CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

P.L. 1983, c.303, section 22 (N.J.S.A. 52:27H-81) and N.J.S.A. 54:10A-27.

Source and Effective Date

R.2004 d.367, effective September 1, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 7, Corporation Business Tax Act, expires on February 28, 2010. See: 41 N.J.R. 3401(a).

Chapter Historical Note

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

Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979. See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

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Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

Subchapter 17, Partnerships; Subchapter 18, Alternative Minimum Assessment; and Subchapter 19, Filing Fee Payments by Professional Corporations were adopted as special new rules by R.2003 d.135, effective February 27, 2003. Subchapters 17, 18 and 19 were adopted as R.2003 d.370, effective August 22, 2003. See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Chapter 7, Corporation Business Tax Act, was readopted as R.2004 d.367, effective September 1, 2004. See: Source and Effective Date. See, also, section annotations.

Subchapter 3B, Film Tax Credits, was adopted as new rules and Subchapter 15, Urban Enterprise Zones Act, was recodified as Subchapter 3A by R.2007 d.203, effective July 2, 2007. See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

Subchapter 3B, Film Tax Credits, was renamed Film and Digital Media Tax Credits by R.2009 d.143, effective May 4, 2009. See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).

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Amended by R.1998 d.193, effective April 20, 1998.
See: 30 N.J.R. 605(a), 30 N.J.R. 1426(a).
Rewrote (g) and (h); inserted new (i) and (j); and recodified former (i) through (k) as (k) through (m).
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 (b), rewrote 6i.

Statutory References

See N.J.S.A. 54:10A-5(c) as to computation of tax on basis of entire net income.

18:7-3.7 Surtax

(a) A taxpayer shall pay a surtax for privilege periods ending on or after July 1, 2006 but before July 1, 2009.

(b) The amount of the surtax shall be four percent of the amount of the tax liability determined pursuant to N.J.S.A. 54:10A-5 after the application of any credits allowed against that liability other than those listed in (c) below.

(c) No credits shall be allowed against the surtax liability computed under this section, except for credits for:

1. Installment payments;

2. Estimated payments made with a request for an extension of time for filing a return; or

3. Overpayments from prior privilege periods.

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.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
(a)2: Added "but before June 30, 1974"; (a)3: Added "but before December 31, 1980".
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 "Corporation tax prepayments; amounts due".
New Rule, R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

18:7-3.8 Investment company; tax self-assessed and payable

(a) The tax payable by an investment company entitled and electing to report as such is a tax measured by 40 percent of its entire net income at the rate provided by law.

(b) In no case shall the total tax be less than $250.00 provided that for privilege periods beginning on and after January 1, 2002 the tax shall not be less than $500.00, except that 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 minimum tax shall be $2,000 for the privilege period.

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.1990 d.489, effective October 1, 1990.
See: 22 N.J.R. 1871(a), 22 N.J.R. 3147(a).
Tax rate amended to conform to statutory tax rates.
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 "Investment company; tax assessed and payable".
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.

18:7-3.9 (Reserved)

Amended by R.1982 d.6, effective February 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
"By" was "for"; added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "N.J.A.C. 18:7-3.7"; deleted "section 3.7"; deleted "of this chapter".
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 "Investment company tax prepayments; amounts, dates due".

18:7-3.10 Regulated investment company; tax payable

(a) For the privilege periods beginning before January 1, 2002, the tax payable by a regulated investment company, entitled and electing to report as such, is $250.00.

(b) For privilege periods beginning on and after January 1, 2002 the tax applicable to a regulated investment company shall be $500.00, provided, however, that 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 minimum tax shall be $2,000 for the privilege period.

(c) A regulated investment company, as defined in N.J.S.A. 54:10A-4(g), that also qualifies as an investment company, as defined in N.J.S.A. 54:10A-4(f), is not subject to the AMA. Such a company shall annually file form CBT-100, completing page 1 and Schedule M for regulated investment companies. In addition, a statement should be attached to the taxpayer's return indicating that the regulated investment company qualifies as an investment company.

(d) A taxpayer that qualifies as both a regulated investment company and an investment company shall pay the minimum tax applicable to all taxpayers of $500.00 unless it is a member of a controlled or consolidated group having total payroll of $5,000,000 or more, in which case the minimum tax would rise to the level of $2,000.

(e) A regulated investment company that does not qualify as an investment company is subject to the alternative minimum assessment.

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.496, effective November 7, 1983.
See: 15 N.J.R. 1365(a), 15 N.J.R. 1872(b).
Deleted old (a)-(c). In (a), added $250.00 tax. Also added new (b).
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.

Statutory References

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

18:7-3.11 (Reserved)

Amended by R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "N.J.A.C. 18:7-3.7"; deleted "section 3.7"; deleted "of this chapter".
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 "Regulated investment company; tax prepayments, amounts and dates due".

18:7-3.12 Method of accounting

In general, the method of accounting, whether cash, accrual or other basis, used in computing net income for Federal income tax purposes is to be used in computing entire net income under the Act.

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-4(k)(3) as to Director's right to redetermine the period in which income should be included despite method of accounting used by the taxpayer.

18:7-3.13 Estimated tax

(a) For any privilege periods beginning on or after January 1, 1985, each taxpayer shall pay its estimated tax in four installments as follows:

1. Twenty-five percent on or before the 15th day of the fourth month; and

2. Twenty-five percent on or before the 15th day of the sixth month; and

3. Twenty-five percent on or before the 15th day of the ninth month; and

4. The balance on or before the 15th day of the 12th month of its current accounting period.

(b) For privilege periods beginning on or after January 1, 2003, each taxpayer with gross receipts of $50,000,000 or more for the prior privilege period shall pay its estimated tax for its current privilege period in installments as follows:

1. Twenty-five percent on or before the 15th day of the fourth month of the period;

2. Fifty percent on or before the 15th day of the sixth month of the period; and

3. The balance on or before the 15th day of the 12th month of its current privilege period.

(c) When the tax liability for the preceding tax year is $500.00 or less, a taxpayer may, in lieu of making the installment payments otherwise required, discharge its entire obligation with respect to estimating its tax by making a single payment on or before the original due date for filing its return. The single payment is 50 percent of the tax shown on the face of its return. Such tax must be determined with reference to the tentative return or final return which was filed or should have been filed on or before the original date of such return. The single payment should be computed by taking into account any payment which may have been made on the 15th day of the first month of its current tax year.

(d) For purposes of applying this rule, it is necessary that the preceding tax year be a full calendar or fiscal year, or where such return is for a short period of less than 12 months, the actual tax liability for such short period must be divided by the number of whole months covered by the return and multiplied by 12 to impute a tax for a full calendar or fiscal year. For the purpose of this computation a fraction of a month is to be disregarded.

(e) A taxpayer shall be entitled to a credit in the amount of the estimated tax payments made and shall be entitled to the return of any amount so paid which is in excess of the total tax payable under N.J.S.A. 54:10A-15(c) and N.J.A.C. 18:7-3.

(f) Any amount overpaid and appearing on the face of the return CBT-100 for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that it elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.

(g) The term "taxpayer" as used in this section is defined at N.J.A.C. 18:7-1.3 and includes corporations as defined in N.J.S.A. 54:10A-4(c), investment companies, regulated investment companies, real estate investment trusts, financial business corporations, banking corporations and savings institutions.

(h) The due date for any payment of estimated tax cannot be extended.

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 Federal 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)1i 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;

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;

xx. For privilege periods beginning after December 31, 2004, amounts deducted for Federal tax purposes pursuant to Federal Internal Revenue Code section 199, except that this provision shall not apply to amounts deducted pursuant to that section that are exclusively based upon domestic production gross receipts of the taxpayer which are derived only from any lease, rental, license, sale, exchange, or other disposition of qualifying production property which the taxpayer demonstrates to the satisfaction of the Director was manufactured or produced by the taxpayer in whole or in significant part within the United States but not qualified production property that was grown or extracted by the taxpayer. "Manufactured or produced," as used in this paragraph, shall be limited to performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character shall be a substantial change, and result in a transformation of property into a different or substantially more usable product. For example, expenses to be added back include, but are not limited to, expenses that are applicable to or pertain to production property grown or extracted; from food processing (but not retail food sales), from software development, from filmmaking and sound recordings, from the production of electricity, natural gas and potable water, from construction activities; and from engineering or architectural services; and

xxi. For property placed in service on or after January 1, 2004, the amounts claimed as cost expense pursuant to IRC section 179 that are in excess of $25,000.

