credit of \$5 million and receives tentative approval from the Authority on February 1, 2007 for a FY 2007 credit of \$1.5 million and a FY 2008 credit of \$3.5 million. Filming begins March 1, 2007, and is completed on November 1, 2007. The project meets the 60 percent test and eligible expenses for the project exceed \$5 million.

The corporation on its New Jersey CBT-100 for tax year ending April 30, 2007, can claim a film credit of up to \$1.5 million only since its tax period ends within FY 2007. On its CBT-100 for tax year ending April 30, 2008, it can claim any unused portion of the FY 2007 credit and the FY 2008 credit of \$3.5 million.

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.

iv. In any privilege period or taxable year beginning on or after January 1, 2002, with respect to property acquired on or after January 1, 2002 and before September 11, 2004, any depreciation which was deducted in arriving at Federal taxable income and which was determined in accordance with Sections 168(k) and 1400L of the Federal Internal Revenue Code. Assets acquired before January 1, 2002 for which such depreciation was taken will continue for the entire life of the asset to follow Federal depreciation. Assets acquired in periods beginning before January 1, 2002 will continue to follow Federal depreciation even if the asset itself was acquired after January 1, 2002 but during such fiscal year. Upon early retirement a basis adjustment will be required to equalize Federal and State basis.

Example: Federal bonus depreciation with respect to an asset acquired February 1, 2002 by a corporation which is a calendar year corporation will be disallowed for the corporation when filing its CBT-100 for 2002.

v. Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Federal Internal Revenue Code, there shall be allowed as a deduction any excess or there must be restored as an item of income any deficiency of depreciation disallowed under (a)1x above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

vi. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under Section 168(f)(8) of the Federal Internal Revenue Code; provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to a qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

(1) Where income relating to such safe harbor leasing election would have been included in Federal taxable income whether or not the election is made, no exclusion is permitted.

Example: A corporation which finances the acquisition of machinery and equipment is not permitted to exclude interest income merely because it is one of the parties to a "safe harbor lease" whereby it agreed that all parties to the trans-

action characterize it as a lease for Federal income tax purposes.

(2) For treatment of deductions relating to such safe harbor lease transactions, see (a)1xi above.

vii. Any banking corporation which is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as herein described, from its entire net income, as follows:

(1) Any deductions under this section can only be claimed to the extent that they are not deductible in determining Federal taxable income, or not deductible under N.J.S.A. 54:10A-4(k)(1) through (3).

(2) The eligible net income of an IBF is the amount of income remaining after subtracting the applicable expenses, as defined by (a)2vii(4) below.

(3) Eligible gross income is the gross income derived from an IBF. This will include gross income derived from the following:

(A) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled, by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(B) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities; or

(C) Entering into foreign exchange or hedging transactions relating to any transactions under (a)2vii(3)(A) and (B) above or (D) below.

(D) Any other activities which an IBF may be, at any time, authorized to engage in by Federal or state law, the Board of Governors of the Federal Reserve, the Comptroller of the Currency, the New Jersey Banking Commission, or any other authority.

(4) Applicable expenses are any expenses or deductions which are directly or indirectly attributable to eligible gross income as defined in (a)2vii(3) above.

(See: N.J.A.C. 18:7-16 regarding international banking facilities.)

Amended by R.1983 d.62, effective March 7, 1983

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

Added new 10 and 11 to (a). Recodified old 10 as new 12 and added 4-6 to (b).

Amended by R.1984 d.453, effective October 15, 1984.

See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).

(b)7 added.
Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).

Substantially amended.
Amended by R.1987 d.335, effective August 17, 1987.
See: 19 N.J.R. 712(a), 19 N.J.R. 1568(b).

Substantially amended.
Amended by R.1992 d.289, effective July 20, 1992.
See: 24 N.J.R. 175(a), 24 N.J.R. 2628(b).

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

Amended by R.1997 d.204, effective May 19, 1997.
See: 28 N.J.R. 5158(a), 29 N.J.R. 2467(a).

In (a)1vii, inserted "For accounting or privilege periods ending on or before January 10, 1996."

