

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 subject to tax as described in N.J.A.C. 18:7-1.6, 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 subjectivity to the tax without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey.

Example 3

A foreign corporation has applied for and has received a certificate of authority to do business in New Jersey by the Secretary of State, but does not actually do any business in New Jersey, nor does it have any office or property or any employees in New Jersey nor does it own or employ capital here. The corporation has sought and received the privilege of exercising its corporate franchise in New Jersey and is therefore subject to the tax and must file a return and pay the minimum tax.

(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 (a).

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

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

Administrative correction.

See: 28 N.J.R. 4509(a).

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

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

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.

Example

Foreign corporation R holds trademarks that were assigned to it by its parent corporation. R receives fees as a result of licensing those trademarks to certain New Jersey companies for use in New Jersey. R is subject to the corporation business tax on its apportioned income as a result of its trademark licensing activities.

(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 filed by shipment or delivery from a point outside the State, then such corporation is doing business in New Jersey and is subject to the tax. Unless it has additional contacts with New Jersey, however, it will not be liable for any tax measured by the income of the corporation. (See P.L. 86-272, 15 U.S.C. § 381). The corporation will be liable for filing a return and payment of the minimum tax.

1. For the in-State activities of the foreign corporation to immunize the corporation from taxation measured by income, 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 additional activities or contacts with New Jersey that will subject a corporation to the tax based on or measured by income 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 additional activities which, together with the solicitation activities described in (d)1 above will not subject a corporation to tax based on or measured by income 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 subjecting a company to liability for tax based on or measured by income. Sales representatives who represent a single principal would not be considered independent contractors. A corporation would be subject to income-based tax if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

Example

Foreign corporation L, represented in New Jersey by a foreign independent contractor, licensing software to New Jersey businesses. L receives fees from New Jersey companies for licensing the software. L is subject to the corporation business tax on its apportioned income.

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).

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

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

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

Issue of whether regulation expanding the definition of doing business under the Corporation Business Tax to include the licensure of trademarks to retailers operating in New Jersey was retroactive was moot, as tax period which remained in dispute between foreign corporation and Director of the Division of Taxation began after the effective date of the amendment of the regulation. *Lanco v. Director, Div. of Taxation*, 21 N.J.Tax 200.

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 foreign corporation which falls into any of the taxable categories subjecting a corporation to tax, 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.

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.1996 d.518, effective November 4, 1996.

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

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.

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State and local taxation of interstate and foreign commerce: The second best solution. Kathryn L. Moore, 42 Wayne L.Rev. 1425 (1996).

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.