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 and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under IRC Section 856, and N.J.S.A. 54:10A-4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2i above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

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.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under IRC section 856, and N.J.S.A. 54:10-A4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2ii above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

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)1xii 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, the transferor of the property shall take as a deduction any excess or shall restore as an item of income any deficiency of depreciation disallowed under (a)1xii 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.
Amended by R.2006 d.61, effective February 6, 2006.
See: 37 N.J.R. 4195(a), 38 N.J.R. 1080(a).
In (a)2i, deleted "of this chapter"; added (a)2i(1) and (a)2ii(1).
Amended by R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
In (a)1viii, updated the second N.J.A.C. reference; in (a)1xviii, deleted "and" from the end; in (a)1xix, substituted a semicolon for the period at the end; and added (a)1xx and (a)1xxi.
Amended by R.2009 d.151, effective May 4, 2009.
See: 41 N.J.R. 721(b), 41 N.J.R. 2050(a).
In (a)2v, substituted "the transferor of the property shall take" for "there shall be allowed", "shall restore" for "there must be restored" and "(a)1xii" for "(a)1x".

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).

Under N.J.A.C. 18:7-5.2(a)2v, a taxpayer's parent corporation had been entitled, but not required, to take an excess depreciation deduction. Therefore, the parent corporation's decision not to take such a deduction did not preclude the taxpayer from assuming the higher depreciable basis of assets transferred to it by the parent. Clorox Prods. Mfg. Co. v. Director, 23 N.J. Tax 260, 2006 N.J. Tax LEXIS 22 (Tax Ct. 2006).

Any distinction between the terms "physical disposal" and "disposal" in N.J.A.C. 18:7-5.2(a)2v is a distinction without a difference. Clorox Prods. Mfg. Co. v. Director, 23 N.J. Tax 260, 2006 N.J. Tax LEXIS 22 (Tax Ct. 2006).

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.

(g) If the taxpayer acquires products or services from another member of its affiliated or controlled group, which it resells or otherwise uses to generate revenue or expense, the taxpayer shall within 90 days of a request from the Director, disclose by computerized spread sheet or other form as specified by the Director the amount of revenue or expense generated from those products or services including, but not limited to, management fees, rents, and other services. A failure to file such disclosure constitutes the filing an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48–1 et seq., including, without limitation, N.J.S.A. 54:49–4 and 54:52–8.

New Rule, R.1978 d.30, effective January 27, 1978.
See: 10 N.J.R. 40(b), 10 N.J.R. 128(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 "New jobs credit; salaries deduction".
Special New Rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, 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.

18:7–5.12 Net operating loss deduction

A taxpayer may deduct a New Jersey net operating loss carryover as defined in N.J.A.C. 18:7–5.13 in computing its entire net income before exclusions and before the net operating loss deduction.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–5.13 New Jersey net operating loss carryover

(a) A New Jersey net operating loss as defined in N.J.A.C. 18:7–5.15 for any taxable year ending after June 30, 1984 becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss year.

(b) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise. See N.J.S.A. 54:10A–4.5.

(c) Corporations acquired under Internal Revenue Code Section 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7–5.14.

Example 1: A domestic corporation dissolves pursuant to laws of the State of New Jersey and incorporates in another state. This newly formed corporation of another state is a new legal entity for corporation business tax purposes and the net operating loss carryover of the domestic corporation is not available to the new entity.

Example 2: The example below illustrates the net operating loss carryover for the full term of seven years and demonstrates the application of net operating loss deductions in the proper sequence.

Amounts From Returns									
Return Year	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**1991**	**1992**
Fiscal Year Ended	**31-Dec-84**	**31-Dec-85**	**31-Dec-86**	**31-Dec-87**	**31-Dec-88**	**31-Dec-89**	**31-Dec-90**	**31-Dec-91**	**31-Dec-92**
Line 28	($100,000)	(6,000)	(8,000)	(10,000)	50,000	8,000	(5,000)	2,000	10,000
NJ Adjustments	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ENI before NOL ded. or exclusions	(95,000)	(1,000)	(3,000)	(5,000)	55,000	13,000	0	7,000	15,000
NOL Deduction	NA	0	0	0	55,000	13,000	0	7,000	9,000
ENI before exclusions	0	0	0	0	0	0	0	0	6,000
Dividend exclusion & IBF exclusion	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Entire Net Income	0	0	0	0	0	0	0	0	4,000
NOL Carryovers Applied									
1985	0								
1986	0	0							
1987	0	0	0						
1988	55,000	0	0	0					
1989	13,000	0	0	0	0				
1990	0	0	0	0	0	0			
1991	7,000	0	0	0	0	0	0		
1992		1,000	3,000	5,000	0	0	0	0	0
1993			0	0	0	0	0	0	0
1994				0	0	0	0	0	0
1995					0	0	0	0	0
1996						0	0	0	0
1997							0	0	0

1998								0	0
1999									0
Unused	20,000	0	0	0	0	0	0	0	0
Total	95,000	1,000	3,000	5,000	0	0	0	0	0

(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's 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. NJ Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax.

1. "ENI" means entire net income as defined in the Act and in these rules.

2. "NOL" means net operating loss.

i. Exclusions are the exclusions from entire net income for dividends received and the eligible net income of an international banking facility.

3. "IBF" means the eligible net income of an international banking facility.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
Administrative Correction to (c), removing Examples 1:B and 2:C from Code.
See: 23 N.J.R. 1024(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).
In (b), added the N.J.S.A. reference.
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.

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

Taxes. Steven P. Bann, 136 N.J.L.J. No. 8, 53 (1994).

Case Notes

New section of Business Tax Reform Act (BTRA), providing that net operating loss for a privilege period ending after specified date could be carried over and allowed as a deduction only by the corporation that sustained the loss, was consistent with prior version of Corporation Business Tax Act (CBTA) and its regulations and, thus, there was no retroactive change in the law as a result of new statute and no concern under state constitution or federal due process clause, with respect to corporation surviving merger that sought to take net-operation-loss deduction for losses suffered by merged corporation in previous years. A.H. Robins Co., Inc. v. Director, Div. of Taxation, 365 N.J.Super. 472, 839 A.2d 914.

Corporate Business Tax Act's (CBT's) regulation, under which net operating costs did not carryover when domestic corporation was dissolved and incorporated in another state such that new corporation could not take deduction, applied to surviving corporation that attempted to take merged corporation's net operating losses, despite claim that regulation contemplates disallowance of future net-operating-loss deductions when a domestic corporation dissolves pursuant to state law and incorporates in another state whereas surviving corporation was a foreign company before and after reorganization; statute did not expressly state that it only affected company's incorporated in state. A.H. Robins Co., Inc. v. Director, Div. of Taxation, 2002 WL 31932043 (2002).

Successor corporation; net operating losses of merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Regulation governing net operating loss carryovers was not authorized. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Surviving corporation could not carryover loss of a merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

Change in 50% or more of ownership of corporation may remove corporation's right to carryover net operating losses. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

18:7-5.14 Limitations to the right of a net operating loss carryover

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all its capital stock redemptions and sales after June 30, 1984 is a 50 percentage point change in the ownership of its voting stock and the corporation changes from the business giving rise to the loss. For this purpose the exchange of stock is a sale. Further, solely for this purpose and no other purpose in the Act, a business is defined in terms of the economic factors of production. The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover.

(b) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:

1. Whether the physical location or other fixed assets of the loss corporation were used in a new business;

2. The extent of the termination of the existing work force of the loss corporation;

3. A price paid for the loss corporation in excess of the market value of the assets; and

4. Any other material deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.

(c) The average values used in determining the property fraction of the allocation factor are normally based on book value with respect to property owned, including property on consignment (consignor). Leased or rented property is valued at eight times its annual rent, including any amounts (such as taxes) paid or accrued in addition to or in lieu of rent during the period covered by the return. Subrents do not reduce annual rents, but rather enter into the determination of the receipts fraction. Property that is used which is neither owned, leased or rented should be valued at book value but if the books do not disclose a fair value or disclose a minimal value then that property should be shown at fair value, which for this purpose would be market value, including, but not limited to, loaned property, bailments, etc. Property on consignment held by the consignee is considered property used. Leasehold improvements are treated as owned by the taxpayer. The numerator and the denominator shall take into account depreciation disallowed at N.J.A.C. 18:7–5.2 where the taxpayer accounts for its property on a Federal income tax basis on its books.

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented or used in this state.

Example 1: Taxpayer is the lessor of equipment. Consistent with generally accepted accounting principles it accounts for its capital leases as completed sales. Consistent with principles of tax accounting, it accounts for that same leasing as net rental income which is reported as entire net income.

That entire net income is apportioned by use of the allocation factor which must include the property fraction. That property fraction must reflect the percentage of the taxpayer's real and tangible personal property within New Jersey, including the leased property, despite the fact that the property no longer appears on the books of the corporation in order to effect a fair and reasonable apportionment of entire net income.

