

**Statutory References**

See N.J.S.A. 54:10A-15 as to annual payment of franchise tax for all or part of a taxpayer's annual or fiscal year accounting period.

**Case Notes**

Rule provides that corporation business tax be imposed upon each calendar year or fiscal period of the taxpayer; business held subject to tax despite its winding down because it remained an enterprise employing money capital coming into competition with the business of national banks and still generating interest income. *I.H.E. Financial Corp. v. Taxation Div. Director*, 3 N.J. Tax 375 (Tax Ct. 1981).

**18:7-2.11 Component factors of tax base**

The tax for the period or partial period prescribed in N.J.A.C. 18:7-2.10 is measured by taxpayer's allocable entire net income. The tax liability may also be the Alternative Minimum Assessment amount calculated pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.

As amended, R.1970 d.121, effective October 5, 1970.

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

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

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

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

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

Added the second sentence.

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**

N.J.S.A. 54:10A-5, 15.

**18:7-2.12 Application of State franchise tax to corporations**

The franchise tax is imposed for all or any part of each calendar or fiscal year during which the taxpayer possessed a New Jersey franchise or otherwise has a taxable status as set forth in N.J.A.C. 18:7-1.6 or other provision of these rules.

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

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

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

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

Substituted "N.J.A.C. 18:7-1.6 or other provision of these rules" for "N.J.A.C. 18:7-1.16".

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.

**Cross References**

As to taxable status, see N.J.A.C. 18:7-1.6.

**Statutory References**

See N.J.S.A. 54:10A-15 as to payment of franchise tax for all or part of each of a taxpayer's fiscal or calendar year accounting period (beginning January 1).

**18:7-2.13 Conditions destroying franchise and franchise tax**

A domestic corporation may cease to possess a franchise as a result of:

1. Its dissolution;
2. Its consolidation or merger into another corporation;
3. The surrender, revocation or annulment of its charter; or
4. The expiration of the term of duration prescribed in its charter.

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

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

**18:7-2.14 (Reserved)**

New Rule, R.2001 d.260, effective August 6, 2001.

See: 33 N.J.R. 1344(a), 33 N.J.R. 2678(a).

Repealed by R.2011 d.271, effective November 7, 2011.

See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).

Section was "Allocation of payments received with CAR-100".

**SUBCHAPTER 3. COMPUTATION OF TAX****18:7-3.1 General bases for computation of tax**

On a return for any accounting period which begins after June 30, 1986, no portion of the tax is measured by net worth.

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). Also added (b)-(e).

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 taxpayer should compute the total amount of franchise tax payable.

**18:7-3.2 (Reserved)**

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

See: 2 N.J.R. 78(a), 2 N.J.R. 95(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 "Computation of tax on entire net worth".

**18:7-3.3 (Reserved)**

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

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

As amended, 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 April 1, 1983".

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 "Computation of tax on average value of real and tangible personal property".

**18:7-3.4 Minimum tax**

(a) The tax paid in the case of an investment company, a regulated investment company or real estate investment trust shall not be less than \$250.00, provided, however, for calendar year 2002 and thereafter the minimum tax shall be \$500.00, unless the taxpayer is a member of an affiliated group or a controlled group pursuant to Sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000. The minimum tax for other corporations is set forth in (b) through (i) below.

(b) For accounting or privilege periods beginning prior to calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$25.00 and in the case of a foreign corporation shall not be less than \$50.00.

(c) For accounting or privilege periods beginning in calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$50.00 and in the case of a foreign corporation shall not be less than \$100.00.

(d) For accounting or privilege periods beginning in calendar year 1995, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$100.00 and in the case of a foreign corporation shall not be less than \$200.00.

(e) For accounting or privilege periods beginning in calendar year 1996, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$150.00 and in the case of a foreign corporation shall not be less than \$200.00.

(f) For accounting or privilege periods beginning in calendar years 1997, 1998, 1999 and 2000, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$200.00 and in the case of a foreign corporation shall not be less than \$200.00.

(g) For accounting or privilege periods beginning in calendar year 2002 through 2005, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$500.00 and in the case of a foreign corporation shall not be less than \$500.00; provided, however, for accounting or privilege periods beginning in calendar year 2002 through 2005, for a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$2,000 and in the case of a foreign corporation shall not be less than \$2,000. If the related corporations do not have the same fiscal years, the

overlapping portion shall be placed upon the equivalent fiscal basis to arrive at the threshold amount.

