

SUBCHAPTER 11. FILING FEE PAYMENTS BY PARTNERSHIPS

Authority

P.L. 2002, c.40, § 25, N.J.S.A. 54:10A-27, 54A:9-17(a) and 54:50-1.

Source and Effective Date

R.2003 d.135, effective February 27, 2003
(to expire August 26, 2003).
See: 35 N.J.R. 1573(a).

18:35-11.1 Definitions

For the purposes of this subchapter only, the following terms shall have the following meanings:

“Common trust fund” means a fund maintained by a bank, which fund is subject to Internal Revenue Code Section 584 and which is free from New Jersey taxation pursuant to N.J.S.A. 17:9A-44.

“Income” means income, loss, gain, or expense.

“Partner” means, and includes without necessarily being limited thereto, each entity that receives a K-1 or NJ-K1 from a partnership.

“Partnership” means any entity classified as a partnership for Federal income tax purposes. The term includes, but is not limited to, a general partnership, a limited liability partnership, a limited partnership, a family limited partnership, and a limited liability company. The term includes partnerships whose members receive nontaxable income pursuant to N.J.S.A. 54A:5-8(c), commonly referred to as hedge funds and qualified investment partnerships as defined in N.J.S.A. 54:10A-4(r). However, the term does not include investment clubs or common trust funds.

“Investment club” means an entity that is classified as a partnership for Federal income tax purposes and, all of whose owners are individuals. All of the entity's assets must be securities, cash, or cash equivalents, and its assets must be valued on a consistent basis at the lower of cost or fair market value. In calculating assets for a privilege period, a quarterly average must be used, and the total value must be less than \$60,000. See also N.J.A.C. 18:35-1.3. To illustrate, an investment club is formed when a group of friends, neighbors, business associates, or others pool their money to invest in stock or other securities. The club may or may not have a written agreement, a charter, or bylaws.

Usually the group operates informally, with members pledging to pay a regular amount into the club, monthly. Some clubs have a committee that gathers information on securities, selects the most promising securities, and recommends that the club invest in them. Other clubs rotate these responsibilities among all their members. Most clubs require all members to vote for or against all investments, sales, trades, and other transactions.

18:35-11.2 Apportionment of the partnership fee

(a) For privilege periods beginning on or after January 1, 2002 each partnership, regardless of any Internal Revenue Code 761(a) election, having income derived from New Jersey sources that has more than two owners shall make a payment of a filing fee of \$150.00 for each owner of an interest in the entity, provided that the payment shall not exceed \$250,000.

(b) If a partnership includes nonresident partners, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the partnership filing fee may be used, provided that the partnership has an office outside New Jersey.

(c) The total apportioned partnership fee is equal to the sum of:

1. The number of resident partners multiplied by \$150.00; plus
2. The number of nonresident partners with physical nexus to New Jersey multiplied by \$150.00; plus
3. The number of nonresident partners without physical nexus to New Jersey multiplied by \$150.00 and the resulting product multiplied by the corporate allocation factor of the partnership.
 - i. The corporate allocation factor includes property, payroll and double weighted receipts fractions.

18:35-11.3 Annual return; payment of tax or fee due; extensions of time to file tentative return; estimated payment

(a) A partnership having a resident New Jersey owner of an interest in the entity or having any income derived from New Jersey sources is required to file a partnership return Form NJ-1065 on or before the 15th day of the fourth month after the end of the tax year. See N.J.A.C. 18:35-1.3.

(b) Any partnership having a liability for a filing fee payment pursuant to N.J.S.A. 54A:8-6 or having tax due pursuant to N.J.S.A. 54:10A-15.11 must file Form PART-100, “Partnership Return Voucher,” and Form NJ-1065. The applicable payment must accompany Form PART-100. Form PART-100 must be postmarked on or before the original due date for the return.

(c) A partnership seeking an extension of time to file NJ-1065 may file a copy of its application for a Federal extension with its New Jersey return. The box at the top of Form NJ-1065 labeled “Application for Federal Extension is attached” shall be checked. If a Federal extension has not been obtained, a request for a State extension may be made by filing Federal Form 8736 or 8800 with the Division of Revenue on or before the due date of the State return. In addition, Form Part 200 T, “Partnership Tentative Return and Application for Extension of Time to File,” must be postmarked on or before the original due date of the return.