Example 2: Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the state and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

As amended, R.1983 d.62, eff. March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added 3. to (a).
Amended by R.1986 d.284, effective July 21, 1986.
See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).
Substantially amended.

Law Review and Journal Commentaries

Taxes. Steven P. Bann, 136 N.J.L.J. No. 15, 78 (1994).

Case Notes

Regulation adjusting calculation of franchise taxes on corporations doing business in state was authorized. Brunswick Corp. v. Director, Div. of Taxation, 135 N.J. 107, 638 A.2d 805 (1994).

Regulation governing computations from property leased by multistate corporate taxpayer did not exceed Director's authority. Brunswick Corp. v. Director, Div. of Taxation, 13 N.J.Tax 136 (A.D.1993), certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Delegation to Director of Division of Taxation authority to compute interstate income applicable to New Jersey was not improper. Brunswick Corp. v. Director, Div. of Taxation, 11 N.J.Tax 530 (1991), affirmed 13 N.J.Tax 136, certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Tax imposed on multistate corporate taxpayer was not limited to owned property. Brunswick Corp. v. Director, Div. of Taxation, 11 N.J.Tax 530 (1991), affirmed 13 N.J.Tax 136, certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Determination of constitutionality of allocation corporate income to various states requires examination of evidence. Silent Hoist & Crane Co., Inc. v. Taxation Div. Director, 9 N.J.Tax 178 (1987).

Administrative fairness in allocation of corporate income requires determination of whether allocation property reflects corporation's activities. Silent Hoist & Crane Co., Inc. v. Taxation Div. Director, 9 N.J.Tax 178 (1987).

Evidence that allocation of corporate income to state is required to invalidate allocation. Silent Hoist & Crane Co., Inc. v. Taxation Div. Director, 9 N.J.Tax 178 (1987).

Lack of rational relationship between corporation's New Jersey presence through a real estate operation and its out-of-state manufacturing operations which the State sought to tax precluded taxation of the latter; no rational relationship found between the corporation's New Jersey presence and its securities portfolio to permit taxation of the portfolio's income; other factors of corporation's operation held insufficient indicia to warrant taxation of the corporation as a unitary business. Silent Hoist & Crane Co., Inc. v. Director, Div. of Taxation, 5 N.J.Tax 242 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 348 (App.Div.1984), reversed and remanded 100 N.J. 1, 494 A.2d 775 (1985) certiorari denied 106 S.Ct. 409, 474 U.S. 995, 88 L.Ed.2d 359, on remand 9 N.J.Tax 178.

18:7–8.6 Average value; computation period

(a) Average value is generally computed on a quarterly basis where the taxpayer's usual accounting practice permits such computation.

(b) At the option of the taxpayer or the Director, a more frequent basis (monthly, weekly or daily) may be used. Where the taxpayer's usual accounting practice does not permit computation of average value on a quarterly or more frequent basis, a semi-annual or annual basis may be used where no distortion of average value results. If any basis other than quarterly is used on the return, such basis and the reasons therefor must be fully explained on a separate rider.

Case Notes

Provision in N.J.A.C. 18:7–3.4 for computation of tax based upon number of shares authorized compared to real and personal property alternative tax as mean average value on a quarterly basis. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–8.7 Business allocation factor; determination or receipts fraction

(a) The percentage of the taxpayer's receipts within New Jersey is determined by ascertaining the taxpayer's receipts allocable to New Jersey during the period covered by the return and dividing the sum of the receipts by the taxpayer's total receipts within and without New Jersey during such period.

(b) The receipts of the taxpayer are to be computed on the cash, accrual or other method of accounting used in computation of its net income for Federal income tax purposes. However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return.

Example 1:

Taxpayer is engaged in long-term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting whereby it recognizes the net income on its contracts in their entirety in the year of completion.

The composition of the receipts fraction must be determined in harmony with the entire net income to which it relates. The numerator and denominator of the receipts fraction must reflect the entire contract revenues on completed contracts recognized in entire net income during the period covered by the return.

Example 2:

Taxpayer recognizes income on a sale for tax purposes on the installment method. The numerator and denominator of the receipts fraction should include the same proportion of the sale as is prorated as recognized income to the year covered by the return.

(c) Entire net income shall be included or excluded as follows:

1. All income which is included in entire net income enters into the numerator and denominator of the receipts fraction.

2. Any income which is excluded from entire net income is also excluded from the numerator and denominator of the receipts fraction, except for banking corporations with international banking facilities as provided in P.L.1983, c.422. See N.J.S.A. 54:10A–6.

Example:

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under Section 4(k)(1) of the law must also be excluded in computing the receipts fraction.

(d) The receipts sourced to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction. This principle applies to single entity taxing jurisdictions as well as postapportionment combination states. The rule also permits the throwout of receipts to preapportionment combination states. Receipts from preapportionment combination states are not required to be thrown out of the denominator of the New Jersey receipts fraction if they create a potential tax in a foreign state. For purposes of this subsection, "preapportionment combination states" are those states where the receipts from all states are added together before the apportionment factor is calculated. "Post-apportionment combination states" are those where the various apportionment factors are calculated first then totaled. If a taxpayer believes that application of the throwout rule in a particular situation produces an improper allocation, the taxpayer may avail itself of the prescribed avenues to request the Director's discretionary adjustment of the allocation factor pursuant to N.J.S.A. 54:10A–8.

Example: ABC Inc., a New Jersey corporation, manufactures goods in New Jersey. It also maintains an office in Philadelphia. Eighty percent of ABC's payroll and property are in NJ. It sells 30 percent of its goods to NJ customers; 30 percent to PA customers; and 40 percent to customers in other states. ABC Inc. files returns and pays tax to NJ and PA only. It is not subject to tax in other states due to the protection of P.L. 86–272. ABC Inc. has entire net income of $1,000,000.

For tax year 2001, beginning 1/1/01 and ending 12/31/01, its allocation factor is:

$$\left(\underset{\text{Property}}{\frac{80}{100}} + \underset{\text{Payroll}}{\frac{80}{100}} + \underset{\text{Double Receipts}}{\frac{30}{100} + \frac{30}{100}}\right) \div 4 = \underset{\text{Allocation Percentage}}{55\%}$$

For tax year 2002, beginning 1/1/02 and ending 12/31/02, its allocation factor is:

$$\left(\underset{\text{Property}}{\frac{80}{100}} + \underset{\text{Payroll}}{\frac{80}{100}} + \underset{\text{Double Receipts}}{\frac{30}{60} + \frac{30}{60}}\right) \div 4 = \underset{\text{Allocation Percentage}}{65\%}$$

(e) Receipts which are included in the numerator of a jurisdiction's receipts fraction by reason of the operation of a throwback provision are deemed not to be receipts assigned to that jurisdiction and are, therefore, excludible from this State's receipts fraction denominator.

(f) The amount by which the exclusion of receipts from the denominator of the sales fraction increases the liability of all the members of an affiliated group or controlled group pursuant to sections 1505 or 1563 of the Internal Revenue Code of 1986 over the liability calculated without application of the exclusion shall not exceed $5,000,000. If the exclusion increases the liability of all the members of an affiliated group or controlled group by more than $5,000,000 for the privilege period, then the amount of liability in excess of $5,000,000 due to the exclusion shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts. The Director may allow a single corporation within the affiliated group or controlled group to act as the key corporation (clearinghouse) for the abatement. "Business presence" or "business activity" taxes include, but are not limited to, net worth taxes, gross receipts taxes, single business taxes. For example, business presence or business activity taxes include, but are not limited to, the Pennsylvania Bank Shares Tax (72 P.S. 7701 et seq.) and the New York Franchise Tax on Banking Corporations (Article 32 of the New York tax laws). Property taxes, excise taxes (for example, cigarette taxes), payroll taxes, and sales taxes are not considered "business presence" or "business activity" taxes.

(g) If the exclusion of sales increases the liability of a single entity taxpayer that is independent of and not affiliated with any controlled or affiliated group as defined above, then such increase shall be capped at $5,000,000 and the excess shall be abated.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(b) substantially amended and Examples added.
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (d) through (g).
Adopted concurrent amendment, R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Rewrote (d) and (f).

Statutory References

See N.J.S.A. 54:10A–6(B) as to factors includible in determination of receipts fraction.

18:7–8.8 Scope of allocable receipts

(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and transshipped to a point outside this State.

i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.

iii. The sale of goods shipped by a taxpayer from outside of New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside of New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside of New Jersey results in receipts which are not allocable to New Jersey.

Example:

Taxpayer, a non-New Jersey manufacturer, transports goods from outside of New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside of New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside of New Jersey results in receipts not allocable to New Jersey.