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

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

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

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Amended by R.2004 d.367, effective October 4, 2004.

See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

In (a), deleted iii, recodified former iv through viii as iii through vii in 2.

Amended by R.2006 d.61, effective February 6, 2006.

See: 37 N.J.R. 4195(a), 38 N.J.R. 1080(a).

In (a)2i, deleted "of this chapter"; added (a)2i(1) and (a)2ii(1).

Amended by R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

In (a)1viii, updated the second N.J.A.C. reference; in (a)1xviii, deleted "and" from the end; in (a)1lix, substituted a semicolon for the period at the end; and added (a)1xx and (a)1xxi.

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).

Under N.J.A.C. 18:7-5.2(a)2v, a taxpayer's parent corporation had been entitled, but not required, to take an excess depreciation deduction. Therefore, the parent corporation's decision not to take such a deduction did not preclude the taxpayer from assuming the higher depreciable basis of assets transferred to it by the parent. *Clorox Prods. Mfg. Co. v. Director*, 23 N.J. Tax 260, 2006 N.J. Tax LEXIS 22 (Tax Ct. 2006).

Any distinction between the terms "physical disposal" and "disposal" in N.J.A.C. 18:7-5.2(a)2v is a distinction without a difference. *Clorox Prods. Mfg. Co. v. Director*, 23 N.J. Tax 260, 2006 N.J. Tax LEXIS 22 (Tax Ct. 2006).

Interpretation of amendment to corporate tax governing safe harbor leases was not an administrative rule. *Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation*, 11 N.J. Tax 241 (1990), reversed 12 N.J. Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

Corporate owner of safe harbor leased property could not include it in owner's business allocation factor. *Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation*, 11 N.J. Tax 241 (1990), reversed 12 N.J. Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

State's inclusion of Federal obligations in taxpayer bank's tax bases under the Corporation Business Tax Act complied with the Federal public debt statute since the tax was nondiscriminatory; taxpayer bank's net worth and net income bases appropriately included the value of and income from the bank's holdings of state and local obligations. *Garfield Trust Co. v. Director, Div. of Taxation*, 6 N.J. Tax 462 (Tax Ct. 1984),

affirmed per curiam 7 N.J. Tax 663 (App. Div. 1984), affirmed 102 N.J. 420, 508 A.2d 1104 (1986), appeal dismissed 107 S.Ct. 390, 479 U.S. 925, 93 L.Ed.2d 345.

Federal minimum tax for tax preference was not properly excludable from the taxpayer's entire net income in the calculation of New Jersey corporation business tax, since the Federal minimum tax is on income and not an excise tax on capital. *Texaco, Inc. v. Director, Div. of Taxation*, 4 N.J. Tax 63 (Tax Ct. 1982).

18:7-5.3 Tax paid to foreign country or United States possession; when deductible from net income

(a) With respect to foreign taxes required to be included in income as dividends received under Section 78 of the Internal Revenue Code, no deduction from Federal taxable income is permitted if 100 percent of the dividend received amount is deductible therefrom under N.J.A.C. 18:7-5.2(a) 2i.

1. However, if 100 percent of the foreign tax amount is not deductible from Federal taxable income as dividends received under N.J.A.C. 18:7-5.2(a) 2i, then the percentage which is taxed may be deducted from Federal taxable income. No other foreign taxes are deductible.

Amended by R.1999 d.116, effective April 5, 1999.

See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

In (b), changed N.J.A.C. references throughout.

Administrative change and correction.

See: 31 N.J.R. 1818(a).

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

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

Rewrote the section.

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

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

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

18:7-5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this rule for:

1. Gains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue Code but only to the extent that recapture or other provisions of the Code are not paramount to these sections.

2. The general business credit allowed or allowable for Federal income tax purposes under Section 38 of the Internal Revenue Code.

i. This may not be taken as a deduction in computing the New Jersey net income tax base, nor as a credit, in any manner, in computing tax liability under the Act.

ii. Upon disposition of assets which qualified for a general business credit under Section 38 of the Internal Revenue Code, taxpayer must use the same basis for computing gain or loss for New Jersey net income tax purposes as employed for Federal income tax purposes.