

18:7-4.13 (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Repealed by R.1994 d.186, effective April 18, 1994.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 "Effect of short tax table on subsidiary deductions".

18:7-4.14 (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Repealed by R.1994 d.186, effective April 18, 1994.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 "Parent must report book value of subsidiary corporation".

18:7-4.15 (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Repealed by R.1994 d.186, effective April 18, 1994.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 "Consolidated returns for subsidiary corporations".

Case Notes

Taxpayer corporation, which possessed 100 percent ownership of investment in French and Brazilian corporations directly and through its wholly-owned Dutch subsidiary, was entitled to 100 percent exclusions for the dividends received from the French and Brazilian corporations. *International Flavors & Fragrances, Inc. v. Taxation Div. Director*, 5 N.J.Tax 617 (Tax Ct.1983), affirmed per curiam 7 N.J.Tax 652 (App.Div.1984), affirmed 102 N.J. 210, 507 A.2d (1986).

18:7-4.16 (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Repealed by R.1994 d.186, effective April 18, 1994.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 "Valuation of securities".

18:7-4.17 (Reserved)

New Rule, R.1984 d.496, effective November 5, 1984.
See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).
Repealed by R.1994 d.186, effective April 18, 1994.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 "Urban enterprise zones".

18:7-4.18 (Reserved)

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

18:7-5.1 Entire net income; definition

(a) "Entire net income" means total net income from all sources, whether within or without the United States, and includes:

1. The gain derived from the employment of capital or labor, or from both combined, as well as
2. Profit gained through a sale or conversion of capital assets.

(b) For the purpose of the New Jersey tax, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net

operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax, subject to the adjustments set forth in this Subchapter.

(c) Consistent with N.J.A.C. 18:7-11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Example 1: Corporation A is part of a consolidated group filing for Federal purposes which as a group incurred a net operating loss for the year. Corporation A, however, on a separate entity basis had net income of \$100,000 before its charitable contribution expense of \$15,000 is taken into account. Based on a separate, non-consolidated calculation under the Internal Revenue Code, and the contribution limitations applicable to all corporations for the period under review (that is, 10 percent), Corporation A's reportable net income for New Jersey purposes is \$90,000 (\$100,000 - (\$100,000 × .10)).

Example 2: Corporation B is part of a consolidated group filing for Federal purposes which sold goods in the ordinary course of business to Corporation C, also a member of the same consolidated group filing. The selling price between Corporation B and C was at arm's length and included a profit element in it. The Federal corporate consolidated filing would recognize but defer the gain on the sale of the goods between Corporation B and C since Corporation C had not disposed of the property outside the group at year end. For New Jersey purposes, however, Corporation B must report the gain on the sale of the property for net income purposes, and Corporation C must include the full sales price of the property in its inventory value.

(d) Entire net income shall be determined as if no election had been made under 26 U.S.C. 1371 (Subchapter S of the Federal Internal Revenue Code).

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

(c) added.

Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).

Added examples to (c); deleted (e).

Law Reviews

How New Jersey treats the acquisition of assets. John M. Metzger, 147 N.J.L.J. 1356 (1997).

Statutory References

See N.J.S.A. 54:10A-4(k) as to definition and scope of "entire net income."

Case Notes

Regulations were valid. *General Bldg. Products Corp. v. State, Div. of Taxation*, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

State's prohibition against filing of consolidated income tax returns by related corporations does not immunize subsidiary corporation from state taxation of any gain realized as result of deemed sale of its assets. *General Bldg. Products Corp. v. State*, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

New York S corporation's distribution to New Jersey taxpayer would be treated as being from corporation's accumulated earnings. *Laurite v. Director*, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 135 N.J. 301, 639 A.2d 301.

Absent showing that S corporation's income was from current earnings it would be assumed that distribution was from accumulated earnings. *Laurite v. Director*, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 135 N.J. 301, 639 A.2d 301.