2. Services performed in New Jersey;

3. Rentals from property situated in New Jersey;

4. Royalties from the use in New Jersey of patents or copyrights;

5. All other business receipts earned in New Jersey. See example in N.J.A.C. 18:7–8.7(c).

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
Substantially amended.
Amended by R.1989 d.311, effective June 19, 1989.
See: 21 N.J.R. 438(b), 21 N.J.R. 1744(c).
Exceptions to receipts allocable to New Jersey added at (a)1i-iv, with examples.

Statutory References

See N.J.S.A. 54:10A-6(B) as to factors includible in computing receipts fraction.

18:7–8.9 Receipts from sales of capital assets; when includible

(a) The gross receipts from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or without New Jersey should not be included in either the numerator or denominator of the receipts fraction. The net gains from such sales which are included in entire net income are the amounts which are properly to be included in the computation of the receipts fraction. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.

ILLUSTRATION
FACTS

	Selling Price	Cost	Net Gain	Net Loss
Property #1	$1,000	$ 600	$400	
Property #2	2,000	2,200		$200
Property #3	3,000	2,900	100	
			$500	$200
			(200)	
Amount of gain appearing on Schedule A			$300	

The $300 net gain is includable in the denominator of the receipts fraction in all cases. The computation to arrive at the amount to be included in the numerator is given in the following examples:

Example 1:

At the time of sale, Property #1 was located within New Jersey whereas Property #2 and #3 were located outside New Jersey.

Amount of N.J. Gains $400 / Total Gains $500 = 80% x $300 (net gain) = $240

The amount of $240 is to be included in the numerator of the receipts fraction.

Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

Amount of N.J Gains -0- / Total Gains $500 = 0% x $300 (net gain) = -0-

There is nothing attributable to this transaction which will affect the numerator of the receipts fraction.

Example 3:

At the time of sale, Property #1 and #3 were located within New Jersey, whereas Property #2 was located outside New Jersey.

Amount of N.J. Gains $500 / Total Gains $500 = 100% x $300 (net gain) = $300

(b) Where the taxpayer's business is the buying and selling of real estate or the buying or selling of securities for trading purposes, these assets are not deemed to be capital assets and the gross receipts from the sales thereof are included in the same manner as other includable receipts.

1. If a taxpayer is trading for its own account, the proceeds of such trades would be treated on a net basis.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(a) substantially amended and examples added.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
In (b), added 1.

Statutory References

See N.J.S.A. 54:10A-6(B) as to what tangible personal property shall be includible when computing taxpayer's receipts fraction.

Case Notes

Rule held to impose restriction not warranted by statute; only net gain from sales of tangible personal property includable in receipts fraction of the business allocation formula of the Corporation Business Tax Act; income derived from the sale or redemption of short-term obligations and the interest increment realized upon the sale or redemption of such obligations issued at a discount were includable in receipts fraction of the business allocation formula. American Telephone & Telegraph Co. v. Director, Div. of Taxation, 4 N.J. Tax 638 (Tax Ct.1982), affirmed 194 N.J.Super. 168, 476 A.2d 800 (App.Div. 1984), certification denied 97 N.J. 627, 483 A.2d 157 (1984).

18:7-8.10 Receipts; compensation for services; allocation for certain special industries

(a) The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned under this section if the service is performed within this State. If the service is performed both within and outside this State, the numerator of the receipts fraction includes receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method which should reflect the trade or business practice and economic realities underlying the generation of the compensation for services. Cost of performance is defined as all direct costs incurred in the performance of the service, including direct costs of subcontractors.

1. All amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.

2. It is immaterial where the amounts were payable or where they actually were received.

Example 1: Taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The appropriate method of assigning the portion of its advertising revenues attributable to services performed in New Jersey is based upon the proportion of its listening audience in New Jersey.

Example 2: Taxpayer earns income from the sale of long distance telephone communications service. It bills the originators of long distance telephone calls directly and for all calls placed by them. The appropriate method of allocating its long distance toll revenues attributable to services performed in New Jersey is based upon billings for calls originating in New Jersey.

(b) Commissions received by the taxpayer are allocable to New Jersey if the services for which the commissions were paid were performed in New Jersey. If the taxpayer's services for which commissions were paid were performed for the taxpayer by salesmen attached to or working out of a New Jersey office of the taxpayer, the taxpayer's services will be deemed to have been performed in New Jersey.

Example

The taxpayer is a New Jersey sales agent of a Pennsylvania manufacturer and receives in New Jersey an order from a New York customer. The order is forwarded to the manufacturer which accepts it and fills it by shipment direct to the customer. The taxpayer's commission is allocable to New Jersey.

(c) Certain service fees from transactions having contact with this State are allocable to New Jersey based upon the following:

1. Twenty-five percent of such fees are allocated to the state of origination.

2. Fifty percent of such fees are allocated to the state in which the service is performed.

3. Twenty-five percent of such fees are allocable to the state in which the transaction terminates.

Example 1: A taxpayer issues credit cards to its customers allowing funds to be obtained through the use of authorized machines located within New Jersey. A customer originates a transaction at a New Jersey location, and the taxpayer's computer, located outside this State, performs a credit check. Funds (or a bank draft) are received by the customer at the point of origin in New Jersey, where the transaction terminates. Taxpayer must allocate 50 percent of the service fee income earned from this transaction to New Jersey based upon the points of origination and termination. For purposes of this example the issuer of credit cards has nexus with New Jersey through physical presence in New Jersey.

Example 2: Taxpayer earns income by providing on-line internet access to customers located within New Jersey and outside New Jersey. Taxpayer's physical equipment allowing such access is located outside New Jersey. Taxpayer must allocate 50 percent of its revenue from internet access charges to New Jersey based upon the origination and termination of such access from points within New Jersey. Absent specific identification of points of origination and termination, the customer's billing address will serve to locate these activities. For purposes of this example, the internet service provider has physical presence through a home office located in New Jersey.

4. Certain lump sum payments for services performed within and without New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

i. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of departures from New Jersey to total departures. Departures may be weighted as to cost and value of aircraft by type where weighting would give a more fair and reasonable business allocation factor.

ii. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayers' receipts are multiplied by a fraction, the numerator of which is the number of miles in New Jersey and the denominator of which is the mileage in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement

pursuant to N.J.S.A. 54:39A-24 and to N.J.A.C. 13:18-3.12 shall make calculations using such records.

(1) In addition, with regard to the property fraction, movable property such as tractors and trailers shall be allocated to this State using the same mileage fraction set forth in (c)4iii above. Such allocated movable property shall be added to the fraction formed by non-movable property in New Jersey over non-movable property everywhere to arrive at the property fraction.

(2) With regard to the payroll fraction, wages of mobile employees such as drivers shall be allocated to New Jersey based upon mileage as set forth in (c)4iii above. Such allocated payroll shall be added to the fraction formed by non-mobile employee wages in New Jersey over non-mobile wages everywhere to arrive at the payroll fraction.

(d) If a taxpayer receives a lump sum in payment for services and also for materials or other property, the sum received must be apportioned on a reasonable basis.

1. That part apportioned to services performed is includible in receipts from services; and

2. That part apportioned to materials or other property is includible in receipts from sales;

3. Full details must be submitted with the taxpayer's return.

(e) Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

1. In the case of asset management services directly or indirectly provided to individuals, receipts shall be allocated to New Jersey if the domicile of the individual is in New Jersey.

2. In the case of asset management services directly or indirectly provided to a pension plan, retirement account or institutional investor, such as private banks, national and international private investors, international traders or insurance companies, receipts shall be allocated to New Jersey to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account or beneficiaries of the similar pool of assets held by the institutional investor is in New Jersey.

i. In the event the domiciles of the beneficiaries are not or cannot be obtained, a reasonable proxy may be used to allocate receipts to New Jersey that reflects the trade or business practice and economic realities underlying the generation of receipts from the asset management services. The burden of demonstrating the reasonableness of the method rests on the taxpayer. Based on specific facts and circumstances, reasonable proxies used to allocate receipts to New Jersey may take into account, among other things, the latest available population census data, the domicile of the sponsor of the plan, account or pool of assets, the sponsor's New Jersey payroll apportionment factor or the sponsor's ratio of New Jersey employees to total employees.

3. In the case of asset management services directly or indirectly provided to a regulated investment company, receipts shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the following:

i. The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes that ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of year balance of shares owned by the regulated investment company shareholders. A separate computation is made to determine the allocation of receipts from each regulated investment company.

