

**CHAPTER 7
CORPORATION BUSINESS TAX ACT**

Authority

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

Source and Effective Date

R.1994 d.186, effective March 14, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Corporation Business Tax Act, expires on March 14, 1999.

Chapter Historical Note

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 7 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 originally filed and 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 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 was readopted as R.1994 d.186. See: Source and Effective Date. As a part R.1994 d.186, Subchapter 6, Valuation, was repealed effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b). See, also, section annotations.

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SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT**18:7-1.1 Corporation business tax; general provisions**

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

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

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

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

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

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

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

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

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

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

Statutory References

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

Case Notes

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

18:7-1.2 Total tax self-assessed

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

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

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

Cross References

See Section 1.1 (General provisions) of this chapter.

18:7-1.3 Definition of taxpayer

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

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

Statutory References

See N.J.S.A. 54:10A-4(h) as to official definition of "taxpayer."

See N.J.S.A. 54:10A-11 as to receivers and others subject to the tax imposed by this Act.

18:7-1.4 Definition of corporation

The term "corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument and includes any corporation created or organized under the laws of New Jersey and any foreign corporation which is authorized to do business, or is doing

business, or employs or owns capital or property or maintains an office in New Jersey in a corporate or organized capacity by virtue of creation or organization under laws of the United States or any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of the foregoing, which provided a medium for the conduct of business or the sharing of its gains.

Statutory References

See N.J.S.A. 54:10A-4(c) as to definition of "corporation".

18:7-1.5 Limited partnership associations subject to the Act

Limited partnership associations formed under N.J.S.A. 42:3-1 are subject to tax under the Act. No new limited partnership associations shall be formed in New Jersey in accordance with N.J.S.A. 42:3-1 et seq. after September 21, 1988.

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

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

Statutory References

N.J.S.A. 54:10A-4(c).

18:7-1.6 Taxable status; how created

(a) Every corporation not expressly exempted is deemed to have or to have acquired a taxable status under the Act and is required to file a return¹ and pay a tax thereunder provided it falls within any one of the following:

1. Existing under the laws of the State of New Jersey; or
2. If a foreign corporation,
 - i. Holding a general certificate of Authority to do business in this State issued by the Secretary of State; or
 - ii. Holding a certificate, license or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or
 - iii. Doing business in this State; or
 - iv. Employing or owning capital in this State; or
 - v. Employing or owning property in this State; or
 - vi. Maintaining an office in this State.

¹ For reporting forms, see Section 14.20 of this Chapter.

Statutory References

See N.J.S.A. 54:10A-2 as to what acts constitute doing business in State of New Jersey for purposes of acquiring a taxable status.

Case Notes

Nonresident corporation's commercial activities in state amounted to the "solicitation of orders". *Pomco Graphics, Inc. v. Director, Div. of Taxation*, 13 N.J.Tax 578 (1993).

Failure to permit allocation to New Jersey corporation which owned rental property in Connecticut but had no regular employees working outside New Jersey held neither contrary to the scheme of the Business Tax Act, a burden on interstate commerce nor double taxation. *S.M.Z. Corp. v. Director, Div. of Taxation*, 5 N.J.Tax 232 (Tax Ct.1982), reversed and remanded 193 N.J.Super. 305, 473 A.2d 982 (App.Div. 1984).

Presence of property in New Jersey, maintenance of workplace in New Jersey employee's home, employee's encouragement to customers to pay due bills, handling of customer complaints and adjustments by employee and employee's supervision of corporation personnel exceeded the mere solicitation of orders and rendered a Pennsylvania corporation liable for payment of New Jersey corporation business tax. *Ringgold Coal Mining Co. v. Taxation Div. Director*, 4 N.J.Tax 321 (Tax Ct.1982).

18:7-1.7 Domestic corporations subject to tax

(a) The tax is imposed on every domestic corporation, with specified exceptions, for the mere possession of the privilege of having its corporate franchise.

(b) A domestic corporation not otherwise exempt is subject to tax for every fiscal or calendar accounting period, or part thereof, whether it does business, owns capital or property, maintains an office, or engages in any activity, whether within or without New Jersey.

(c) A domestic corporation is subject to tax even though it carries on its business entirely outside New Jersey.

Statutory References

See N.J.S.A. 54:10A-2 as to domestic corporations subject to New Jersey annual franchise tax.