(h) For accounting or privilege periods beginning in calendar year 2006 and thereafter the minimum tax shall be based on the New Jersey gross receipts, as defined for the purposes of this subsection pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.1, of the taxpayer pursuant to the following schedule:

<u>New Jersey Gross Receipts:</u>	<u>Minimum Tax:</u>
Less than \$100,000	\$500.00
\$100,000 or more but less than \$250,000	\$750.00
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

1. For accounting or privilege periods beginning in calendar year 2002 and thereafter, a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000 for the accounting or privilege period. If the related corporations do not have the same fiscal years, the overlapping portion shall be placed upon the equivalent fiscal basis to arrive at the threshold amount.

(i) If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are required also to file returns with New Jersey. Such returns shall reflect the minimum tax. Entities required to file minimum returns under this subsection include, without limitation thereto, qualified New Jersey Subchapter S subsidiaries, members of a casino consolidated group, and members of a combined group required to file a consolidated return by the director pursuant to N.J.S.A. 54:10A-10c.

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

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

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

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

Changed "New Jersey" to "domestic" corporation. Added "accounting period before April 1, 1983". Added \$250.00 tax for investment, regulated investment and real estate investment companies.

Repeal and New Rule, R.1994 d.186, effective April 18, 1994.

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

Section was "Computation of tax by domestic corporations".

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

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

Rewrote (a); in (f), inserted "1998, 1999 and 2000" following "1997"; added new (g) and recodified former (g) as (h); in new (h), substituted "2002" for "1997" throughout and "2001" for "1996"; added (i).

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.2007 d.284, effective September 4, 2007.

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

In (g), inserted "through 2005"; and rewrote (h).

(v) Any Federal deduction under IRC Section 174 will be the same for New Jersey purposes, since there is no New Jersey provision for a separate modified state tax credit amount under such circumstances.

(w) The credit allowable in any given tax year cannot exceed 50 percent of the tax liability otherwise due on the return.

(x) The amount of the credit cannot reduce the tax liability to any amount less than the statutory minimum provided in N.J.S.A. 54:10A-5(e).

(y) The amount of the tax year credit allowable which cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven accounting years following a credit's tax year.

(z) Credits allowable shall be applied in the order of the credits' tax years.

New Rule, R.1995 d. 462, effective August 21, 1995.

See: 27 N.J.R. 842(a), 27 N.J.R. 3210(a).

Administrative correction.

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

#### 18:7-3.24 Effluent equipment tax credit

(a) As used in this section, the following terms shall have the following meanings:

"Cost of the certified equipment" means the "invoice cost" or "purchase price" of the eligible equipment itself. The term does not, for example, include peripheral or indirect costs associated with the purchase, installation or construction of the eligible equipment. Ineligible costs include, but are not limited to, sales tax, shipping costs, design and engineering costs and site preparation.

"Maximum yearly credit" means the maximum amount of the tax credit allowable in a tax year.

"Qualified treatment or conveyance equipment" means that equipment used exclusively in New Jersey which is certified in writing by the Commissioner of the Department of Environmental Protection as equipment for the treatment or transport of wastewater effluent that is qualified for the corporation business tax credit.

"Total credit allowable" means the total corporation business tax credit that a taxpayer can take on equipment certified by the Department of Environmental Protection.

(b) A corporate taxpayer that purchases qualified treatment or conveyance equipment is entitled to a corporation business tax credit equal to 50 percent of the cost of the certified equipment, subject to the following limitations:

1. The taxpayer must receive certification from the Commissioner of the Department of Environmental Protection prior to claiming the credit.

2. The maximum yearly credit shall not be more than 20 percent of the total credit allowable in any one given full tax year.

3. The credit shall be based on amounts paid for the equipment less the amount of any loan made pursuant to section 36 of P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

4. The credit allowable in a given tax year cannot exceed 50 percent of the tax liability otherwise due on that return. See N.J.A.C. 18:7-3.17 for priority of tax credits.

5. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

(c) Unused credit amounts may be carried forward for use in future privilege periods.

(d) To claim the credit, the taxpayer must complete Form 312 and attach it to the Corporation Business Tax return (Form CBT-100 or CBT-100S) being filed. A copy of the determination of environmentally beneficial operation issued by the Department of Environmental Protection, along with an affidavit affirming that the equipment will only be used in New Jersey, must be filed with the tax return.

New Rule, R.2004 d.367, effective October 4, 2004.

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

#### 18:7-3.25 Economic recovery tax credit

(a) As used in this section, the following words and terms shall have the following meanings:

"Credit year one" means the first 12 calendar months following initial or expanded operations at a location within a qualified municipality pursuant to N.J.S.A. 52:27BBB-1 et seq.

"Credit year two" means the 12 calendar months following credit year one.

"Employee of the taxpayer" does not include an individual with an ownership interest in the business, that individual's spouse or dependents, or that individual's ancestors or descendants.

"Full-time position" means a position filled by an employee of the taxpayer for at least 140 hours per month on a permanent basis, which does not include employment that is temporary or seasonal.

"Full-time position equivalent" means the combined hours of the part-time positions filled by employees of the taxpayer, amounting to the requirement for "full-time position," 140 hours per month on a permanent basis, not including employment that is temporary or seasonal. Example: Taxpayer employs two employees in part-time positions, working 20 hours per week for at least three months during the credit year. The total hours worked per month by the

two employees is 160 hours (20 hours per week, 80 hours per month, for each of two total employees for a total of 160 hours). The taxpayer-employer, therefore, has one "full-time position equivalent," because the taxpayer-employer has two part-time positions that have a total of at least 140 hours. The "full-time position equivalent" qualifies for the credit.

"New full-time position" means a position that did not exist prior to credit year one. New full-time positions shall be measured by the increase, from the 12-month period preceding credit year one to the measured credit year, in the average number of full-time positions and full-time position equivalents employed by the taxpayer at the location within a qualified municipality pursuant to N.J.S.A. 52:27BBB-1 et seq.

If employees of the taxpayer fill part-time positions, the hours of the part-time positions filled by the employees shall be aggregated to determine the number of full-time position equivalents.

"Part-time position" means a position filled by an employee of the taxpayer for at least 20 hours per week for at least three months during the credit year.

"Qualified municipality" means, pursuant to N.J.S.A. 52:27BBB-3, a municipality:

1. That has been subject to the supervision of a financial review board pursuant to the "Special Municipal Aid Act," N.J.S.A. 52:27D-118.24 et seq., for at least one year;
2. That has been subject to the supervision of the Local Finance Board pursuant to the "Local Government Supervision Act (1947)," N.J.S.A. 52:27BB-1 et seq. for at least one year; and
3. Which, according to its most recently adopted municipal budget, is dependent upon State aid and other State revenues for not less than 55 percent of its total budget.

"Sustained effort ratio" means the proportion that the credit year two new full-time positions bears to the credit year one new full-time positions, not to exceed one.

(b) A corporate taxpayer engaged in the conduct of business within a qualified municipality and that is not receiving a benefit under the "New Jersey Urban Enterprise Zones Act," N.J.S.A. 52:27H-60 et seq., may apply to receive a tax credit equal to: \$2,500 for each new full-time position at that location in credit year one and \$1,250 for each new full-time position at that location in credit year two.

(c) Notwithstanding (b) above, the credit allowed for credit year one may be refundable at the close of credit year two pursuant to the requirements of this subsection. That amount of the credit received for credit year one remaining, if any, after the liabilities have been satisfied for the privilege period or reporting period in which or with which credit year two ends and for any prior period, multiplied by the sustained effort ratio, shall be an overpayment for the purposes of N.J.S.A. 54:49-15 for the period in which or with which credit year two ends. The amount of the credit received for credit year one remaining, if any, that is not an overpayment pursuant to this paragraph may be carried forward pursuant to (d) below.

(d) An unused credit may be carried forward, if necessary, for use in the five privilege periods or reporting periods following the privilege period for which the credit is allowed.

(e) The burden of proof shall be on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the credits or refund allowed pursuant to this section. No taxpayer shall be allowed more than a single 24-month continuous period in which credits shall be allowed for activity at a location within a qualified municipality.

(f) The tax credit permitted by this section shall not exceed 50 percent of the taxpayer's liability otherwise due and shall not reduce the total tax liability below the statutory minimum.

(g) To claim the credit, the taxpayer must complete Form 313 and attach it to the Corporation Business Tax return (Form CBVT-100 or CBT-100S) being filed.

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

### 18:7-3.26 HMO assistance fund tax credit

(a) As used in this section, "member organization" means, pursuant to N.J.S.A. 17B:32B-3, a person who holds a certificate of authority to operate a health maintenance organization pursuant to N.J.S.A. 26:2J-1 et seq., and includes any person whose certificate of authority has been suspended, revoked or nonrenewed.

(b) Member organizations are allowed a credit under N.J.S.A. 17B:32B-12 in an amount equal to 50 percent of an assessment for the New Jersey Insolvent Health Maintenance Organization Assistance Association imposed pursuant to N.J.S.A. 17B:32B-9.

(c) Ten percent of the credit amount may be applied to each of the five privilege periods beginning on or after the third calendar year beginning after the assessment was paid.