4. As used in (e)1 through 3 above:

i. "Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets and related activities. As used in this section, "related activities" means administration services, distribution services, management services and other related services.

ii. "Administration services" means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services but does not include trust services.

iii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company.

iv. "Management services" means the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made or the selling or purchasing of securities and related activities.

v. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-2m in the case of an individual and under N.J.S.A. 54A:1-2o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or

the shareholder's mailing address on the records of the regulated investment company. For purposes of (e)3 above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

vi. In addition to amounts received directly from a regulated investment company, "receipts" shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such.

vii. "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.

viii. "Sponsor" means the party that has contracted directly with the beneficiaries of the plan, account or similar pools of assets.

5. See N.J.A.C. 18:7-1.6 regarding foreign advisors having customers in New Jersey.

(f) Receipts from the services of a registered securities or commodities broker or dealer shall be sourced to New Jersey if the customer is located within the State.

1. For purposes of this subsection:

i. "Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475;

ii. "Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475; and

iii. "Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the Federal Securities and Exchange Commission or the Federal Commodities Futures Trading Commission.

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.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
(c) substantially amended and examples and illustration added.
Amended by R.1989 d.439, effective August 21, 1989.
See: 21 N.J.R. 1106(a), 21 N.J.R. 2527(a).
Added subsection (e)1-2vi.
Administrative Correction to (c).
See: 21 N.J.R. 3477(a).
Administrative Correction to (c) and Example 1.
See: 22 N.J.R. 363(a).
Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Rewrote (a) and (c).
Administrative correction.
See: 30 N.J.R. 3660(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote (e); added (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.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
In (c)4, rewrote iii.
Amended by R.2007 d.218, effective July 16, 2007.
See: 39 N.J.R. 1243(a), 39 N.J.R. 2653(a).
Deleted former (c)4i; and recodified former (c)4ii and (c)4iii as (c)4i and (c)4ii.

Statutory References

See N.J.S.A. 54:10A-6(C) as to includability of compensation for personal services in receipts fraction.

18:7-8.11 Receipts; rents and royalties

(a) Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use in New Jersey of patents or copyrights, are allocable to New Jersey.

1. Receipts from rentals include all amounts received by the taxpayer for the use or occupation of property, whether or not such property is owned by the taxpayer.

2. Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not such patents or copyrights were originally issued to or are owned by the taxpayer.

3. A patent or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.

(b) Receipts from royalties derived from trademarks utilized in business in New Jersey are deemed located in New Jersey.

1. Receipts from royalties derived from trademarks utilized both within and outside New Jersey will be allocated to New Jersey based upon the use of the trademarks in New Jersey in relation to all use by the licensee.

2. Receipts from royalties derived from trademark license agreements, which wholly or in part authorize the licensee to sell or market products or services, are sourced to New Jersey in the same ratio as the licensee recognizes in its sales fraction receipts from sales related to the trademarked items or services.

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. B licenses those trademarks to affiliated entities, and the affiliates pay B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10 percent of its sales revenue from the use of a trademark within New Jersey and therefore is recognizing 10 percent of the affiliate's revenue in its New Jersey receipts fraction numerator and 90 percent in other jurisdictions, 10 percent of the royalty

paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Added (b).
Amended by R.2006 d.121, effective April 3, 2006.
See: 37 N.J.R. 4528(a), 38 N.J.R. 1583(a).
Added (b)1 and 2; in Example 1, added "and therefore is recognizing 10 percent of the affiliate's revenue in its New Jersey receipts fraction numerator".

Statutory References

See N.J.S.A. 54:10A-6(B)(5) as to includability of rents and royalties in computing receipts fraction.

18:7-8.12 Other business receipts

(a) All other business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules. Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies or proceeds from sales of scrap.

(b) For treatment of dividends see N.J.A.C. 18:7-8.7(c)2, Example.

(c) For treatment of receipts from sales of capital assets, see N.J.A.C. 18:7-8.9.

(d) Receipts from the sale of real property situated in New Jersey are earned in New Jersey.

(e) Intangible income not apportioned by other provisions of these rules is included in the numerator of the receipts fraction where the taxable situs of the intangible is in this State. The taxable situs of an intangible is the commercial domicile of the owner or creditor unless the intangible has been integrated with a business carried on in another state. Notwithstanding that the commercial domicile is outside this State, the taxable situs is in New Jersey to the extent that the intangible has been integrated with a business carried on in this State.

Example: Taxpayer has its domicile outside this State. It is in the business of lending money, some of which is loaned to New Jersey residents. Interest income recognized from such loans is income derived from sources within this State and, as such, is earned in New Jersey. That interest income is includable in the numerator of the receipts fraction.

(f) For treatment of non-operational income, see N.J.A.C. 18:7-8.17.

(g) Unless the taxpayer can show by clear and convincing evidence that such a methodology does not properly reflect the activity or business of the taxpayer reasonably attributable to the State, receipts from the sale of tangible and intangible assets in a transaction pursuant to IRC 338(h)(10) are allocated and sourced to New Jersey by multiplying the gain by a three-year average of the allocation factors used by target corporation for its three tax return periods immediately prior to the sale.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
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.2007 d.218, effective July 16, 2007.
See: 39 N.J.R. 1243(a), 39 N.J.R. 2653(a).
Added (g).

Case Notes

Place to or from which shipment is made is not relevant to the determination of whether receipts must be included in numerator of receipts fraction under statute requiring inclusion of 'all other business receipts' earned in New Jersey in receipts numerator for computation of corporation business tax for taxpayer which does business in New Jersey and maintains regular place of business in another state; issue is solely whether receipt was earned by taxpayer within New Jersey. Stryker Corporation v. Director, Division of Taxation, 773 A.2d 674 (2001).

Cross References

See subsection (g) of section 8.8 (Scope of allocable receipts) of this chapter as to treatment of dividends received from subsidiaries. See section 8.9 (Receipts of capital assets; when includible) of this chapter as to treatment of receipts of capital assets.

Statutory References

See N.J.S.A. 54:10A-6(B) as to includability of all business receipts earned within New Jersey in receipts fraction.

18:7-8.13 Business allocation factor; payroll fraction

(a) Wages, salaries and other compensation include all amounts paid for personal services rendered to the taxpayer, but do not include amounts paid of the taxpayer which do not have in them the element of compensation for personal services actually rendered or to be rendered.

(b) The percentage of the taxpayer's payroll allocable to New Jersey is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within New Jersey during the period covered by the return by the total amount of compensation of all the taxpayer's employees during the period.

1. All executive salaries are includible in both the numerator, as applicable, and the denominator.

2. In general, a taxpayer reporting to the Division of Employment Security in the New Jersey Department of Labor must allocate to New Jersey all wages, salaries and other personal service compensation, and other items reportable to that Division, including the portions thereof, in individual cases, over $6,200 for the calendar year 1978 and $6,600 for the calendar year 1979 and for subsequent years the amount prescribed by the New Jersey Department of Labor. (As a point of reference, such base wage amount for 1992 was $15,300 and for 1993 was $16,000.)

Case Notes

Circumstances exist where changes in a taxpayer's taxable income for Federal tax purposes require the taxpayer to file an amended State corporation business tax return; taxpayer's refund claims filed beyond two-year limit; additional assessments unrelated to years for which refunds claimed did not extend claim time limit. Bristol–Myers Co. v. Taxation Div. Director, 3 N.J.Tax 451 (Tax Ct.1981), affirmed 9 N.J. Tax 88, certiorari denied 107 N.J. 121, 526 A.2d 189.

18:7–11.5 Change of accounting period

(a) A taxpayer will not be permitted to change its accounting period for purposes of the Act unless it has first obtained the permission of the Commissioner of Internal Revenue for Federal Income tax purposes where permission is required under the Internal Revenue Code. A copy of such permission must be filed with the Division of Taxation.

(b) The taxpayer will also be required to file a short period return and remit the amount of its tax liability for the period from the close of its last accounting period for which a return was filed to the beginning of its newly authorized accounting period.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Statutory References

See N.J.S.A. 54:10A–4 as to definition of "fiscal year" and "privilege period"; and 54:10A–17 as to right of Director to determine a taxpayer's net worth, net income if the period covered by its report is other than the period covered by the Federal income tax report.

Case Notes

Taxpayer that separated from consolidated group was not required to file two short-term returns. Drake Bakeries, Inc. v. Taxation Div. Director, 12 N.J.Tax 172 (1991).

Filing of consolidated returns for parent corporation and subsidiary prohibited; in determining net worth of investments in subsidiaries, Director was not required to accept corporation's claim as to precise method of accounting used in corporation's books; Director authorized to use equity method of accounting where corporation's books used both cost and equity methods; use of equity method not required to be promulgated as a rule. Bristol–Myers Co. v. Taxation Div. Director, 8 N.J.Tax 133 (Tax Ct.1986), affirmed 9 N.J.Tax 88, certification denied 107 N.J. 121, 526 A.2d 189.

18:7–11.6 Forms of returns

(a) Returns are required to be made on forms prescribed by the Director.

1. In the case of all taxpayers, annual returns are required to be filed on Form CBT–100 or CBT–100S. As used in these rules, references to CBT–100 may be interpreted to include CBT–100S, as the context may require.

2. In the case of all taxpayers entitled and electing to allocate entire net income, the supplemental sheet, to be used in conjunction with Form CBT–100 and containing the allocation schedules, must be completed and annexed to Form CBT–100.

(b) The Director may require any taxpayer to file any other reports and submit any further information he may require in the administration of the provisions of the Act.

(c) Every return shall have annexed to it a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained in the return are true.

1. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation;

2. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of the corporation;

3. Annual return forms are supplied by the Division of Taxation but failure to receive a form does not relieve any taxpayer from the obligation to file a return under the provisions of the Act.

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.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–18 as to the required forms for returns and any additional statements.

18:7–11.7 Time for filing returns

(a) The appropriate annual Corporation Business Tax return together with payment of the tax, including the required prepayment, must be filed with the Division of Taxation on or before the 15th day of the fourth month after the close of each fiscal or calendar accounting period.

(b) A return is timely filed and deemed delivered on the date of the United States postmark stamped on the envelope. See N.J.S.A. 54:49–3.1.

(c) A return is timely filed when it is mailed to the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday or State holiday.

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.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(b), 17 N.J.R. 2677(b).
(b) and (c) added.
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
N.J.A.C. 18:7–11.7 cite corrected.
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–15 as to due dates for filing returns under the Act.

18:7-11.8 Time to report change or correction in Federal net income

(a) The report of change or correction in Federal taxable income as the result of an Internal Revenue Service audit must be reported to the Division of Taxation within 90 days of issuance of the report.

(b) Any taxpayer which files an amended return with the United States Treasury Department must file an amended New Jersey Corporation Business Tax return within 90 days thereafter.

(c) After the filing of a report of change or correction on an IRA-100, or CBT-100-X, the Director may, within the time prescribed by law, audit the return and compute and assess the tax based upon the issue or issues set forth in the revenue agent report, but neither the Director nor the taxpayer may change the allocation of entire net income within and without New Jersey as theretofore computed.

(d) If the Division of Taxation assesses and bills a deficiency to a taxpayer resulting from a Federal change and if the taxpayer pays the deficiency in full within the 90 day period from the issuance of the report, then no separate return need be filed by the taxpayer reflecting the Federal change.

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.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
N.J.A.C. 18:7-11.8 cite corrected.
Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Deletion of text at (a) and addition of text regarding reporting changes resulting from IRS audit. Clarification of text at (c).
Amended by R.1990 d.102, effective February 5, 1990.
See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).
Added subsection (d), upon adoption.
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

For definition of "final determination", see N.J.A.C. 18:7-11.2 (Returns where Federal net income is changed) of this chapter.

Statutory References

See N.J.S.A. 54:10A-13 as to requirement that taxpayer report any amended return for his Federally taxable income to New Jersey, Division of Taxation within 90 days.

Case Notes

Interest on deficiency. Texaco, Inc. v. Director, Div. of Taxation, Dept. of Treasury, 13 N.J.Tax 572 (1994).

Limitations period for seeking refund of New Jersey corporate tax was not extended by furnishing amended tax return to IRS. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Second corporate return was "final return" commencing limitations period for refund. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Limitations period for seeking refund of corporate taxes was not extended due to equitable considerations. 26 U.S.C.A. § 338; N.J.S.A. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

18:7-11.9 Time for filing returns for unauthorized foreign corporations doing business in New Jersey

(a) A foreign corporation which does business, employs or owns capital or property or maintains an office in New Jersey without authorization or after its withdrawal from the State, is subject to tax for each calendar or fiscal accounting period or part thereof during which it has engaged in any such activity. The corporation is subject to the same requirements with respect to filing returns and paying taxes as a duly authorized corporation.

(b) In this connection see N.J.S.A. 14A:13-11 under which every foreign corporation transacting any business, directly or indirectly, in New Jersey without having first obtained a Certificate of Authority to do business shall for each offense forfeit to the State the sum of $200.00 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State.

Statutory References

See N.J.S.A. 14A:13-11 as to every foreign corporation which shall transact any business in New Jersey, directly or indirectly, without first having obtained a Certificate of Authority to do business forfeiting to the State for each offense the sum of $200.00 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State. See N.J.S.A. 54:10A-4 as to definitions of "fiscal year" and "privilege period". See N.J.S.A. 54:10A-15 as to due dates for filing returns under the Act.

18:7-11.10 Failure to file return or make payment when due

See N.J.A.C. 18:7-14.1 (Penalties) of this chapter.

18:7-11.11 Returns required to be filed by corporation ceasing to be subject to tax

(a) A domestic corporation which ceases to possess its franchise is required to file a return covering each year or period for which no return was previously filed.

(b) A foreign corporation which surrenders its authority to do business or otherwise ceases to have a taxable status in New Jersey is required to file a return covering each year or period for which no return was filed.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Statutory References

See N.J.S.A. 54:10A-2, 15, 17 as to requirements for filing short period returns.

(c) P.L. 2001, c.136, applies to privilege periods beginning on and after January 1, 2001 and before January 1, 2002.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In (b)1, amended the N.J.S.A. reference.

18:7-17.3 Due date for return

The return and payment of tax shall be due on or before the 15th day of the fourth month succeeding the close of the privilege period.

18:7-17.4 Extension of time to file returns

No extension will be granted unless the request is made on Partnership Tentative Return and Application for Extension of Time to File Form PART-200T and the form is actually received by the Division or is postmarked on or before the due date of the return. (See N.J.A.C. 18:7-11.12 for additional standards for extension of time to file.)

18:7-17.5 Calculation of tax

(a) The tax shall be the total of:

1. The share of entire net income of the partnership for that privilege period of all nonresident noncorporate partners multiplied by an allocation factor determined pursuant to corporation business tax principles under N.J.S.A. 54:10A-6 and using the partnership's allocation fractions and multiplied by the tax rate of .0637; plus

2. The share of entire net income of the partnership for that privilege period of all nonresident corporate partners multiplied by an allocation factor determined pursuant to corporation business tax principles under N.J.S.A. 54:10A-6 and using the partnership's allocation fractions and multiplied by the tax rate of .09.

Example: If a partnership is the owner of a partnership interest, then tax payment is required at the rate of nine percent for that interest because a partnership is defined as a "nonresident corporate partner."

3. As used in this subsection, the term "entire net income" as applied to partnerships means distributive share of partnership income for Federal purposes plus tax exempt interest income as shown on the Federal K-1.

(b) A partnership shall not claim credit or take into account estimated tax payments made by nonresident partners in determining how much tax to pay on behalf of any corporate partner.

(c) A partnership must have a regular place of business as defined under N.J.A.C. 18:7-7.2 outside the State of New Jersey in order to allocate a portion of its income outside New Jersey. For purposes of this subchapter, each regular place of business of a partnership which is unitary with a corporate partner who is filing a return in this State is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7-17.8(d).

18:7-17.6 Credit or refund

(a) As of the date the Division receives the payment, the amount of tax paid by a partnership pursuant to N.J.A.C. 18:7-17.5 shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the rate for that partner class set forth in N.J.A.C. 18:7-17.5.

(b) Each payment amount credited will be deemed to have been paid by the respective partner for the privilege period of the partner.

(c) A nonresident noncorporate partner and a nonresident corporate partner may claim a credit on their own New Jersey return for the amount of tax allocated to them by the partnership. Any excess tax payments may be refunded to the partner.

(d) Since partners may wish to claim a credit or refund for tax payments made on their behalf by a partnership, there may be an advantage if certain partnerships issue NJ-K1's as soon as possible after the close of the tax period.

(e) Example: A partnership has a fiscal year ending on January 31. The partnership tax payment on behalf of foreign partners is due May 15. The amount of payment on behalf of partners will not be credited to the accounts of partners until the date received by the Division.

1. Accordingly a calendar year partner, whose first quarter estimated payment is due April 15 cannot take a credit against its April 15 estimated payment, for the partnership's May 15 tax payment which has not yet been received by the Division.

(f) Payments remitted on unauthorized or improperly prepared returns will be credited on the date the Division is able properly to post the payment.

18:7-17.7 Estimated return

A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall be required to make installment payments of tax. For privilege periods beginning on January 1, 2007 and thereafter, those partnerships that are required to make tax payments pursuant to N.J.S.A. 54:10A-15.11a.(1) shall make installment payments of 25 percent of that tax on or before the 15th day of each of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period. A partnership required to make such payments shall be deemed to make them subject to the provisions of N.J.S.A. 54:10A-15.4 and shall be liable for any addition to tax provided thereunder.