An extension of time to file Form NJ-1065 does not extend the time to pay the filing fee or tax due. It also does not extend the time for filing the tax return or returns of the partners.

18:35-11.4 Installment payment

(a) Each entity required to make a payment of the partnership filing fee shall, on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the current fiscal year.

(b) In the year a partnership dissolves a 50 percent repayment of the filing fee liability for the succeeding year is not required.

1. For example, if a partnership having a taxable year beginning on or after January 1, 2002 dissolves during the calendar year 2002, the 50 percent prepayment of the \$150.00 per partner filing fee for the 2003 year is not required, provided the partnership properly marks its 2002 Form NJ-1065 signifying it is a final return.

18:35-11.5 Penalty and interest

For purposes of tax administration, tax and filing fees are payments subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Unless such provisions are superceded by specific sections of the Gross Income Tax Act such as N.J.S.A. 54A:9-5 and 54A:9-6, collection of the tax and filing fee shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

18:35-11.6 Partnership examples of the imposition of the filing fee

(a) The following are examples of the application of the filing fee to a variety of situations.

Example 1: A limited partnership operates a profitable shopping center in Middlesex County, New Jersey. It has 20 partners. All reside in New Jersey. The partnership is liable for a partnership filing fee of \$3,000 (20 x \$150.00) plus an installment payment of 50 percent of the current year's fee (\$1,500) for the succeeding year.

Example 2: A Connecticut partnership with an office in New Haven sells small tables. Ten partners reside in New Jersey and ten reside in Connecticut. The New Jersey customers of the business purchase \$200,000 worth of tables per year. Four Connecticut partners remain outside New Jersey, but six Connecticut resident partners work in the partnership's New Jersey office.

Since the partnership includes nonresident partners, the apportionment methodology for the partnership filing fee may be used. The partnership's allocation factor is assumed to be 0.4.

The fee is calculated as follows:

The number of New Jersey resident partners is multiplied by \$150.00.

$$10 \times \$150.00 = \$1,500$$

The number of nonresident partners with physical nexus with New Jersey multiplied by \$150.00.

$$6 \times \$150.00 = \$900.00$$

The number of nonresident partners without physical nexus to New Jersey is multiplied by \$150.00 and the result is multiplied by the allocation factor.

$$4 \times \$150.00 = \$600.00$$

$$\$600.00 \times 0.4 = \$240.00$$

The total fee for 2002 is:

$$\$1,500 + \$900.00 + \$240.00 = \$2,640$$

The prepayment for 2003 is

$$\$2,640 \times 50 \text{ percent} = \$1,320$$

Example 3: A limited partnership, East, L.P., is organized and has an office in New Jersey. It has 10 limited partners and two general partners. One of the limited partners is a California limited partnership, West, L.P., having 15 partners all of whom are based in an office in Los Angeles. Certain property belonging to West, L.P., is stored at East, L.P.'s office in New Jersey. The Los Angeles limited partnership received a \$1,000,000 distribution in 2002 from the New Jersey partnership. West, L.P.'s apportionment formula is 10 percent or 0.1.

First, in 2002 the New Jersey partnership pays a fee of (12 x \$150.00) \$1,800 for 2002 since all its partners had a presence in New Jersey plus a prepayment of \$900.00 (50 percent x \$1,800) for 2003.

Second, since the California partnership derives income from New Jersey, it is also responsible for the partnership fee. Its fee is calculated as follows:

$$0 \text{ Resident partners} = \$0$$

$$0 \text{ Non-resident partners with physical nexus} = \$0$$

15 Non-resident partners without physical nexus to New Jersey

$$15 \times \$150.00 = \$2,250$$

\$2,250 \times 0.1 = \$225.00 which is the fee for the California partnership.

Example 4: A family limited partnership is organized so that two general partners receive K-1s and two limited

partners that receive no income from the partnership do not receive K-1s.

The partnership fee is 4 \times \$150.00. There are four owners of the partnership and the partnership directory discloses them as such. The fact that two partners do not receive K-1s is not material, and they are still counted toward the fee total since they are also owners of the partnership.