Case Notes

Failure to permit allocation to New Jersey corporation which owned rental property in Connecticut but had no regular employees working outside New Jersey held neither contrary to the scheme of the Business Tax Act, a burden on interstate commerce nor double taxation. *S.M.Z. Corp. v. Director, Div. of Taxation*, 5 N.J.Tax 232 (Tax Ct.1982), reversed and remanded 193 N.J.Super. 305, 473 A.2d 982 (App.Div. 1984).

18:7-1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation having a taxable status as described in N.J.A.C. 18:7-1.6 with specified exceptions, and includes every corporation which does business, employs or owns capital or property, or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business in New Jersey.

Example 1

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Example 2

A foreign corporation which operates several retail stores outside New Jersey, leases an office in New Jersey for the convenience of its buyers when they come to New Jersey. It has several employees permanently assigned to such office. Salesmen call at the office to solicit orders from the buyers, and the merchandise is shipped to such office by the sellers. Upon receipt the merchandise is examined, separated by them to the various stores of the corporation outside New Jersey. The corporation is subject to the Tax Act because it maintains an office, is regularly doing business through its constituted representatives, and owns property in New Jersey.

Note: The foregoing examples illustrate conditions giving rise to taxable status without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey. It should be noted that if the corporation holds any certificate of authority, it is subject to the Act by virtue of that fact alone.

(b) Mandatory submission of affidavit; proof of authorization to do business. A foreign corporation which is subject to tax under the Act must submit an affidavit by a duly authorized corporate officer, stating whether or not the corporation at any time prior to the date of admitted subjectivity under the Act held any authorization to do business in New Jersey or carried on in this State any of the activities set forth in N.J.A.C. 18:7-1.6(a)2.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Administrative correction.
See: 28 N.J.R. 4509(a).

Statutory References

See N.J.S.A. 54:10A-2 as to foreign corporations subject to New Jersey annual franchise tax.

Case Notes

Nonresident corporation's commercial activities in state amounted to the "solicitation of orders". *Pomco Graphics, Inc. v. Director, Div. of Taxation*, 13 N.J.Tax 578 (1993).

Foreign corporation held to be doing business in New Jersey so as to be subject to the corporation business tax; requiring the corporation to file a business tax return was not a violation of due process. *Thomson-Leeds Co., Inc. v. Taxation Div. Director*, 8 N.J.Tax 24 (Tax Ct.1985).

Corporation's activities in New Jersey held to constitute "doing business" for the purposes of the corporation business tax; corporation business tax not limited to intrastate businesses. *Tamko Asphalt Products, Inc. of Maryland v. Glaser*, 5 N.J.Tax 446 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 342 (App.Div.1984).

Failure to permit allocation to New Jersey corporation which owned rental property in Connecticut but had no regular employees working outside New Jersey held neither contrary to the scheme of the Business Tax Act, a burden on interstate commerce nor double taxation. *S.M.Z. Corp. v. Director, Div. of Taxation*, 5 N.J.Tax 232 (Tax Ct.1982), reversed and remanded 193 N.J.Super. 305, 473 A.2d 982 (App.Div. 1984).

Presence of property in New Jersey, maintenance of workplace in New Jersey employee's home, employee's encouragement to customers to pay due bills, handling of customer complaints and adjustments by employee and employee's supervision of corporation personnel exceeded the mere solicitation of orders and rendered a Pennsylvania corporation liable for payment of New Jersey corporation business tax. *Ringgold Coal Mining Co. v. Taxation Div. Director*, 4 N.J.Tax 321 (Tax Ct.1982).

18:7-1.9 Doing business in New Jersey; definition and rules of construction

(a) The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of men for profit.

1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of this Act.

2. In determining whether a corporation is "doing business", it is immaterial whether its activities result in a profit or a loss.

(b) Whether a foreign corporation is doing business in New Jersey is determined by the facts in each case. Consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;

2. The location of its offices and other places of business;

3. The continuity, frequency and regularity of the activities of the corporation in New Jersey;

4. The employment in New Jersey of agents, officers and employees;

5. The location of the actual seat of management or control of the corporation.

(c) A foreign corporation shall not be deemed to be doing business or employing or owning capital or property in this State for the purposes of the Act by reason of the following:

1. The maintenance of cash balances with banks or trust companies in New Jersey;

2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault or other

receptacle rented for the purpose, or pledged as collateral security, or deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;

3. The taking of any action by any such bank or trust company or broker which is incidental to the rendering of safekeeping or custodian service to such corporation;

4. Any combination of the foregoing activities.

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filled by shipment or delivery from a point outside the State, then such corporation is not subject to tax in New Jersey, provided it is not subject to tax by virtue of other contacts. (See P.L. 86-272, 15 U.S.C. § 381.)