Repeal and New Rule, R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
Section was "Estimated return".

18:7-17.8 Certain corporate partners; exemption form

(a) In order for a nonresident corporate partner to establish that the partnership is not required to pay tax on its behalf, the partner must file annually with the partnership a statement making its claim for exemption. The claim shall be on a form specified by the Director. It must be filed annually and must be received by the partnership on or before the 15th day of the fourth month succeeding the close of the privilege period, or on or before the filing date of the return, if that occurs earlier.

(b) If a partnership erroneously makes a tax payment to the State on behalf of an entity that is exempt, the exempt entity must establish that the money has actually been paid to the State by the partnership, and the entity is actually exempt, in order to qualify for a refund from the State.

(c) If a New Jersey S corporation, that does not have a place of business in New Jersey is a partner in a partnership, a tax payment is made on its behalf at the nine percent rate, since it does not have a regular place of business in New Jersey.

(d) For purposes of this subchapter, each regular place of business of a partnership which is unitary with a corporate partner is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7-7.6(g) and (h)1.

(e) If a partner in a partnership is a qualified IRC 501(c)(3) charity, or any retirement plan approved by the Internal Revenue Service, it may file the form 1065E with the partnership to relieve the partnership from making a payment measured by its share. At present, New Jersey does not impose a tax on unrelated business income.

Example: A New Jersey general partnership has a unitary relationship under the criteria set forth at N.J.A.C. 18:7-7.6(g)3 with a corporate partner located in Illinois. As a result of this relationship the corporate partner is considered to have a regular place of business in the State and is not a "nonresident corporate partner." Such partner may file a 1065E with the partnership so that no tax payments will be made by the partnership on its behalf.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Added (e) and (f).
Amended by R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
In (e), inserted "or any retirement plan approved by the Internal Revenue Service,"; and deleted (f).

18:7-17.9 Allocation of tax for partners that are corporations

Separate accounting apportionment shall be used if a corporate partner and partnership are not in a unitary relationship in which the apportioned income of the partnership and partner (excluding the partner's distributive share) are added together. When a corporation and a partnership are in a unitary relationship, then a blended or combined allocation factor should be used. It is derived by adding the partnership and corporation allocation fractions together and applying the combined factor to the corporation's entire net income including its distributive share of the partnership's income (see N.J.A.C. 18:7-7.6(g)).

18:7-17.10 Electronic filing

A partnership subject to the provisions of the corporation business tax shall file its return and make payment of its liability by electronic means, if it has 10 or more partners.

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

18:7-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the meanings, unless the context clearly indicates otherwise.

"Affiliated group" means a group of corporations defined as an affiliated group by section 1504 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1504, or any successor Federal law, that files a consolidated Federal income tax return for the privilege period pursuant to sections 1501 through 1504 of the Federal Internal Revenue Code of 1986.

"Cost of goods sold" means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its Federal income tax (including, for example, and without limitation, IRC Section 263A) multiplied at the taxpayer's election by either the allocation factor computed pursuant to N.J.S.A. 54:10A-6 or the receipts fraction of the allocation factor (c.f. N.J.A.C. 18:7-10.1 regarding discretionary adjustments of the allocation factor by the Director). In a particular case, the Director may use another input or expenditure that is necessary to measure equally the business activity of the taxpayer.

"Key corporation" means a single member within an affiliated group designated by the group to act as a "clearinghouse" for adjustments to members of the group.

"Member of an affiliated group" means a taxpayer that is part of an affiliated group.

"New Jersey gross profits" means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold.

"New Jersey gross receipts" means the receipts of the taxpayer for the privilege period, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for Federal tax purposes arising during the privilege period from:

1. Sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State;

2. Sales of intangible personal property located without the State at the time of the receipt of or appropriation to the order where shipment is made to points within the State;

3. Services performed within the State;

4. Rentals from property situated, and royalties from the use of patents or copyrights, within the State; and

5. All other business receipts earned within the State.

Dividends are included in New Jersey gross receipts when the recipient's commercial domicile is in New Jersey.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In "New Jersey gross receipts", inserted "Dividends are included in New Jersey gross receipts when the recipient's commercial domicile is in New Jersey" following 5.

18:7-18.2 Alternative minimum assessment

(a) For privilege period beginning on or after January 1, 2002, all New Jersey taxpayers except those enumerated in N.J.A.C. 18:7-18.3, are required to pay a New Jersey Corporation Business Tax computed under N.J.S.A. 54:10A-5 or the alternative minimum assessment, computed under N.J.S.A. 54:10A-5a, whichever is greater. There are two methods of determining the alternative minimum assessment. One is based on New Jersey Gross Receipts, and the other is based upon New Jersey Gross Profits.

(b) For privilege periods beginning on and after July 1, 2006, the alternative minimum assessment shall be $0.00 except for corporations exempt from the corporation business tax on net income by virtue of the application of 15 U.S.C. §§ 381 et seq. (P.L. 86-272). For such taxpayers, the alternative minimum assessment shall continue to be computed.

(c) For privilege periods beginning on and after January 1, 2007, a taxpayer exempt from the corporation business tax on net income by virtue of the application of 15 U.S.C. §§ 381 et seq. (P.L. 86-272) that files a consent to jurisdiction of the State to impose and pay the tax pursuant to N.J.S.A. 54:10A-5 shall have an alternative minimum assessment of $0.00.

18:7-18.3 Taxpayers not subject to the alternative minimum assessment

(a) Corporations that are subject to tax under N.J.S.A. 54:10A-5 but that are not subject to the alternative minimum assessment are:

1. New Jersey S corporations;

2. Investment companies;

3. Professional corporations organized pursuant to N.J.S.A. 14A:17-1 et seq. or a similar corporation for profit organized to render professional services under the laws of another state; or

4. A person operating as a cooperative under 26 U.S.C. §§ 1381 et seq.

18:7-18.4 Calculation of the Alternative Minimum Assessment

(a) The computation of the Alternative Minimum Assessment (AMA) based upon New Jersey gross profits is calculated as follows:

1. If New Jersey gross profits are:

i. $1,000,000 or less, the AMA based on gross profits is zero;

ii. Greater than $1,000,000, but not over $10,000,000, the AMA is .0025 times the gross profits in excess of $1,000,000, multiplied by the AMA exclusion rate of 1.11111;

iii. Greater than $10,000,000, but not over $15,000,000, the AMA is the gross profits multiplied by .0035;

iv. Greater than $15,000,000, but not over $25,000,000, the AMA is the gross profits multiplied by .006;

v. Greater than $25,000,000, but not over $37,500,000, the AMA is the gross profits multiplied by .007; or

vi. Greater than $37,500,000, the AMA is the gross profits multiplied by .008.

(b) The computation of the AMA based upon gross receipts is calculated as follows:

1. If New Jersey gross receipts are:

i. $2,000,000 or less, the AMA based on gross receipts is zero;

ii. Greater than $2,000,000, but not over $20,000,000, the AMA is .00125 times the gross receipts in excess of $2,000,000, multiplied by the AMA exclusion rate of 1.11111;

iii. Greater than $20,000,000, but not over $30,000,000, the AMA is the gross receipts multiplied by .00175;

iv. Greater than $30,000,000, but not over $50,000,000, the AMA is the gross receipts multiplied by .003;

v. Greater than $50,000,000, but not over $75,000,000, the AMA is the gross receipts multiplied by .0035; or

vi. Greater than $75,000,000, the AMA is the gross receipts multiplied by .004.

(c) For the first privilege period that the taxpayer pays the Alternative Minimum Assessment, the taxpayer may select a computation method for the Alternative Minimum Assessment, based either on gross profits or gross receipts. Once selected, that method must be employed for that privilege period, and for the next succeeding four privilege periods.

(d) The maximum Alternative Minimum Assessment for an individual corporation for a privilege period is $5,000,000. For an affiliated group of corporations, the maximum Alternative Minimum Assessment is $20,000,000. If the $20,000,000 threshold is claimed by an affiliated group, the group must name a key corporation to act as a clearinghouse for adjustments to members of the group.

1. An affiliated group's AMA tax cannot be more than $20,000,000 less its CBT liability. Form 401 assists taxpayers in calculating the AMA threshold limit. Form 401, Column C, reflects the CBT liability of each corporation in the affiliated group, including the designated key corporation. Form 401, Column D, reflects the amount of AMA that each corporation in the group would be liable for in excess of its CBT liability. The total CBT liability is subtracted from $20,000,000. The resulting amount, if greater than zero, is the total AMA payable by the designated key corporation. Accordingly, if the amount is zero or less, all corporations are relieved of paying any AMA.

2. However, if for some reason an affiliated group does not elect to include one of its affiliate corporations on Form 401, even though it is part of the affiliated group, then the AMA cap for that corporation must be calculated separately and that corporation will not be considered in calculating the AMA cap for the group listed on Form 401. The AMA calculation for members of the group may be computed using either the gross receipts or the gross profits method.

3. If it wishes to do so, a group can change the key corporation each year to allow a different entity to pay the AMA on behalf of the group so that such entity will be due the credit for excess AMA payments in 2007 when the credit against CBT is calculated.

4. Examples:

Example 1. An affiliated group has 10 corporations. The total CBT liability of the group is $23 million. Therefore, there would be no AMA liability because the CBT liability is more than the cap of $20 million.

Example 2. An affiliated group has 10 corporations. The total CBT liability of the group is $7 million, of which the key corporation's CBT liability is $1 million. When the group calculates its AMA liability, the group discovers that its total AMA liability is $50 million of which $43 million is in excess of its CBT liability of $7 million. However, because of the $20 million cap and its reduction in the cap for CBT payments, the group's AMA liability cannot be more than $13 million ($20 million less the group's CBT liability of $7 million). The total tax, paid by the key corporation, for itself and the members of the group that are listed on Form 401 is $14 million. This is made up of its $1 million in key corporation's CBT liability plus the $13 million AMA. The key corporation would reflect its own CBT liability on line 13 of CBT-100, page 1 and the $13 million key corporation AMA payment on line 17 of CBT-100, page 1. Each of the other members of the group would list its own CBT liability on line 13 of CBT-100, page 1 of its own return. The total amount of CBT liability shown on the returns of the other members of the group is $6 million.

Example 3. An affiliated group has 10 corporations. The total CBT liability of the group is $7 million, of which the key corporation's CBT liability is $1 million. If the group's excess AMA had been $9 million instead of $43 million (as in Example 2) the key corporation would be liable for $9 million AMA since the $20 million cap was not reached. The total tax, paid by the key corporation, for itself and the members of the group that are listed on Form 401, is $10 million. This is made up of its $1 million in key corporation's CBT liability plus the $9 million AMA. The key corporation would reflect its own CBT liability on line 13 of CBT-100, page 1 and the $9 million key corporation AMA payment on line 17 of CBT-100, page 1. Each of the other members of the group would list its own CBT liability on line 13 of CBT-100, page 1 of its own return. The total amount of CBT liability shown on the returns of the other members of the group is $6 million.

(e) If a taxpayer has a short period return, the thresholds and caps are prorated. For example, a taxpayer whose privilege period is six months shall become subject to tax under the gross profits method when gross profits are $500,000 or greater and under the gross receipts method when gross receipts are $1,000,000 or more. Similarly, for an individual corporation having a six month privilege period, the maximum alternative minimum tax shall be $2,500,000 or for an affiliated group of corporations $10,000,000.

Amended by R.2003 d.370, effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In (d), added 1 through 4.

18:7-18.5 Alternative Minimum Assessment credits

(a) If the Alternative Minimum Assessment (AMA) for a taxpayer exceeds the amount of tax computed under N.J.S.A. 54:10A-5 for a privilege period, that excess amount shall be permitted to the taxpayer as a credit unless such taxpayer is also entitled to a credit pursuant to N.J.S.A. 54:10A-5b (for certain air carriers pursuant to 49 U.S.C. § 40102).

(b) The credit may be carried forward to subsequent privilege periods, including periods when the Alternative Minimum Assessment is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the Alternative Minimum Assessment provided that:

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the alternative minimum assessment for that period;

2. The credit applied shall not reduce the amount of tax otherwise due by more than 50 percent; and

3. The credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

(c) If a corporation having AMA carryforward credits is liquidated or merged into another corporation, the carryforward credits are lost to the corporation that does not survive such reorganization.

18:7-18.6 Gross receipts calculation; agency businesses

(a) Under the applicable accounting principles for several industries, cash flow relating to the underlying product is not considered a receipt of the taxpayer. Using this approach, a taxpayer in such a business may report as its gross receipts for Federal purposes fees it receives from its customers. This methodology enables certain high volume, low margin industries to achieve an accurate reflection of their tax liability when calculating the AMA.

1. For example, a professional employer organization (PEO), which serves as a co-employer with its customers, may use this "agency approach" in calculating its New Jersey gross receipts. Using that approach, the PEO may report as its gross receipts for Federal purposes the administrative fees it receives from its customers. The customers' payments of the fixed obligations and costs relating to the employees, such as wages, taxes and benefits, are then reported as reimbursed expenses, namely, direct expenses without profit or indirect cost reimbursement.

2. This approach is also applicable to other entities such as real estate and insurance agencies, where cash flow relating to the underlying product is not considered a receipt of the taxpayer.

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

18:7-19.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Licensed professional" means, and is limited to, persons rendering professional services in the following professional capacities: certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, veterinarians and, subject to the Rules of the Supreme Court, attorneys-at-law.

"Professional corporation" means a corporation which is organized under The Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., or a similar act of another state for the purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within the State to render such professional service.

18:7-19.2 Payment of filing fee

(a) For privilege periods beginning on or after January 1, 2002, each professional corporation filing a corporation business tax return that has more than two licensed professionals shall make a payment of a filing fee of $150.00 for each licensed professional of the corporation, provided that the payment shall not exceed $250,000.

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

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

1. The number of resident professionals multiplied by $150.00; plus

2. The number of nonresident professionals with physical nexus to New Jersey multiplied by $150.00; plus

3. The number of nonresident professionals without physical nexus to New Jersey multiplied by $150.00, and the resulting product multiplied by the corporate allocation factor of the professional corporation.

(d) Example: A professional corporation has an office in Washington, D.C. It has 100 professionals in that office. Three of the attorneys travel from Washington to Newark, N.J. for a trial. As the result of their legal work in New

Jersey, the firm receives a $1,000,000 legal fee. The professional corporation's New Jersey allocation factor for 2002 is 0 property, 0 payroll, $1,000,000 New Jersey receipts over $10,000,000 receipts everywhere which equals

$$\left(0 + 0 + \frac{1}{10} + \frac{1}{10}\right) \div 4 = 0.05.$$

The professional corporation fee is calculated as follows:

0 Resident professionals = 0

Three nonresident professionals with physical nexus to New Jersey:

3 x $150.00 = $450.00

97 nonresident professionals without physical nexus

97 x $150.00 = $14,500

14,550 x 0.05 = $727.50

total of 0 + $450 + $727.50 = $1,177.50 total professional fee of the corporation for 2002.

(e) In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners and regardless of the nature of the licensed profession that they practice.

Example 1: A law firm has eight partners and 16 associates. It also employs one registered nurse and two certified public accountants. Since the firm has 27 licensed professionals, its professional fee payment is $4,050 (27 x $150.00) plus an installment payment of $2,025 (50 percent of $4,050) creditable against the succeeding year's payment.

Example 2: A nursing home which is a professional corporation has 10 physicians and 10 licensed registered nurses, half of which are nonresidents which have no physical nexus in New Jersey. The professional corporation has a New Jersey business allocation factor of 50 percent. The professional fee payment is $2,250 ((5 + 5) x $150.00 plus ((5 + 5) x $150.00) x 50 percent) plus an installment payment of $1,125 (50 percent of $2,250).

(f) In the event of a period shorter than a year, the fee and fee cap may be prorated by months. A fraction of a month is deemed to be a month.

18:7-19.3 Installment payment

(a) Each professional corporation required to make a payment of the professional corporation 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 present fiscal year.

(b) The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period. If the amount exceeds the fee due for the succeeding return period, the excess shall be credited against the amount for succeeding return periods.

(c) If a professional corporation dissolves, the corporation is not required to make a prepayment of the fee for the succeeding taxable period.

18:7-19.4 Penalty and interest

For purposes of tax administration, the filing fee and installment payments are subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Collection of the filing fee and installment payments shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

SUBCHAPTER 20. TREATMENT OF S CORPORATIONS

Authority

N.J.S.A. 54:10A-27, 54:50-1 and 54A:9-17(a).

Source and Effective Date

R.2005 d.230, effective July 18, 2005.
See: 37 N.J.R. 739(a), 37 N.J.R. 2688(a).

18:7-20.1 S corporations

(a) The following words and terms, when used in this subchapter, shall have the following meanings:

1. "Federal S corporation" means a corporation making a valid election under Federal law (section 1361 of the Internal Revenue Code of 1986, 26 U.S.C. § 1361), to be an