18:7-5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as Federal taxable income, is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

1. Add to Federal taxable income:

i. The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, where such specific exemption or credit has been deducted in computing Federal taxable income;

ii. All interest income from sources within the United States which has not been included in computing Federal taxable income, including interest on State and Municipal bonds and certain obligations of the United States and its instrumentalities, less interest expense incurred to carry such investments, to the extent such interest expense has not been deducted in computing Federal taxable income;

iii. All dividend income from sources within the United States which has not been included in computing Federal taxable income;

iv. All Federal taxes on or measured by income or profits which were deducted in computing Federal taxable income;

v. All New Jersey franchise taxes paid or accrued under the Corporation Business Tax Act, whether measured by net worth, net income or otherwise, to the extent such taxes were deducted in computing Federal taxable income; and, with respect to accounting years beginning after July 7, 1993, taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part by "net taxable capital" to the extent such taxes were deducted in computing Federal taxable income;

vi. All taxes paid or accrued to any foreign country, state, province, territory or subdivision, on or measured by profit or income or business presence or business activity, to the extent such taxes were deducted in computing Federal taxable income with respect to accounting beginning on or after January 1, 2002;

vii. Taxes paid or accrued with respect to subsidiary dividends should be added back to the extent dividends are excluded from entire net income and such taxes were deducted in computing Federal taxable income;

viii. Net operating losses sustained during any year or period other than that covered by the return, which were deducted in computing Federal taxable income, but a net operating loss deduction shall be allowed to the extent provided by N.J.A.C. 18:7-5.12 through 5.16.

ix. For accounting or privilege periods ending on or before January 10, 1996, the amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written statement. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder which owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or \$1,000, whichever is larger. Thus, if the amount of such interest is \$1,000 or less, then none of said amount need be added back. (For definition of and guidance in determining "directly" and "indirectly" see N.J.A.C. 18:7-4.5(d), (e) and (f).) However, there shall be allowed as a deduction:

(1) Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who is prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

(2) Any part of a deduction for interest that relates to financing of motor vehicle inventory held for sale to customers, provided that the underlying indebtedness is owing to a taxpayer customarily and routinely providing this type of financing. The portion of such interest which may be deducted is limited to interest on indebtedness relating to floor-planning of motor vehicles evidenced by a trust receipt or similar document and is also limited to interest on unsold inventory items. The interest must be paid or accrued directly to a creditor which is a taxpayer under the act and not indirectly to any related entity. That taxpayer, or a corporation which is a parent or subsidiary of that taxpayer must be the manufacturer or the motor vehicles financed; and

(3) Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C. 18:7-1.16. A debt is owed to an "affiliate" corporation when it is owing directly or indirectly to holders of ten percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes as defined in N.J.A.C. 18:7-4.5. The deduction may not be claimed on the Corporation Business Tax Return, Form CBT-100. Any corporation which is a financial business corporation must file the Corporation Business Tax Return for Banking and Financial Corporations, Form BFC-1, and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38; and

(4) Any part of a deduction for interest that related to debt of a banking corporation owing directly to a bank holding company as defined in 12 U.S.C. 1841 of which the banking corporation is a subsidiary. The allowable deduction for interest is limited to interest paid or accrued directly by the subsidiary to its bank holding company parent notwithstanding that related indebtedness may be excluded from net worth where it is indirectly owing to such bank holding company.

x. Recoveries with respect to war losses, regardless of whether such war losses were deducted in any return previously made for the purpose of computing the New Jersey Corporation Business Tax;

xi. All income from sources outside the United States which has not been included in computing Federal taxable income less all allowable deductions to the extent that such allowable deductions were not taken into account in computing Federal taxable income;

xii. In any year or short period which ends 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 depreciation or cost recovery (ACRS or MACRS) which was deducted in arriving at Federal taxable income and which was determined in accordance with Section 168 of the Federal Internal Revenue Code in effect after December 31, 1980. See (a)2iv below for depreciation allowable in computing entire net income.

xiii. 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 interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Feder-

al taxable income 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 a fiscal year or short period which begins in 1981 and ends in 1982, any such amount which relates to property placed in service during that part of the return year which occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect 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 allowed in any event.

(1) Where the "user/lessee" of qualified lease property which is precluded from claiming a deduction for rent under this rule would have been entitled to cost recovery on property which is subject to such "safe harbor lease" election in the absence of that election, it may claim depreciation on that property under the provisions of (a)2iv and v below. See (a)2vi below for the treatment to be accorded related income on such "safe harbor lease" transactions.

xiv. All income, from whatever sources derived not included in computing Federal taxable income and not otherwise required to be added back under (a)li through ix above, less all allowable deductions attributable thereto, to the extent that those allowable deductions were not taken into account in computing Federal taxable income.

xv. The amount deducted from Federal taxable income for any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for violation of a State or Federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this subsection shall not apply to a penalty or fine assessed or collected for a violation of a State or Federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

xvi. The amount deducted from Federal taxable income of treble damages paid to the Department of Environmental Protection and Energy pursuant to subsection a of section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11f) for costs incurred by the Department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the Department to remove, or arrange for the removal of, the discharge.

xvii. Any deduction for research and experimental expenditures to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to N.J.S.A. 54:10A-5.24 unless those research and experimental expenditures are also used to compute a Federal credit claimed pursuant to IRC section 41;

xviii. Interest paid, accrued or incurred to a related member except as may be permitted pursuant to N.J.A.C. 18:7-5.18; and

xix. Interest expenses and costs and intangible expenses and costs directly or indirectly paid accrued or incurred in connection with a transaction with one or more related members, except as may be permitted pursuant to N.J.A.C. 18:7-5.18.

2. Deduct from Federal taxable income:

i. 100 percent of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary under N.J.A.C. 18:7-4.11(a)1 of this chapter and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;

ii. Fifty percent of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income or added to Federal taxable income in accordance with (a) above if received from 50 to less than 80 percent owned subsidiaries defined under N.J.A.C. 18:7-4.11(a)2. Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

iii. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993 on which ACRS or MACRS has been disallowed under (a)lxii above using any method, life and salvage value which would have been allowable under the Federal Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Federal Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Federal Internal Revenue Code at December 31, 1980;

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 transaction 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.

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).

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.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under Section 38 of the Internal Revenue Code.

i. This depreciation may not be taken as a deduction in computing the New Jersey net income tax base.

ii. Depreciation taken for New Jersey net income tax purposes must be reported at the same amount as reported for Federal income tax purposes for the same period.

Amended by R.1985 d.562, effective November 4, 1985.

See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).

(a)2 deleted; (a)1 amended; 3 and 4 renumbered as 2 and 3.

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

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

18:7-5.5 Entire net income; determining stock ownership

(a) The provisions of N.J.A.C. 18:7-4.5 and 4.6 relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(b) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1: Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludible from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from Corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C		20%
Investment in Corporation B	90%	
Investment of Corporation B in Corporation C	70%	
Indirect investment in Corporation C	$.90 \times .70 =$	<u>63%</u>
Aggregate ownership by Corporation A of the stock of Corporation C		<u>83%</u>

Example 2: Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludible from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F		20%
Investment in Corporation E	90%	
Investment of Corporation E in Corporation F	<u>60%</u>	
Indirect investment in Corporation F	$.90 \times .60 =$	<u>54%</u>
Aggregate ownership by Corporation D of the stock of Corporation F		<u>74%</u>

New Rule, R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Old rule repealed.

Cross References

See N.J.A.C. 18:7-4.5 (Net worth; indebtedness includible) and 18:7-4.6 (Receivables offset against includible indebtedness) as to computing net worth.

Statutory References

See N.J.S.A. 54:10A-4(e) as to what may be included in "indebtedness owing directly or indirectly."

18:7-5.6 Adjustment of entire net income to period covered by return; how computed

(a) If the entire net income required to be reported is for a period other than a period covered by the taxpayer's Federal income tax return, the taxpayer shall compute its net income as follows:

1. Its Federal taxable income is first adjusted in the manner set forth on N.J.A.C. 18:7-5.1 through 5.4;
2. The result is then divided by the number of calendar months or parts thereof covered by the Federal income tax return;
3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Act. A part of a month shall be deemed to be a month.

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