1. For the in-State activities of the foreign corporation to be immune from taxation for the purposes of "doing business," such activities must be limited solely to:

i. Speech or conduct that explicitly or implicitly invites an order; and

ii. Activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order.

2. Examples of activities that may be considered non-immune are:

i. Repairs, maintenance, and installations;

ii. Collection or repossession activities;

iii. Credit investigations;

iv. Personnel courses or lectures;

v. Technical assistance;

vi. Customer complaint resolution if the sole purpose is not to ingratiate sales personnel with the customer;

vii. Approving or accepting orders or securing deposits on sales;

viii. Acquiring personnel for other than solicitation activities;

ix. Maintaining a display at a single location in excess of two weeks during the tax year;

x. Carrying samples for sale, exchange or distribution in any manner for consideration or other value;

xi. Owning, leasing, or maintaining in-state facilities such as a warehouse or answering service; and

xii. Consignment of personal property.

3. Examples of immune activities are:

- i. Solicitation of orders through advertising;
- ii. Carrying samples for display or distribution without charge;
- iii. Providing automobiles, owned or leased, registered or not registered in New Jersey, to sales personnel for their use in conducting protected activities.
- iv. Checking customer inventories without charge;
- v. Maintaining a display at a single location for less than two weeks during the tax year;
- vi. Recruitment, training, or evaluating of sales personnel;
- vii. A sales employee's in-home work space that is not paid for by the company; and
- viii. Mediating customer complaints if just to ingratiate sales personnel with the customer.

(e) Independent contractors may solicit or make sales or maintain an office without the company's loss of immunity. Sales representatives who represent a single principal would not be considered independent contractors. Immunity would be lost if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

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.1995 d. 194, effective April 3, 1995. See: 27 N.J.R. 471(a), 27 N.J.R. 1440(b).

Statutory References

See N.J.S.A. 54:10A-2 as to what acts constitute doing business in New Jersey for purposes of acquiring a taxable status.

Case Notes

Foreign corporation held to be doing business in New Jersey so as to be subject to the corporation business tax; requiring the corporation to file a business tax return was not a violation of due process. *Thomson-Leeds Co., Inc. v. Taxation Div. Director*, 8 N.J.Tax 24 (Tax Ct.1985).

Corporation's activities in New Jersey held to constitute "doing business" for the purposes of the corporation business tax; corporation business tax not limited to intrastate businesses. *Tamko Asphalt Products, Inc. of Maryland v. Glaser*, 5 N.J.Tax 446 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 342 (App.Div.1984).

18:7-1.10 Foreign corporations engaged in interstate commerce

(a) A foreign corporation which falls within any of the categories creating a taxable status, as enumerated in N.J.A.C. 18:7-1.6 is subject to the Tax Act notwithstanding its business is wholly or partly in interstate commerce.

(b) Such tax is measured by entire net income allocable to New Jersey, including that derived from or used in interstate commerce.

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-2 as to what acts constitute doing business in New Jersey for purposes of acquiring a taxable status.

18:7-1.11 Foreign corporations stocking goods in New Jersey

A foreign corporation which regularly maintains a stock of goods in New Jersey and makes deliveries to its customers from such stock shall be deemed to be doing business in New Jersey within the meaning of the Act.

Example 1

A foreign manufacturing corporation has its factories and offices located outside New Jersey. Its sole activity in New Jersey consists of holding or storing goods in a public warehouse in this State. It has no employees in New Jersey. The corporation is subject to the Tax Act because it owns property in New Jersey.

Example 2

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Statutory References

N.J.S.A. 54:10A-2.

Case Notes

Foreign corporation's contacts established minimal nexus with New Jersey to allow taxation without violating commerce clause. *Mark Andy, Inc. v. Taxation Div. Director*, 8 N.J.Tax 593 (1986).

18:7-1.12 Exempt corporations

(a) Corporations exempted from taxation under the Act include:

1. Telegraph, telephone, cable or telecommunications companies subject to tax under N.J.S.A. 54:30A-16 et seq. (including, without limitation, N.J.S.A. 54:30A-18.6); or any statute or law imposing a similar tax or taxes;
2. Railroad companies subject to tax under N.J.S.A. 54:29A-1, et seq.;
3. Energy, gas and electric companies subject to tax under N.J.S.A. 54:30A-49, et seq.; or any statute or law imposing a similar tax or taxes;
4. Corporations subject to a tax upon the basis of gross receipts, or insurance premiums collected;