	XYZ Corp.	50 Percent Partnership Interest	Combined	Fraction in NJ	
Property NJ	9,000	750	9,750		
Everywhere	10,000	1,000	11,000	.886364	
Receipts NJ	3,000	10,000	13,000		
Everywhere	10,000	20,000	30,000	.433333	
Double Weighting of Receipts Fraction				.433333	
Payroll NJ	6,000	750	6,750		
Everywhere	10,000	1,000	11,000	.613636	
Total				2.36666	
Allocation Factor (Total divided by 4)				.591667	
Net Income of Corporation					\$5,000
Corporation's Distributive Share of Partnership Income					\$1,000
Total Net Income					\$6,000
Combined Allocation Factor				.591667	
Allocated Entire Net Income					\$3,550

The numerator and denominator of each fraction is determined by taking the corporation's property, payroll or receipts in State and everywhere and adding them to its share of the partnership's property, payroll or receipts in State and everywhere. The partnership's fractions are based on the corporation's percentage ownership interest without regard to special allocations. The column in the example headed "Fraction in NJ" represents each combined fraction in decimal form.

#### EXAMPLE IV

Corporation GHI is a foreign corporation which has no nexus with New Jersey other than a 10 percent general partnership interest in a limited partnership, which is unitary with the corporation. GHI is subject to Corporation Business Tax. Since the corporation has a unitary relationship with the partnership, the flow through method should be used to calculate the correct amount of income to be allocated to New Jersey. Corporation LMN holds a limited partnership interest in the same limited partnership. The corporation and the partnership are not part of a unitary business, and the limited partnership does not have liabilities to third parties. LMN is not subject to corporation business tax in New Jersey since it is a true limited partner, not a "deemed general partner" pursuant to (c) above.

	GHI Corp.	10 Percent General Partnership Interest	Combined	Fraction in NJ	
Property NJ	0	750	750		
Everywhere	10,000	1,000	11,000	.068182	
Receipts NJ	0	10,000	10,000		
Everywhere	10,000	20,000	30,000	.333333	
Double Weighting of Receipts Fraction				.333333	
Payroll NJ	0	750	750		
Everywhere	10,000	1,000	11,000	.068182	
Total				.803030	
Allocation Factor (Total divided by 4)				.200758	
Net Income of Corporation					\$5,000
Corporation's Distributive Share of Partnership Income					\$1,000
Total Net Income					\$6,000
Combined Allocation Factor				.200758	
Allocated Entire Net Income					\$1,205

The numerator and denominator of each fraction is determined by taking the corporation's property, payroll or receipts in State and everywhere and adding them to its share of the partnership's property, payroll or receipts in State and everywhere. The partnership's fractions are based on the corporation's percentage ownership interest without regard to special allocations. The column in the example headed "Fraction in NJ" represents each combined fraction in decimal form.

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 "Optional short tax table in lieu of allocation of net worth".

New Rule, R.1997 d.430, effective October 6, 1997.

See: 29 N.J.R. 1686(a), 29 N.J.R. 4327(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), deleted the last sentence; rewrote (b); in (c), amended the N.J.A.C. reference in 3 and added 4; rewrote (d); in (f), deleted the last sentence; deleted (f).

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.

#### 18:7-7.7 (Reserved)

### SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

#### 18:7-8.1 Business allocation factor; computation

(a) The business allocation factor is computed on the basis of the average percentage resulting from the following three fractions:

1. Average value of real and tangible personal property in New Jersey over the average value of such property both within and without New Jersey (this is usually referred to as the property fraction);
2. Receipts allocable to New Jersey over receipts both within and without New Jersey (this is usually referred to as the receipts fraction in this subchapter but may also be referred to as the sales fraction. The terms may be used interchangeably for fiscal periods beginning on or after July 1, 1996);
3. Payrolls allocable to New Jersey over payrolls within and without New Jersey (this is usually referred to as the payroll fraction).

(b) The business allocation factor is weighted as follows:

1. For fiscal or calendar accounting years beginning before July 1, 1996, the business allocation factor is computed by adding together the percentages derived from the foregoing three fractions for the period covered by the return, and dividing the total of the percentages by three.

2. For fiscal or calendar accounting years beginning on or after July 1, 1996, the business allocation factor is computed by adding together the percentages derived by adding the property fraction, the payroll fraction, and twice the receipts for the period covered by the return, and dividing the total of the percentages by four.

(c) If the receipts fraction is missing, the other two percentages are added and the sum is divided by two, and if both the receipts fraction and one other fraction are missing, the remaining percentage may be used as the business allocation factor. If the receipts fraction is present and either the property or payroll fraction is absent, then the percentages represented by the two fractions present are added together and divided by three. A fraction is not missing merely because its numerator is zero, but it is missing if both its numerator and denominator are zero.

Amended by R.1997 d.429, effective October 6, 1997.

See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).

Substantially amended section.

#### Statutory References

See N.J.S.A. 54:10A-6 as to how to compute business allocation factor.

#### Case Notes

Change in interpretation of safe harbor leasing provision did not require administrative rule making. *Reuben H. Donnelley Corp. v. Director, Div. of Taxation*, 128 N.J. 218, 607 A.2d 1281 (1992).