

**CHAPTER 7  
CORPORATION BUSINESS TAX ACT**

**Authority**

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

**Source and Effective Date**

R.1999 d.116, effective March 12, 1999.  
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 7, Corporation Business Tax Act, expires on March 12, 2004.

**Chapter Historical Note**

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

Pursuant to Executive Order No. 66(1978), Chapter 7, 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Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

### 18:7-1.1 Corporation business tax; general provisions

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

Amended by R.1970 d.121, effective October 5, 1970.

See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

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

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

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

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

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

#### Statutory References

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

#### Case Notes

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

### 18:7-1.2 Total tax self-assessed

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

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

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

#### Cross References

See Section 1.1 (General provisions) of this chapter.

### 18:7-1.3 Definition of taxpayer

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

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

(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).

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).