

"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 jurisdic-

tion 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.

S corporation. For a definition of "S corporation" as used in this section, see N.J.A.C. 18:7-1.18.

2. "New Jersey S corporation" means an S corporation which has made a valid election under N.J.S.A. 54:10A-5.22, and which has been an S corporation since such election. For a definition of "New Jersey S corporation" see N.J.A.C. 18:7-1.19. For purposes of this section, a New Jersey S corporation also refers to a parent of a New Jersey Qualified Subchapter S Subsidiary.

3. "S corporation shareholder" means an individual, an estate, or a trust owning a share(s) in an S corporation except as provided herein.

(b) A New Jersey S corporation is subject to New Jersey corporation business tax as provided under P.L. 2002, c.40 (N.J.S.A. 54:10A-5(c)(2)). S corporation shareholders are subject to gross income tax, pursuant to N.J.S.A. 54A:5-1 et seq.

(c) A Federal S corporation must file a New Jersey Subchapter S Election form (CBT-2553) to elect treatment as a New Jersey Subchapter S corporation, to treat its subsidiary as a New Jersey Qualified Subchapter S Subsidiary (see N.J.A.C. 18:7-20.2), or to report a change in shareholders.

1. A Federal S corporation may make an election to be treated as a New Jersey S corporation if it meets all of the following criteria:

i. The corporation is or has applied to be an S corporation pursuant to section 1361 of the Federal Internal Revenue Code;

ii. Each initial shareholder (holding shares on the day of the election) and the corporation must consent to the election, and the jurisdictional requirements that provide New Jersey with the right and jurisdiction to tax and collect the tax on each shareholder's pro rata share of S corporation income. Such right and jurisdiction shall not be affected by change of a shareholder's residency, except as provided in N.J.S.A. 54A:1-1 et seq.;

iii. With respect to nonconsenting shareholders, the corporation and consenting shareholders consent to the corporation assuming any tax liabilities of a nonconsenting shareholder as may be required pursuant to N.J.S.A. 54:10A-5.22b;

iv. The beneficiary of a qualified Subchapter S trust must make an election to be treated as the owner of the trust so that the trust will be eligible to hold stock, and the beneficiary will be treated as the stockholder. If the trust is a shareholder at the time the S corporation election is made, the beneficiary's election may be made on the New Jersey CBT-2553 or on a separate consent statement to be attached to the CBT-2553. If the stock is acquired after the S corporation election is made, the beneficiary's election is made on a separate statement;

v. Those eligible to consent and sign an S election include:

(1) Adult shareholders who are not under disability;

(2) A shareholder and, if under disability and not a minor, the shareholder's representative;

(3) Each person having community interest in stock (or stock income), each tenant in common, joint tenant or tenant by the entirety; and

(4) An executor or administrator of an estate or any other fiduciary appointed by a testamentary instrument or court having jurisdiction over the estate's administration;

vi. Shareholder elections may be made on form CBT-2553 or on separate consent statements which may be attached to form CBT-2553;

vii. An Employee Stock Option Plan (ESOP) may not be an initial shareholder of a New Jersey S corporation;

viii. For S corporations having shareholders that are trusts, the trust beneficiaries or trust owners must join in the filing of the New Jersey CBT-2553. Both the trusts and the trust beneficiaries and/or owners must sign and consent to New Jersey's jurisdiction and right to tax, on the CBT-2553. (See (c)1iii above.)

(1) If an initial shareholder were to transfer stock to a trust which qualifies as a grantor trust of which the shareholder is a grantor, a new CBT-2553 shall be signed and filed by the Trustee in that capacity; and

ix. For an electing small business trust (ESBT) that is a shareholder of a Federal S corporation seeking to elect New Jersey S corporation status, shareholder consent must be signed by the trustee of the ESBT.

2. The fully completed and duly executed form CBT-2553 shall be filed within one-calendar month of the time at which a Federal S corporation election would be required. Specifically, it must be filed at any time before the 16th day of the fourth month of the first tax year the election is to take effect. If the tax year has 3 1/2 months or less, and the election is made not later than three months and 15 days after the first day of the tax year, it shall be treated as timely made during such year. An election made by a small business corporation after the 15th day of the fourth month but before the end of the tax year is treated as made for the following year. A small business corporation is one that is defined in section 1361(b) of the Internal Revenue Code.

i. No filing extensions are available.

3. Federal S corporations that have neither made the election nor have been approved as New Jersey S corporations, in accordance with N.J.S.A. 54:10A-5.22, N.J.S.A.

54:10A-5.23, and N.J.A.C. 18:7-20.1(c), are subject to the provisions of the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq., and must continue to file the New Jersey Corporation Business Tax Return, Form CBT-100.

i. Failure to consent to the initial S corporation election will cause the election to be invalid.

ii. If a new shareholder (acquired either existing shares or shares issued at a later date subsequent to the initial New Jersey S corporation election) fails to sign a consent statement and objects to New Jersey's right and jurisdiction to tax, the S corporation is required to fulfill the tax requirements on behalf of such shareholder as stated under N.J.S.A. 54:10A-5.23.

4. Corporations that are void must be reinstated before an S election can be granted. Failure to reinstate by the S election due date precludes the New Jersey S election from being effective for that year.

(d) The reporting requirements for S corporations are as follows:

1. An S corporation making an election to be treated as an S corporation in New Jersey shall file an S corporation Corporate Business Tax Return (Form CBT-100S) along with a Schedule NJ-K-1 for each shareholder.

i. Foreign corporations that meet the filing requirements and whose income is immune from New Jersey tax pursuant to Public Law 86-272, 15 U.S.C. § 381 et seq., must obtain and complete Schedule N, Nexus-Immune Activity Declaration, and remit the minimum tax with the CBT-100S.

2. For New Jersey Corporation Business Tax purposes, a Federal S corporation that fails to elect New Jersey S corporation status, or has not been approved for New Jersey S corporation status files its tax return as a C corporation on Form CBT-100 and calculates its New Jersey allocation factor to determine its net income or loss allocated to New Jersey.

(e) If a corporation that has elected New Jersey S corporation status loses its Federal S corporation status during the taxable year, and, therefore, ceases to be a New Jersey S corporation, but continues its corporate existence, the corporation must file a New Jersey S corporation return (CBT-100S) for the short period ending on the day before the disqualifying event, and a C corporation short period return (CBT-100) for the remainder of the year.

1. The due date for the return for the short period is the 15th day of the fourth month after the close of the period. An automatic six-month extension of time to file the CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200 T on or before the due date of the return.

(f) In general, once an election is made and accepted, a corporation remains a New Jersey S corporation as long as it is a Federal S corporation unless the election is revoked pursuant to N.J.S.A. 54:10A-5.22(d).

1. To revoke an election, a letter of revocation signed by all shareholders holding more than 50 percent of the outstanding shares of stock on the day of the revocation, must be filed. A copy of the original election form must accompany the letter of revocation.

2. Subject to (f)1 above, an election may be revoked on or before the last day of the accounting or privilege period in which the election would otherwise apply.

(g) A foreign business entity that is not required to be authorized to transact business in New Jersey in accordance with N.J.S.A. 14A:13-3 but that wishes to elect a New Jersey S Corporation status must submit to the Division of Revenue a completed New Jersey S Corporation Certification form (Form CBT-2553-Cert), along with a completed CBT-2553. A properly executed certification form affirms that the corporation has not engaged in any activities within New Jersey that would require the corporation to obtain a Certificate of Authority as required by N.J.S.A. 14A:13-3.

Amended by R.2007 d.204, effective July 2, 2007.
See: 39 N.J.R. 763(a), 39 N.J.R. 2544(a).

In (c)1vii, deleted "and" from the end; in (c)1viii(1), substituted "; and" for the period at the end; added (c)1ix; and added (g).

18:7-20.2 Qualified Subchapter S Subsidiaries (QSSS)

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

1. "Qualified Subchapter S Subsidiary" (QSSS) means and includes a domestic corporation which is a wholly owned subsidiary of a Federal S corporation and for which a valid election has been made by the parent S corporation to be treated as a QSSS for Federal income tax purposes.

2. "New Jersey Qualified Subchapter S Subsidiary" (NJ-QSSS) means and includes a Federally qualified QSSS, and wholly owned by a New Jersey S corporation, and for which the parent and the New Jersey S corporation make a valid NJ-QSSS election as set forth in these regulations.

(b) A Federal S corporation is permitted to own a Qualified Subchapter S Subsidiary (QSSS) and effectively to treat the subsidiary as if it were a division. The assets, liabilities, and items of income, deduction, and credit flow through to the parent retaining the same character as do the respective allocation factor attributes of the QSSS which flow through to the parent's property, receipts and payroll factors.

(c) A New Jersey S corporation seeking recognition as a New Jersey Qualified Subchapter S Subsidiary (NJ-QSSS), must meet the following requirements: