CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

N.J.S.A. 52:27H-81 and 54:10A-27.

Source and Effective Date

R.2009 d.384, effective November 24, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c(2), Chapter 7, Corporation Business Tax Act, expires on May 23, 2017. See: 49 N.J.R. 52(b).

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Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979.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Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

Subchapter 20, Treatment of S Corporations, was adopted as new rules by R.2005 d.230, effective July 18, 2005. See: 37 N.J.R. 739(a), 37 N.J.R. 2688(a).

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).

Chapter 7, Corporation Business Tax Act, was readopted as R.2009 d.384, effective November 24, 2009. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7, Corporation Business Tax Act, was scheduled to expire on November 24, 2016. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

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.

(c) The term "taxpayer" shall also mean any partnership required or consenting to report or to pay taxes, interest or penalties under this Act, provided that the term does not include a partnership that is listed on a United States national stock exchange.

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

(a) 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.

1. The term includes any other entity classified as a corporation for Federal income tax purposes.

2. The term includes any State or Federally chartered building and loan association or State or Federally chartered savings and loan association.

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), added 1 and 2.
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-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).

Case Notes

Taxpayer holding company did not qualify as investment company that could elect to have its corporation business tax calculated on 25% of its net income and net worth, due to provision of services to subsidiaries and participation in day-to-day operation of subsidiaries, and failure to show that such activities represented less than 10% of total activities or that qualified investment activities represented 90% or more of total activities. International Thomson Business Information, Inc. v. Director, Division of Taxation, 14 N.J.Tax 424 (1995).

18:7-1.6 Subjectivity to tax; how created

(a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return 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; or

vii. Deriving receipts from sources within this State; or

viii. Engaging in contacts within this State.

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1: An entity regularly providing asset management services as defined in N.J.A.C. 18:7-8.10(e) from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: A New York corporation delivers furniture into New Jersey by its company owned truck. The driver collects the payment from the New Jersey customer. The New York corporation is subject to tax in New Jersey.

Amended by R.1996 d.518, effective November 4, 1996.
See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to *expire August 26, 2003*).
See: 35 N.J.R. 1573(a).
In (a)2, added vii and viii; added (b).
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-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 subject to tax as described in N.J.A.C. 18:7-1.6, and includes every corporation that derives receipts from sources within New Jersey or engages in contacts within New Jersey or 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, provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

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 subjectivity to the tax without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey.

Example 3

A foreign corporation has applied for and has received a certificate of authority to do business in New Jersey by the Secretary of State, but does not actually do any business in New Jersey, nor does it have any office or property or any employees in New Jersey nor does it own or employ capital here. The corporation has sought and received the privilege of exercising its corporate franchise in New Jersey and is therefore subject to the tax and must file a return and pay the minimum tax.

(b) A financial business corporation, a banking corporation, a credit card company or similar business that has its commercial domicile in another state is subject to tax in this State if during any year it obtains or solicits business or receives gross receipts from sources within this State.

(c) 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).

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).
Amended by R.1996 d.518, effective November 4, 1996.
See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).
Amended by R.2011 d.217, effective August 15, 2011.
See: 43 N.J.R. 277(a), 43 N.J.R. 2193(b).

In (a), substituted "that derives receipts from sources within New Jersey or engages in contacts within New Jersey or" for "which", deleted a comma following "property", and inserted ", provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States"; added new (b); and recodified former (b) as (c).

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.

Example

Foreign corporation R holds trademarks that were assigned to it by its parent corporation. R receives fees as a result of licensing those trademarks to certain New Jersey companies for use in New Jersey. R is subject to the corporation business tax on its apportioned income as a result of its trademark licensing activities.

(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 filed by shipment or delivery from a point outside the State, then such corporation is doing business in New Jersey and is subject to the tax. Unless it has additional contacts with New Jersey, however, it will not be liable for any tax measured by the income of the corporation. (See P.L. 86-272, 15 U.S.C. § 381). The corporation will be liable for filing a return and payment of the minimum tax.

1. For the in-State activities of the foreign corporation to immunize the corporation from taxation measured by income, 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 additional activities or contacts with New Jersey that will subject a corporation to the tax based on or measured by income 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 additional activities which, together with the solicitation activities described in (d)1 above will not subject a corporation to tax based on or measured by income 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 subjecting a company to liability for tax based on or measured by income. Sales representatives who represent a single principal would not be considered independent contractors. A corporation would be subject to income-based tax if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

Example

Foreign corporation L, represented in New Jersey by a foreign independent contractor, licensing software to New Jersey businesses. L receives fees from New Jersey companies for licensing the software. L is subject to the corporation business tax on its apportioned income.

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).
Amended by R.1996 d.518, effective November 4, 1996.
See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).

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

Issue of whether regulation expanding the definition of doing business under the Corporation Business Tax to include the licensure of trademarks to retailers operating in New Jersey was retroactive was moot, as tax period which remained in dispute between foreign corporation and Director of the Division of Taxation began after the effective date of the amendment of the regulation. Lanco v. Director, Div. of Taxation, 21 N.J.Tax 200.

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 foreign corporation which falls into any of the taxable categories subjecting a corporation to tax, 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.

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.1996 d.518, effective November 4, 1996.
See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).

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State and local taxation of interstate and foreign commerce: The second best solution. Kathryn L. Moore, 42 Wayne L.Rev. 1425 (1996).

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, other than the tax pursuant to N.J.S.A. 54:10A–5a or insurance premiums collected;

5. Canal corporations, agricultural cooperative associations incorporated or domesticated under N.J.S.A. 4:13–1 et seq. and exempt under Section 521 of the Federal Internal Revenue Code (26 U.S.C. § 521);

6. Cemetery corporations not conducted for pecuniary profit of any private shareholder or individual;

7. Nonprofit corporations, associations or organizations not conducted for pecuniary profit of any private shareholder or individual, and established, organized or chartered without capital stock under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes; or a special charter; or any similar general or special law of this or any other state (see N.J.A.C. 18:1–1.4(a) for exemption opinion procedures);

8. Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under Federal law by tenants, but:

i. The exemption under this subsection shall continue only as long as:

(1) The corporations remain subject to rules and regulations of the Federal Housing Authority; and

(2) The Commissioner of the Federal Housing Authority holds membership certificates in the corporations; and

(3) The corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat. 1246) as amended by subsequent Acts of Congress. (See 12 U.S.C.A. § 1701, et seq.)

ii. In order to be exempted under this subsection, corporations shall:

(1) Annually file a report on or before August 15 with the Director, in the form required by the Director, to claim exemption; and

(2) Shall pay a filing fee of $25.00.

9. A corporation not for profit organized under any law of this State where the primary purpose of it is to provide for its shareholders or members housing in a retirement community as defined under the "Retirement Community Full Disclosure Act," N.J.S.A. 45:22A–1, et seq.;

10. Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Insurance pursuant to section 11 of P.L. 1960, c.32 (N.J.S.A. 17:22–6.45) to insure risks within this State; and

11. Corporations exempt from the corporation business tax by virtue of the provisions of another New Jersey statute.

(b) See N.J.A.C. 18:1–1.4 for the procedure to obtain exemption opinion letters.

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).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), inserted "other than the tax pursuant to N.J.S.A. 54:10A–5a" following "gross receipts," in 4 and rewrote 5.
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–3 as to those corporations declared exempt from the annual New Jersey franchise tax.

Case Notes

Dental service corporation, though entitled to exemption from sales tax, was not tax exempt until it actually applied and was approved for that status; corporation not entitled to refund of sales tax paid prior to

status approval. New Jersey Dental Service Plan, Inc. v. Baldwin, 7 N.J.Tax 421 (Tax Ct.1985), affirmed per curiam 8 N.J.Tax 335 (App. Div.1986).

18:7–1.13 Regulated investment company; definition

(a) "Regulated investment company" means any corporation which for a period covered by its return is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended. (See 15 U.S.C. §§ 80a–1 et seq.)

(b) A regulated investment company may also qualify as an investment company.

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).
Designated existing paragraph as (a); added (b).
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–4(g) as to official definition of "regulated investment company".

18:7–1.14 Subjectivity of foreign banks and foreign national banks

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

1. "Banking corporation" means those banking corporations subject to tax under N.J.S.A. 54:10A–34, which are defined in N.J.S.A. 54:10A–36 as New Jersey chartered banks, national banks headquartered in New Jersey, and foreign national banks.

2. "Foreign bank" means commercial banks chartered in foreign states of the United States or in foreign countries.

3. "Foreign national bank" means national banks headquartered in foreign states of the United States.

(b) Applicable rules dealing with tax nexus and subjectivity to the Corporation Business Tax which are contained in this chapter shall apply to foreign banks as well as to any other taxable entity including banking corporations. In particular, but without limitation thereto, foreign banks and foreign national banks shall be subject to N.J.A.C. 18:7–1.6 and 1.8 through 1.11.

(c) Any foreign bank or foreign national bank which engages in any activity described or contemplated in P.L. 1996, c.17, effective April 17, 1996, shall be subject to the Corporation Business Tax in this State.

(d) Foreign banks subject to the Corporation Business Tax shall file form CBT–100 and pay the applicable tax thereon to the Director of Taxation.

(e) Foreign national banks subject to the Corporation Business Tax shall file form BFC–1 and pay the applicable tax thereon to the Director of Taxation.

(f) Examples of bank activity in New Jersey include the following:

1. A Pennsylvania state chartered bank reports on the calendar year basis. It began doing business in Pennsylvania prior to 1996 and it begins doing business in New Jersey on July 1, 1996. It is required to file on April 15, 1997 its first annual Corporation Business Tax return (CBT–100) and to pay the 1996 Corporation Business Tax for the short period July 1, 1996 to December 31, 1996. Thereafter, it would continue to file returns for a 12 month calendar year period and pay the annual tax due.

2. A national bank that will report on the calendar year basis has its principal office in New Jersey. It begins doing business on July 1, 1996. Pursuant to N.J.S.A. 54:10A–34, it is required to file its first annual Corporation Business Tax return (BFC–1) for the privilege period 1997 with an assessment date of January 1, 1997 and to pay a 1997 Corporation Business Tax on April 15, 1997 based on income from July 1, 1996 to December 31, 1996. Thereafter, it would continue to file returns for a 12 month calendar year period and pay the annual tax due.

3. A national bank that reports on the calendar year basis has its principal office in Philadelphia. Prior to July 1, 1996 it was not doing business anywhere. On that date it began doing business in both Pennsylvania and New Jersey. Pursuant to N.J.S.A. 54:10A–34 it is required to file its first annual Corporation Business Tax return (BFC–1) for the privilege period 1997 with an assessment date of January 1, 1997 and to pay a 1997 Corporation Business Tax on April 15, 1997 based on income from July 1, 1996 to December 31, 1996. Thereafter, it would continue to file returns for a 12 month calendar year period and pay the annual tax due.

4. A national bank that reports on the calendar year basis and has its principal office in Philadelphia began doing business prior to January 1, 1996. It begins doing business in New Jersey on July 1, 1996. Pursuant to N.J.S.A. 54:10A–34 it is required to file its first annual Corporation Business Tax return (BFC–1) on April 15, 1997 for the privilege period 1997 with an assessment date of January 1, 1997 based on its income from July 1, 1996 to December 31, 1996.

5. A calendar year New Jersey State chartered bank begins doing business on July 1, 1996. Pursuant to N.J.S.A. 54:10A–34, it is required to file its first annual Corporation Business Tax return (BFC–1) for the privilege period 1997 with an assessment date of January 1, 1997 and to pay a 1997 Corporation Business Tax on April 15, 1997 based on income from July 1, 1996 to December 31, 1996. Thereafter, it would continue to file returns for a 12 month calendar year period and pay the annual tax due.

6. On June 30, 1997 a New Jersey State chartered bank merges into another New Jersey State chartered bank. Under N.J.S.A. 54:10A-34(5), the surviving bank's return (BFC-1) for the 1998 privilege period will be based on its income from January 1, 1997 to December 31, 1997 and the income of the bank that merged into it from January 1, 1997 to June 30, 1997.

7. On July 31, 1997 a Pennsylvania state chartered bank merges into a New Jersey chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis using a CBT-100. The New Jersey State chartered bank will file on April 15, 1998, under N.J.S.A. 54:10A-34, a BFC-1 return for the 1998 privilege period that will be based on its income from January 1, 1997 to December 31, 1997. In addition, the Pennsylvania state chartered bank will file on November 15, 1997, a CBT-100 return for the pre-merger short period covering January 1, 1997 to July 31, 1997 under N.J.S.A. 54:10A-2 that will be based on its pre-merger 1997 income.

8. On July 31, 1997 a New Jersey State chartered bank merges into a Pennsylvania state chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis. The Pennsylvania state chartered bank's 1997 CBT-100 return filed April 15, 1998 for the calendar year 1997 will be based on its income from January 1, 1997 to December 31, 1997. In addition, the New Jersey State chartered bank will file on November 15, 1997 under N.J.S.A. 54:10A-2 a 1997 CBT-100 return reporting its pre-merger 1997 income. This return will be in addition to the BFC-1 return required to be filed, under N.J.S.A. 54:10A-34, by April 15, 1997 by the New Jersey State chartered bank for the 1997 privilege period that is based on its income for 1996.

9. On July 1, 1997 a national bank headquartered in New Jersey merges into a national bank headquartered in Pennsylvania. Prior to the merger, the New Jersey national bank was only doing business in New Jersey and the Pennsylvania national bank was only doing business outside of New Jersey. The Pennsylvania national bank reports for Federal tax purposes on the calendar year basis. The Pennsylvania national bank is required to file its first annual corporation business tax return (BFC-1) on April 15, 1998 for the privilege period 1998 with an assessment date of January 1, 1998 based on its income from July 1, 1997 through December 31, 1997 and the income of the New Jersey national bank that merged into it from the short period covering January 1, 1997-June 30, 1997.

New Rule, R.1997 d.254, effective June 16, 1997.
See: 29 N.J.R. 850(a), 29 N.J.R. 2708(a).

18:7-1.15 Investment company; definition

(a) "Investment company" means any corporation:

1. Whose business for the period covered by its return consisted to the extent of at least 90 percent of "qualified investment activities" which are: investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting therein for its own account. As used in this rule, "qualified investment assets" are stocks, bonds, notes, mortgages, debentures, patents, patent rights, publicly traded limited partnership or limited liability company interests and other securities and cash on deposit;

2. Which had for the period covered by the return 90 percent or more of its average gross assets in New Jersey, at cost, invested in "qualified investment assets" referred to in (a)1 above;

3. Which meets the numerical tests in (f) below;

4. Which is not a banking corporation as defined by the Act;

5. Which is not a financial business corporation as defined by the act; and

6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities. The receipts, direct and indirect expenses and assets connected with the following will not be included in the numerator of any test:

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;

2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;

3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;

4. The direct day-to-day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;

5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;

6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;

7. The direct investment in collectibles, including, but not limited to, stamps, pottery, cars, gold coins;

8. The direct investment in trademarks or similar assets; or

9. The direct investment in a non-publicly-traded pass-through entity, if that entity would not satisfy the definition of investment company if it had been organized as a corporation.

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1. For services performed;

2. For the sale or transfer of assets;

3. For income recognized from the liquidation of liabilities; and

4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense nor its recovery should appear on the taxpayer's income statement for Federal purposes. Where taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7-13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within four years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame prescribed.

(f) In order for a corporation to qualify as an investment company, it must meet the three-part business test and the asset test:

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a)1 above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

(1) Add gross receipts or gross sales adjusted for gross profit (loss) reported for Federal income taxes;

(2) Add gross sales price from the disposition of assets adjusted for capital gain or loss or net gain or loss reported for Federal income taxes;

(3) Add interest on Federal, State, municipal and other obligations included in determining New Jersey new income, but not otherwise included in Federal total income;

(4) Do not add any capital loss carry back or carry forward in computing total income.

ii. (Income unadjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions, as reported for Federal income tax purposes, from cash and/or investment assets plus interest on Federal, State, municipal and other obligations not otherwise included in Federal taxable income and exclusive of any capital loss carryback or carryforward.

(1) A gain resulting from the disposition of an asset and reported on the installment basis for Federal income taxes is considered income for purposes of the investment company statute in the year in which the installment is received under both (c)1i and ii above. Income reported on the installment basis is treated as investment income only if it is generated by the sale of an investment asset. Interest income received in conjunction with each installment is deemed investment income.

iii. (Deductions): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing and reinvesting in cash and/or investment assets.

2. Assets test: For purposes of the 90 percent requirement provided by (a)2 above, at least 90 percent of the taxpayer's gross assets located in New Jersey, valued at cost, must consist of cash and/or investment assets, during the period covered by its report.

Example No. 1
Corporation A

Adjusted Income Test:			
Sch. A–6 Other Interest	$56,205	Sch. A–11 Total Income	$65,152
Sch. A–29 Interest on Exempt Securities	31,385	Sch. A–29 Interest on Exempt Securities	31,385
Total Investment Income	$87,590	Sch. D–Selling Price $71,000 Less Gain–$8,947	62,053
Sch. A–9(a) Capital gain (*)	8,947		
Total Income	$96,537	Total Income—Adjusted	$158,590

(*)From sale of non-investment type assets.
Ratio of Investment Income ($87,590) to Total Income Adjusted ($158,590) equals 55%

Unadjusted Income Test:			
Sch. A–6 Other Interest	$56,205	Sch. A–6 Other Interest	$56,205
Sch. A–29 Interest on Exempt Securities	31,385	Sch. A–9(a) Capital Gain	8,947
Total Investment Income	$87,590	Sch. A–29 Interest on Exempt Securities	31,385
Sch. A–9(a) Capital Gain (*)	8,947		
Total Income	$96,537	Total Income—Unadjusted	$96,537

(*)From sale of non-investment type assets.
Ratio of Investment Income ($87,590) to Total Income Unadjusted ($96,537) equals 91%

Deduction Test:			
Sch. A–13 Salaries	$24,000	Sch. A–13 Salaries	$24,000
Sch. A–17 Tax (Investment related)	1,000	Sch. A–17 Taxes	1,000
Total related to Investments	$25,000	Sch. A–27 Total Deductions	$25,000
Sch. A–17 Taxes (Real Estate)	1,200		
Sch. A–27 Total Deductions	$26,200		

Ratio of Investment Related Deductions ($25,000) to Total Deductions ($26,200) equals 95%

Assets Test—CBT–100 Schedule B (restated at cost)	
Cash	$21,558
Bonds, Notes & Mortgages	123,821
N.J. State & Local Governmental Obligations	27,140
All Other Governmental Obligations	1,067,874
Total Intangible Personal Property	$1,240,393
Land	5,000*
Buildings	30,000*
Machinery & Equipment	17,000*
Total Real and Tangible Personal Property	$52,000
Total Assets	$1,292,393

(*)Sold during accounting period
Ratio of Total Intangible Assets to Total Assets equals 96%
Corporation A does not qualify since it did not meet the adjusted Income Test.

Example No. 2
Corporation B

Adjusted Income Test:			
Sch. A6 Other Interest	$82,722	Sch. A6 Other Interest	$82,722
Total Income from Investments	$82,722	Sch. A–11 Total Income—Adjusted	$82,722

Ratio of Investment Income to Total Income—Adjusted equals 100%

Unadjusted Income Test:			
Sch. A6 Other Interest	$82,722	Sch. A6 Other Interest	$82,722
Total Income from Investments	$82,722	Sch. A–11 Total Income—Unadjusted	$82,722

Ratio of Investment Income to Total Income—Unadjusted equals 100%

Deductions Test:			
Sch. A–17 Taxes	$1,709		
Sch. A–18 Interest Expense	37		
Total Investment related deductions	$1,746	Sch. A–27 Total Deductions	$1,746

Ratio of Investment Related Deductions equals 100%

Assets Test: CBT–100 Schedule B (restated at cost)	
Cash	$26,482
Bonds, Notes & Mortgages	365,444
All Other Governmental Obligations	499,254
Total Investment Type Assets	$891,180
Total Real and Tangible Personal Property	–0–
Total Assets	$891,180

Ratio of Investment Type Assets to Total Assets equals 100%
Corporation B qualifies as an investment company since it met each test.

Example No. 3
Corporation C

Adjusted Income Test:				
Sch. A–5 Interest on Gov't Obligations	$9,000	Sch. A–11 Total Income		$32,000
Sch. A–6 Other Interest	$5,000	Sch. A–2 Cost of Goods Sold		$1,000
Sch. A–8 Gross Royalties	8,000	Sch. A–9(a) Sales Price $10,000		
Sch. A–9(a) Capital Gain	2,000	Gain 2,000 equals	(Basis)	8,000*
Sch. A–29 Interest on Other Obligations	500	Sch. A–29 Interest on Other Obligations		500
Total Income from Investments	$24,500	Total Income—Adjusted		$41,500
Add: Basis of Asset Sold	8,000*			
Gross Investment Income	$32,500			

(*)Investment type asset

Ratio of Gross Investment Income to Total Income—Adjusted equals 78%

Unadjusted Income Test:			
Sch. A–11 Total Income	$32,000	Sch. A–11 Total Income	$32,000
Sch. A–3 Gross Profit	(1,000)*	Sch. A–29 Interest on Other Obligations	$500
Sch. A–7 Gross Rents	(6,000)*		
Sch. A–29 Interest on Other Obligations	500		
Total Income—from Investments	$25,500	Total Income—Unadjusted	$32,500

(*)Non-investment income

Ratio of Investment Income to Total Income—Unadjusted equals 78%

Deduction Test:			
Sch. A–12 Compensation of Officers	$2,000	Sch. A–12 Compensation of Officers	$2,000
Sch. A–13 Salaries & Wages	10,000	Sch. A–13 Salaries & Wages	10,000
Sch. A–17 Tax	10,000	Sch. A–17 Taxes	12,000*
		Sch. A–21 Depreciation	1,100
Total Investment Related Deductions	$22,000	Sch. A–27 Total Deductions	$25,100

(*)Includes $2,000 real estate tax

Ratio of Investment Related Deductions to Total Deductions equals 88%

Assets Test: CBT–100 Schedule B (restated at cost)		
Cash	$5,000	
Bonds, Notes & Mortgages	50,000	
NJ State & Local Gov't Obligations	10,000	
All Other Gov't Obligations	100,000	
Patents & Copyrights	1,000	
Total Investment Type Assets	$166,000	
Land	50,000	
Bldgs. & Improvements	200,000	
Total Real and Tangible Personal Property	$250,000	(non-investment type assets)
Total Assets	$416,000	

Ratio of Investment Type Assets to Total Assets equals 40%

Corporation C does not qualify as an investment company since it did not meet all tests.

Example No. 4
Corporation D

Adjusted Income Test:			
Sch. A–4 Dividends	$14,000		
Sch. A–5 Interest on Gov't Obligations	12,000		
Sch. A–6 Other Interest	11,000		
Sch. A–8 Gross Royalties	11,000	Sch. A–11 Total Income	$48,000
Sch. A–11 Total Income	$48,000	Deduct: Capital loss per Federal Sch. D	(10,050)*
Add: Sales price of assets sold	50,000	Add: Basis of capital asset sold	60,050*
Total Investment Income	$98,000	Total Income—Adjusted	$98,000

(*)Investment type asset sold at a loss

Ratio of Investment Income to Total Income—Adjusted equals 100%

Unadjusted Income Test:			
Total Income from investments	$48,000	Sch. A—11 Total Income Unadjusted	$48,000

Ratio of Total Investment Income to Total Income—Unadjusted equals 100%

Deductions Test:			
Total Investment Related Deductions	$30,250	Investment Related Deductions	$30,250
		Sch. A–17 Real Estate Tax	675
		Sch. A–21 Depreciation	120
		Sch. A–27 Total Deductions	$31,045

Ratio of Investment Related Deductions to Total Deductions equals 97%

Assets Test: CBT-100 Schedule B (restated at cost)	
Cash	$11,000
Accounts & Notes Receivable	12,000
Corporate Stocks	30,000
Bonds, Mortgages & Notes	30,000
NJ State & Local Gov't Obligations	15,000
Patents & Copyrights	20,000
All Other Intangible Personalty	$60,000
Total Investment Type Assets	$178,000
Land	$15,000
Furniture & Equipment	1,200
Total Real and Tangible Property	$16,200
Total Assets	$194,200

Ratio of Investment Type Assets to Total Assets equals 92%
Corporation D qualifies as an investment company since it met each test.

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to O go beyond actual reimbursements and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of the rule. Where such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

(g) An investment company may also qualify as a regulated investment company. See N.J.A.C. 18:7-1.13.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
As amended, R.1982 d.34, effective February 16, 1982.
See: 13 N.J.R. 684(b), 14 N.J.R. 209(b).
(c) added.
Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(a), 17 N.J.R. 2677(a).
Substantially amended.
Amended by R.1990 d.482, effective October 1, 1990.
See: 22 N.J.R. 1904(a), 22 N.J.R. 3159(a).
Definition of investment company restructured; investment activities and assets, receipts, reimbursements, and timeliness of elections clarified further, pursuant to the holdings of the court in *National Wax Paper Company v. Director, Division of Taxation MC-539-78* (Tax Court 1981) and *Milton Management, Inc. v. Director, Division of Taxation* MC-386-72 (Division of Tax Appeals, 1975), and *Department of Environmental Protection v. Franklin Township,* 3 N.J. Tax 105, 119 (Tax Court 1981), *aff'd* 5 N.J. Tax 476 (App.Div.1983).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (g).
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 (f), inserted "1" following "provided by (a)" in 1i, substituted "(a)2" for "(b)2i and ii" in 2.
Amended by R.2006 d.280, effective August 7, 2006.
See: 38 N.J.R. 1558(a), 38 N.J.R. 3183(a).
In (a)1, inserted "publicly traded limited partnership or limited liability company interests"; in (b)7, deleted "or" from the end; in (b)8, inserted "or" at end; and added (b)9.

Statutory References

See N.J.S.A. 54:10A-4(f) as to those corporations included and those not included within the definition of an investment company.

18:7-1.16 Financial business corporation; definition

(a) "Financial business corporation" means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with

the object of making profit by its use as money through any of the following:

1. Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt;

2. Buying and selling exchange;

3. Making of or dealing in secured or unsecured loans and discounts;

4. Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;

5. Investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or

6. Dealing in or underwriting obligations of the United States, any state or any political subdivision thereof or of a corporate instrumentality of any of them.

7. Certain leasing transactions which approximate secured loans by meeting each of the following requirements:

i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment.

ii. Lessor may not rely on repetitious leasing of the same property.

iii. The lease must be a net lease.

iv. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property.

(b) For purposes of this section:

1. "Tax benefits" means those benefits derived from depreciation and any investment tax credit related to the financed property.

2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed.

3. "Net lease" means a lease under which the lessor will not, directly, or indirectly, provide or be obligated to provide for:

i. The servicing, repair or maintenance of the leased property during the lease term.

ii. The purchasing of parts and accessories for the leased property; however, the improvements and additions to the leased property may be leased to the lessee upon its request.

iii. The loan of replacement or substitute property while the leased property is being serviced.

iv. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

v. The renewal of any license or registration for the property unless such action by the taxpayer is clearly necessary to protect its interest as an owner or financier of the property.

(c) A financial business corporation shall not include:

1. Any enterprise that is not a corporation;

2. National banks;

3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 91-181 (12 U.S.C. § 2091 et seq.);

4. Stock or mutual insurance companies authorized to transact business in this State;

5. Securities brokers or dealers, investment companies, or investment bankers not employing moneyed capital with the object of making profit by its use as money or in substantial competition with the business of national banks;

6. Real estate investment trusts;

7. Credit unions organized under the laws of this State;

8. Savings banks organized under the laws of this State;

9. Savings and loan or building and loan associations organized under the laws of this State;

10. Pawn brokers organized under the laws of this State; and

11. State banks and trust companies organized under the laws of this State.

(d) A financial business corporation may not qualify as an investment company as that term is used in N.J.A.C. 18:7-1.15.

(e) The business of national bank is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C.A. 21, et seq. (The National Banking Act).

1. "The business of national banks" as used in N.J.S.A. 54:10A-4(m) and this section means the business of the bank itself and does not include bank subsidiaries, holding companies or affiliates.

(f) A corporation may qualify as a financial business corporation provided that 75 percent of its gross income is derived from the activities enumerated in (a)1 through (a)7 above. For purposes of making this computation, gross income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form BFC-1, adjusted as follows:

1. "Gross income" for purposes of this subsection and N.J.A.C. 18:7-5.2(a) 7iii means the result of adding the income amounts for gross receipts, or sales, dividends, interest, gross rents, gross royalties, capital gain, net income, net gain or loss from line 14(a), Part II, Federal Form 4797 and other income as adjusted for interest on Federal, state, municipal and other obligations not included in line 5 above and the dividend exclusion;

2. Gross income arrived at (f)1 above is the denominator;

3. The gross income included in (f)2 above resulting from the activities set forth in (a)1 through (a)7 above is the numerator; and

4. If the resulting percentage of (f)2 and 3 above is 75 percent or more, such corporation is a financial business corporation.

(g) A corporation that qualifies as a financial business corporation must file a 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 (Section 38 of the Corporation Business Tax Act).

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Formerly entitled "Motion to report as investment company".
New Rule R.1987 d.335, effective August 17, 1987.
See: 19 N.J.R. 712(a), 19 N.J.R. 1568(b).
Amended by R.1993 d.364, effective July 19, 1993.
See: 25 N.J.R. 1841(a), 25 N.J.R. 3239(a).

Case Notes

Taxpayer's loan of $75,000,000 to one of its subsidiaries, from which it derived 88 percent of its income, did not qualify taxpayer as a financial business corporation; taxpayer failed to prove by a preponderance of the evidence that national banks would have competed for loan business of the type represented by the loan. Chemical N.J. Holdings v. Dir., Div. of Taxation, 23 N.J. Tax 212, 2006 N.J. Tax LEXIS 13 (Tax Ct. 2006).

18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return

(a) Pursuant to N.J.S.A. 5:12-148(b), any business conducted by an individual, partnership, corporation, or any other entity, or any combination thereof, holding a license pursuant to the Casino Control Act shall, in addition to all other taxes imposed by that act, file a consolidated corporation business tax return pursuant to the Corporation Business Tax Act and pay the taxes indicated thereon.

(b) The consolidated return to be filed under the Casino Control Act is in addition to, and not in lieu of, any return due under the Corporation Business Tax Act. Provided, however, that where any corporation is a licensee under the Casino Control Act, it may exclude from the return due under the Corporation Business Tax any item of income, loss or deduction appearing on its consolidated return, but which would have been reported on its own separate return under the Corporation Business Tax Act for the year for which that item would otherwise have been reported. Provided further, that where any corporation is a partner in a licensee under the Casino Control Act, it may similarly exclude its share of distributable income or loss attributable to its partnership interest in the licensee which would otherwise have been reported by it on its own separate return under the Corporation Business Tax Act.

1. In no event may the tax reduction arising out of any such exclusion exceed the portion of the tax paid with the consolidated return which is clearly attributable to the net effect of the existence of the amount which is duplicated in entire net income on the separate return filed under the Corporation Business Tax Act.

2. The return filed under the Corporation Business Tax Act shall reflect taxable income before net operating loss deduction and special deductions which is required to be reported to the United States Treasury Department for the purposes of computing its Federal income tax. Claims for exclusion for any duplication shall be separately identified in computing entire net income and be documented and reconciled on the return due under the Corporation Business Tax Act.

3. The amount of net worth reported on the separate return filed under the Corporation Business Tax Act by a corporate member of a consolidated group may be reduced by an amount also reported on the consolidated corporation business tax return of the casino business to the extent that such net worth would have been duplicated on both returns.

(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right under the Corporation Business Tax Act. The rules governing consolidation under the Internal Revenue Code do not apply. The business conducted by each casino hotel shall give rise to an obligation to file a separate consolidated corporation business tax return based on all the business activities conducted with respect to that casino hotel. All licensees and all other entities subject to common effective control, without respect to their form of organization or the form of license held, except for licenses issued to individuals in their capacity as employees, must join in filing the consolidated return. All transactions between or among them are to be eliminated in consolidation and shall not appear on the consolidated return. Accordingly, where the same licensee or entity subject to common effective control is a participant in the business conducted by more than one casino hotel, it must join in filing a consolidated return with each such business. A change in common effective control terminates the fiscal year for purposes of filing the consolidated return.

1. Common effective control is the power exercisable by any person or entity arising out of ownership or a contractual arrangement which joins more than one licensee or other entity or entities and permits domination in the management of more than one licensee or other entity or entities for the purpose of engaging in a single casino hotel

business. Common effective control also occurs where a contractual arrangement permits more than one licensee or other entity or entities to operate jointly a single casino hotel business. For example, where the same persons or entities simultaneously control voting stock, boards of directors or serve as or nominate managing partners or are employed as managers or executives in more than one licensee or other entity or entities which participates in the business activities conducted by the same casino hotel, or where a licensee or other entity or entities executes a sale and leaseback of its property with another licensee or other entity or entities and reserves by contract the option to recover its property, all such licensees or other entity or entities subject to common effective control shall join in filing the consolidated return. Notwithstanding an absence of common ownership, licensees and all other entities subject to common effective control joined in the operation of the business conducted by a casino hotel by management contract or partnership arrangement shall join in filing the return.

2. Consistent with N.J.A.C. 18:7-11.15(a), the separate return due under the Corporation Business Tax Act may not be consolidated. See also (c)(4) below.

3. Certain corporations that are members of affiliated or controlled groups may be required to file consolidated returns pursuant to N.J.S.A. 54:10A-10. See N.J.A.C. 18:7-5.11. See also (c)4 below.

4. For purposes of this section and notwithstanding any other provision, all divisions, components, or entities that comprise the casino hotel business are required to be included in the casino consolidated return. This includes, without limitation thereto, entities known as "qualifiers." The term "qualifiers" means entities that have officially qualified to participate in the casino industry in New Jersey pursuant to N.J.S.A. 5:12-84 or 5:12-85.c or similar statute, but that are not licensed under the Casino Control Act.

(d) Where a licensee is engaged in a business wholly unrelated to the casino hotel, or is engaged in the operation of more than one casino hotel, common costs must be apportioned in a reasonable manner consistently applied. The method of apportionment shall be disclosed on the consolidated return and may be adjusted by the Director where it shall appear to him to result in a distortion of tax liability.

(e) Where the licensees joining in filing the consolidated return do not have a common fiscal year, the return may be based upon the fiscal year of the casino operator as defined at N.J.A.C. 19:54-1.2 where all licensees join in making such an election. The other licensees may then include their respective financial condition and operations on the basis of their own fiscal years within which the consolidated year ends. Separate schedules reconciling timing differences in elimination of balance sheet items and items of entire net income attributable to the lack of a common fiscal year must be submitted as part of any such consolidated return. In the absence of this election, the return shall be based on a calendar year ending December 31. The reporting method, once adopted, is effective for all future returns unless the prior consent of the Director is obtained for a change.

(f) A legend shall be prominently displayed on the face of any return filed under this section identifying the return as a casino business consolidated return.

EXAMPLE

	Hotel Entity 1		Management Co. Entity 2		Eliminations		Consolidated		Duplications Entity 1		Duplications Entity 2	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
Gaming Revenue	$	$1000	$	$–0–	$	$	$	$1000	$	$1000	$	$–0–
Other Income		200		–0–				200		200		–0–
Management Fees		–0–		500	500			–0–		–0–		–0–
Total Income		1200		500				1200		1200		–0–
Management Fees	500		–0–			500	–0–		–0–		–0–	
Payroll Deductions	–0–		200				200		–0–		200	
Other Deductions	200		–0–				200		200		–0–	
Total Deductions	700		200				400		200		200	
Net Income	500		300				800					
Duplications									1000			(200)

Entity #1
Net Income ..... $ 500
Adjustment for duplication ..... (1000)
Tax Base ..... $ –0–

Entity #2
Net Income ..... $ 300
Adjustment for duplication ..... (200)
Tax Base ..... $ 300
Entity #2 may elect not to exclude duplications

New Rule, R.1985 d.453, effective September 3, 1985.
See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (c)3.
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.2006 d.204, effective June 5, 2006.
See: 38 N.J.R. 915(a), 38 N.J.R. 2518(a).
In the introductory paragraph of (c), inserted "and all other entities" in the fourth sentence and "or entity subject to common effective control" in the sixth sentence; in (c)1, inserted "or other entity or entities" six times and inserted "or other entity or entities subject to common effective control" and "all other entities subject to common effective control"; inserted the last sentence in (c)2 and (c)3; and added (c)4.

18:7-1.18 Definition of S corporation

"S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1361.

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.

18:7-1.19 Definition of New Jersey S corporation

"New Jersey S corporation" means a corporation that is an S corporation which has made a valid election pursuant to section 3 of P.L. 1993, c.173 (N.J.S.A. 54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L. 1993, c.173 (N.J.S.A. 54:10A-5.22).

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.

18:7-1.20 Definition of public utility

"Public utility" means "public utility" as defined in N.J.S.A. 48:2-13.

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.

18:7-1.21 Definition of qualified investment partnership

(a) "Qualified investment partnership" means a partnership under this Act that has more than 10 members or partners with no member or partner owning more than a 50 percent interest in the entity and that derives at least 90 percent of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks or securities or foreign currencies or commodities or other similar income (including, but not limited to, gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of Section 1236 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1236.

1. If a partnership would otherwise qualify as a "qualified investment partnership," except that it has 10 or fewer partners, such partnership is deemed a "qualified investment partnership," if:

i. It is managed by an independent third party for a fee;

ii. There is no direct or indirect relationship between the manager and any of the partners; and

iii. There is no direct or indirect affiliation between or among the partners.

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.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Designated paragraph as (a), added 1.

18:7-1.22 Definition of savings institution

"Savings institution" means a State or Federally chartered building and loan association, savings and loan association, or savings bank.

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.

18:7-1.23 Definition of partnership

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

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.

SUBCHAPTER 2. NATURE OF TAX

18:7-2.1 Nature of tax; in general

(a) The Act imposes a franchise tax on every domestic corporation not otherwise exempt, and upon every foreign

corporation not otherwise exempt, falling within any of the taxable categories enumerated in N.J.A.C. 18:7-1.6.

(b) All corporations incorporated in New Jersey and all foreign corporations acquiring a taxable status in New Jersey immediately become subject to the tax.

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 those domestic and foreign corporations deemed to have acquired a taxable status.

18:7-2.2 Calendar and fiscal years; definitions

(a) The term "calendar year" means an accounting period ending on December 31.

(b) The term "fiscal year" means an accounting period ending on the last day of any month other than December.

Statutory References

See N.J.S.A. 54:10A-4(i) as to definition of "fiscal year."

18:7-2.3 Federal calendar or fiscal year for reporting

(a) In general, the calendar or fiscal year on the basis of which the taxpayer is required to report for Federal income tax purposes is the calendar or fiscal year on the basis of which it is required to report for purposes of the Act.

(b) Reports based on a 52-53 weeks account year will be accepted where that method of reporting is permissible and used for Federal tax purposes. If that method is used, a fiscal year which begins within seven days from the beginning of any calendar month shall be deemed to have begun on the first day of that calendar month, and any fiscal year which ends within seven days from the end of any calendar month shall be deemed to have ended on the last day of that calendar month.

(c) Subsection (b) above shall be used to determine the applicability of the Business Tax Reform Act, P.L. 2002, c.40 to a taxpayer having a 52-53 week year beginning on or about January 1, 2002.

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

18:7-2.4 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.2011 d.271, effective November 7, 2011.
See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).
Section was "Proof of Federal accounting period".

18:7-2.5 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.2011 d.271, effective November 7, 2011.
See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).
Section was "Proof of accounting period other than Federal basis".

18:7-2.6 Subject corporations must file on basis of calendar year period unless otherwise permitted

A subject corporation which is not required to file a Federal income tax return must file its Corporation Business Tax Return on the basis of a calendar year accounting period unless permission to employ a fiscal year basis has been granted in writing by the Division of Taxation upon application having been made.

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

18:7-2.7 Effect of failure by a corporation to establish accounting period

A corporation which has not established an accounting period for Federal income tax purposes shall be deemed to be operating on the basis of a calendar year accounting period until proof has been submitted to the Division of Taxation of the establishment of a fiscal year accounting period for Federal income tax purposes.

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

18:7-2.8 Effect of failure by a corporation to submit proof of an established fiscal year accounting period

Every corporation which has not submitted satisfactory proof to the Division of Taxation that it is operating on a basis other than a calendar year accounting period for Federal income tax purposes, shall be deemed to be operating on the basis of a calendar year 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).

18:7-2.9 Effect of proof of established fiscal year accounting period submitted late

Upon due proof of the establishment of a fiscal accounting period and the filing of a proper return covering such period accompanied by payment of the tax liability, a corporation shall be credited with any payment made in connection with a return previously filed on the basis of a calendar year period by reason of this regulation.

18:7-2.10 Period of application of tax

The tax is imposed for each calendar or fiscal period of the taxpayer, or any part thereof, during which the taxpayer had a taxable status as described in N.J.A.C. 18:7-1.6. See N.J.A.C. 18:7-1.6, (Taxable status; how created.)

Statutory References

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

Case Notes

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

18:7-2.11 Component factors of tax base

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

As amended, R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added the second sentence.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Statutory References

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

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

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

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Substituted "N.J.A.C. 18:7-1.6 or other provision of these rules" for "N.J.A.C. 18:7-1.16".
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

Cross References

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

Statutory References

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

18:7-2.13 Conditions destroying franchise and franchise tax

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

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

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

18:7-2.14 (Reserved)

New Rule, R.2001 d.260, effective August 6, 2001.
See: 33 N.J.R. 1344(a), 33 N.J.R. 2678(a).
Repealed by R.2011 d.271, effective November 7, 2011.
See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).
Section was "Allocation of payments received with CAR-100".

SUBCHAPTER 3. COMPUTATION OF TAX

18:7-3.1 General bases for computation of tax

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

Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added "accounting period before July 1, 1986" to (a). Also added (b)-(e).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

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

18:7-3.2 (Reserved)

Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax on entire net worth".

18:7-3.3 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
As amended, R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added "accounting period before April 1, 1983".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax on average value of real and tangible personal property".

18:7-3.4 Minimum tax

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

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

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

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

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

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

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

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

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

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

(i) For privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are New Jersey S corporations shall be based on the New Jersey gross receipts of the taxpayer, as defined for the purposes of this subsection pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.1, pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$375.00
$100,000 or more but less than $250,000	$562.50
$250,000 or more but less than $500,000	$750.00
$500,000 or more but less than $1,000,000	$1,125
$1,000,000 or more	$1,500

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

Amended by R.1970 d.121, effective Oct. 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Changed "New Jersey" to "domestic" corporation. Added "accounting period before April 1, 1983". Added $250.00 tax for investment, regulated investment and real estate investment companies.
Repeal and New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax by domestic corporations".
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).

Rewrote (a); in (f), inserted "1998, 1999 and 2000" following "1997"; added new (g) and recodified former (g) as (h); in new (h), substituted "2002" for "1997" throughout and "2001" for "1996"; added (i).
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.
Amended by R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
In (g), inserted "through 2005"; and rewrote (h).
Amended by R.2012 d.111, effective June 4, 2012.
See: 44 N.J.R. 142(a), 44 N.J.R. 1727(a).
Added new (i); and recodified former (i) as (j).

Statutory References

See N.J.S.A. 54:10A–5(e) as a minimum amount of franchise tax which may be assessed.

Case Notes

Provision for computation of tax based on number of shares authorized as of the close of the calendar or fiscal accounting period covered by a return, in the absence of a statutory determinative date, not challenged; provision compared to real and personal property alternative tax as mean average value on a quarterly basis in N.J.A.C. 18:7–8.6. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7–3.5 (Reserved)

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.395, effective November 1, 1982.
See: 14 N.J.R. 826(b), 14 N.J.R. 1221(b).
Added (c).
Amended by R.1983 d.219, effective June 20, 1983.
See: 15 N.J.R. 320(a), 15 N.J.R. 1038(e).
Deleted and reserved (a). In (b), added 2–4. Also deleted old (c).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax by short tax table".

18:7–3.6 Tax rates—corporations, S corporations and surtax

(a) Tax rates for C corporations are as follows:

1. Except as may be provided in (a)3 and 4 below, for all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent, for a corporation that is not a New Jersey S corporation.

2. Except as may be provided in (a)3 and 4 below, for a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980 and filing its New Jersey return Form CBT–100 on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

3. For privilege periods beginning on or after July 1, 1996, a taxpayer that is not a New Jersey S corporation that has entire net income of $100,000 or less for a 12 month privilege period, the rate for that privilege period shall be 7½ percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month.

Example: A taxpayer having a five month accounting period qualifies for the 7½ percent rate if its income for the period does not exceed $41,666.

4. For privilege periods beginning on or after January 1, 2002, a taxpayer that is not a New Jersey S corporation that has entire net income of $50,000 or less for a 12–month privilege period, the rate for that privilege period shall be 6½ percent. A corporation that is not a New Jersey S corporation having an accounting period less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $4,166 per month.

(b) Tax rates for New Jersey S corporations are as follows:

(1) For a New Jersey S corporation with a fiscal year beginning after July 7, 1993 but before January 1, 1994 the tax rate for a New Jersey S corporation is two percent.

2. For a New Jersey S corporation whose privilege period begins on or after January 1, 1994 but before January 1, 1995 the tax rate for a New Jersey S corporation is 2.350 percent.

3. For a New Jersey S corporation whose privilege period begins on or after January 1, 1995 but before January 1, 1996 the tax rate for a New Jersey S corporation is 2.42 percent.

4. Periods beginning on or after January 1, 1996 and ending on or before June 30, 1998:

i. Except as may be provided in (b)4ii below, for a New Jersey S corporation whose privilege period begins on or after January 1, 1996 and ends on or before June 30, 1998 the tax rate, with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 2.63 percent. See also (c) below.

ii. For privilege periods beginning on or after July 1, 1996, and ending on or before June 30, 1998, a taxpayer that is a New Jersey S corporation that has entire net income of $100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) shall be 1.13 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month. See also (c) below.

5. Periods ending on or after July 1, 1998 and on or before June 30, 2001:

i. Except as provided in (b)5ii below, for a New Jersey S corporation whose privilege period ends on or after July 1, 1998, but on or before June 30, 2001 the tax with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is two percent. See also (c) below.

ii. For privilege periods ending on or after July 1, 1998, but on or before June 30, 2001 a taxpayer that is a New Jersey S corporation that has entire net income of $100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 0.5 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month. See also (c) below.

6. Periods ending on or after July 1, 2001 and ending on or before June 30, 2006.

i. Except as may be provided in (b)6ii below, for a New Jersey S corporation whose privilege period ending on or after July 1, 2001 and ends on or before June 30, 2006 the tax rate, with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 1.33 percent, provided that for privilege periods beginning before January 1, 2002 and ending during the period beginning on or after January 1, 2002 and ending on or before June 30, 2002, the rate shall be 0.67 percent. See also (c) below.

ii. For privilege periods ending on or after July 1, 2001, a taxpayer that is a New Jersey S corporation that has entire net income of $100,000 or less for a 12–month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) shall be 0 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month. See also (c) below.

7. Periods ending on or after July 1, 2006 but on or before June 30, 2007:

i. Except as may be provided in (b)7ii below, for a New Jersey S corporation whose taxable income is in excess of $100,000 for the privilege period and whose taxable year ends on or after July 1, 2006, but on or before June 30, 2007 the tax with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 0.67 percent. See also (c) below.

ii. For a taxpayer that is a New Jersey S corporation having entire net income less than $100,000 for privilege periods ending on or after July 1, 2001 there is no tax.

8. For privilege periods ending on or after July 1, 2007 there shall be no tax imposed on New Jersey S corporations.

(c) The rates for income of New Jersey S corporations Federally are as follows:

1. Except as may be provided in (c)2 or 3 below, for a New Jersey S corporation the tax rate is nine percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374, 1375.)

2. For privilege periods beginning on or after July 1, 1996, a taxpayer that is a New Jersey S Corporation that has entire net income of $100,000 or less for a 12 month privilege period, the tax rate is 7.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374, or 1375). A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month.

3. For privilege periods beginning on or after January 1, 2002, a taxpayer that is a New Jersey S corporation that has entire net income of $50,000 or less for a 12 month privilege period, the tax rate is 6.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374 or 1375.) A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $4,166 per month.

(d) In addition, a surtax calculated pursuant to N.J.S.A. 54:10A–5.1 and 5.2 shall be computed and added to the applicable tax, provided that on and after January 1, 1994 there shall be no surtax imposed. The adjusted surtax rate for accounting periods ending between January 1 and June 30, 1994 is determined by multiplying the surtax rate for the period (.00375) by a quotient, the numerator of which is the number of complete calendar months in the taxpayer's accounting period ending before January 1, 1994, and the denominator of which is the total number of complete calendar months in the accounting period. This calculation ensures that the surtax rate is reduced proportionally for those taxpayers with a tax year ending after January 1, 1994. The surtax is then completely eliminated for fiscal year 1995 and thereafter.

$$.00375 \times \frac{\text{Months ending before January 1, 1994}}{\text{Total months in accounting period}} = \text{Adjusted Surtax Rate}$$

Example 1. A taxpayer whose tax year covers a 12–month period ending on January 31, 1994 determines the adjusted surtax rate as follows: .0035 × 1½ =.00344. Note: For ease of computation, the calculation is rounded to the fifth decimal place.

Example 2. The adjusted surtax rates for taxpayer with accounting periods covering 12 months are listed below. Taxpayers with accounting periods covering less than 12 months must compute the appropriate rate using the formula indicated above.

Fiscal Year Ended	Adjusted Surtax Rate
1/31/94	0.00344
2/28/94	0.00313
3/31/94	0.00281
4/30/94	0.0025
5/31/94	0.00219
6/30/94	0.00188

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.1980 d.146, effective April 9, 1980.
See: 12 N.J.R. 159(b), 12 N.J.R. 293(b).
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 "Method of computing part two of tax; net income base".
Amended by R.1995 d.134, effective March 6, 1995.
See: 27 N.J.R. 57(a), 27 N.J.R. 935(c).
Amended by R.1996 d.495, effective October 21, 1996.
See: 28 N.J.R. 3056(b), 28 N.J.R. 4592(b).

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, 2010.

(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).
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (a), substituted "2010" for "2009".

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.

New Rule, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Amended by R.1990 d.296, effective June 18, 1990.
See: 22 N.J.R. 1045(a), 22 N.J.R. 1946(a).
In (f): added last sentence. Added form number CBT-100.
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 (a), substituted "privilege periods" for "accounting period" in the introductory paragraph; added new (b); recodified former (b) through (g) as (c) through (h); in new (g), substituted "savings institutions" for "limited partnership associations".
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.

18:7-3.14 Estimated payment for fourth quarter 2002

Notwithstanding contrary provisions of law, for the privilege period of the taxpayer beginning in calendar year 2002, an underpayment of the installment payment due on or before the 15th day of the 12th month of the period exists if the amount actually paid is less than the amount that would have been paid if the taxpayer had paid 25 percent of its actual liability for the current privilege period. The underpayment is the amount of this difference.

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.

18:7-3.15 Interest on underpayment of installment payments

(a) N.J.S.A. 54:10A-15.4 imposes an addition to the tax on the amount of the underpayment of any installment of estimated tax by a corporation (with certain exceptions). This addition to the tax is imposed irrespective of any reason for the underpayment. The amount of the underpayment for any installment date is the excess of:

1. The amount of the installment payment which would be required to be paid if all installment payments were equal to 90 percent of the tax shown on the return for the accounting year or, if no return was filed, 90 percent of the tax for that year, over

2. The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(b) Interest is determined at the annual rate referred to in (c) below based upon the amount of the underpayment of any installment of estimated tax for the period from the date such installment was required to be paid until the 15th day of the fourth month following the close of the tax year, or the date such underpayment was received by the Director, whichever is earlier. For purposes of determining the period of the underpayment:

1. The date prescribed for payment of any installment of estimated tax may not be extended; and

2. A payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under (a)1 above for such date shall be considered a payment of any previous underpayment.

(c) The rate to be used in (b) above is an annual rate of five percent above the prime rate, compounded daily from the date the tax was originally due and payable until the date of payment. On and after July 1, 1993, the rate is three percent above the prime rate compounded annually. Each such underpayment shall bear interest at the rate prescribed above. The following is an example of underpayment interest computation:

1. Assume the average predominant prime rate for January 1, 1994 is six percent. Therefore, the applicable interest on underpayment pursuant to this subsection is six percent plus three percent or nine percent on the amount of any underpayment of estimated tax due on or after April 1, 1994 but before July 1, 1994. The method prescribed for computing the addition to the tax may be illustrated by the following example:

i. A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for 1994, estimated tax in the amount of $50,000. It made payments of $12,500 each on April 15, 1994, June 15, 1994, September 15, 1994 and December 15, 1994. On April 15, 1995, it filed its tax return, CBT-100, showing a total tax of $200,000. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for 1994	$200,000
Item (2)	Ninety percent of item (1)	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of $180,000)	45,000
Item (4)	Deduct amount paid on each installment date	12,500
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4))	$ 32,500
Item (6)	Interest shall be charged on each underpayment at the rate as prescribed in this subsection	

First installment: Interest period April 15, 1994 to April 15, 1995
Second installment: Interest period June 15, 1994 to April 15, 1995
Third installment: Interest period September 15, 1994 to April 15, 1995
Fourth installment: Interest period December 15, 1994 to April 15, 1995

(d) If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in (e) below precludes the imposition of the addition to the tax, it should attach to its tax return, CBT-100,

for the taxable year a Form CBT-160 showing the applicability of any exception upon which the taxpayer relied.

(e) Exceptions to imposition of interest on underpayment of an installment payment. The addition to the tax under this rule will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equalled or exceeded the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

1. An amount equal to the tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year. If the tax rates for the current taxable year with respect to which the underpayment occurs differ from the rates applicable to the preceding taxable year, the exception will only apply to installments due on or after the change in tax rates. If the preceding return was a short period return filed pursuant to N.J.A.C. 18:7-12, the tax computed on the basis of the facts shown on such return for purposes of determining the applicability of the exception shall be the tax appearing on such short period return multiplied by 12 and then divided by the number of whole months covered by such short period return; or

2. An amount equal to 90 percent of the tax determined by placing on an annual basis the taxable income and taxable net worth for:

i. The first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

ii. Either the first three months or the first five months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the sixth month;

iii. Either the first six months or the first eight months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the ninth month; and

iv. Either the first nine months or the first eleven months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the twelfth month.

3. The tax so determined shall be placed on an annual basis by first multiplying it by 12, and then dividing the resulting amount by the number of months in the taxable year.

New Rule, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Amended by R.1984 d.322, effective August 6, 1984.
See: 16 N.J.R. 1043(a), 16 N.J.R. 2152(b).
Section substantially amended.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substantially amended (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-3.16 Banking corporations and financial business corporations

N.J.A.C. 18:7-3.13, 3.15, 11.12 and 13.6 apply to banking corporations and financial business corporations. See N.J.S.A. 54:10A-34 et seq. regarding their general taxability under the Corporation Business Tax Act.

New Rule, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-3.17 Coordination of tax credits

(a) The priority of credits for a taxpayer under the Corporation Business Tax Act shall be the priority of statutory credits set forth in this section.

1. The tax imposed for a fiscal or calendar accounting year pursuant to section 5 of P.L. 1945, c. 162, shall first be reduced by the amount of any credit allowed pursuant to section 12 of P.L. 2000, c. 12 (N.J.S.A. 17B:32B-12) (HMO Credit);

2. Then by the amount of any credit allowed pursuant to section 3 of P.L. 1993, c. 170 (N.J.S.A. 54:10A-5.6) (New Jobs Investment Tax Credit);

3. Then by any amount allowed pursuant to section 19 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-78) (Enterprise Zone Employee Tax Credit);

4. Then by any amount allowed pursuant to section 12 of P.L. 1985, c. 227 (N.J.S.A. 55:19-13) (Redevelopment Authority Project Tax Credit);

5. Then by any amount allowed pursuant to section 42 of P.L. 1987, c. 102 (N.J.S.A. 54:10A-5.3) (Recycling Equipment Tax Credit);

6. Then by any amount allowed under sections 3 or 4 of P.L. 1993, c. 171 (N.J.S.A. 54:10A-5.18 or 54:10-5.19) (Manufacturing Equipment and Employment Investment Tax Credit);

7. Then by any amount allowed pursuant to section 1 of P.L. 1993, c. 175 (N.J.S.A. 54:10A-5.24) (Research and Development Tax Credit);

8. Then by any amount allowed pursuant to section 1 of P.L. 1993, c. 150 (N.J.S.A. 27:26A-15) (Commuter Transportation Benefits);

i. The credit permitted pursuant to section 1 of P.L. 1993, c. 150 (N.J.S.A. 27:26A-15) (Commuter Transportation Benefits) shall be used to reduce taxes listed in section 1 of P.L. 1993, c. 150 (N.J.S.A. 27:26A-15);

9. Then by any amount allowed pursuant to section 3 of P.L. 1997, c. 349 (N.J.S.A. 54:10A-5.30) (Small New Jersey Based High Technology Business Investment Tax Credits);

10. Then by any amount allowed pursuant to section 1 of P.L. 1999, c. 102 (N.J.S.A. 54:10A-5 Note) (Neighborhood and Business Childcare Tax Incentive Program);

11. Then by any amount allowed pursuant to section 3 of P.L. 2001, c. 415 (N.J.S.A. 52:27D-492) (Neighborhood Revitalization State Tax Credit);

12. Then by any amount allowed pursuant to section 1 of P.L. 2001, c. 321 (N.J.S.A. 54:10A-5.31) (Effluent Equipment Tax Credit);

13. Then by any amount allowed pursuant to section 56 of P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-55) (Economic Recovery Tax Credit);

14. Then by any amount allowed pursuant to section 1 of P.L. 2003, c. 296 (N.J.S.A. 54:10A-5.33) (Remediation Credit);

15. Then by any amount allowed pursuant to Section 7 of P.L. 2002, c. 40 (N.J.S.A. 54:10A-5af.) (AMA credit);

16. Then by any amount allowed pursuant to Section 3 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-114) (Business Retention and Relocation Assistance Grant Program);

17. Then by any amount allowed pursuant to Section 1 of P.L. 2005, c. 345 (N.J.S.A. 54:10A-5.39) (Film Production Credit); and

18. Then by any amount allowed pursuant to section 1 of P.L. 2005, c. 318 (N.J.S.A. 54:10A-5.38) (Handicapped Persons Sheltered Workshop Program).

(b) The total amount of the credits listed in this section that are allowed against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 for the tax year shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c. 162.

(c) Any credit carryover should be taken in the manner set forth in the section granting the relevant credit and should be applied in the sequence that the credits are listed in (a) above. If the credit carryover section is silent about whether a carryover is allowed, no carryover is permitted.

(d) Corporate tax credits may not be used to decrease the tax due calculated under the alternative minimum assessment. N.J.S.A. 54:10A-5a.

New Rule, recodified from 18:7-3.20 by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).
Former N.J.A.C. 18:7-3.17, Enterprise zone employees tax credit, recodified to N.J.A.C. 18:7-3.20.
Special amendment, R.2003 d.135, effective February 27, 2003 (to ***expire August 26, 2003***).
See: 35 N.J.R. 1573(a).
Rewrote (a); added (d).
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).
Amended by R.2007 d.285, effective September 4, 2007.
See: 39 N.J.R. 762(a), 39 N.J.R. 3782(a).
Rewrote (a); in (b), substituted "c. 162" for "c.162" twice; and in (c), substituted "is permitted" for "should be allowed".

18:7-3.18 Recycling tax credit

(a) As used in this section:

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

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

"Qualified recycling equipment" means that recycling equipment used in New Jersey which is certified in writing by the Commissioner of the Department of Environmental Protection as qualified for the corporation business tax credit.

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

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

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

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

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

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

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

(c) No tax credit may be taken by a taxpayer in the year that the equipment is disposed of.

(d) The basis for computation of the tax credit amount is cost exclusive of any loans received by the taxpayer pursuant to section 36, P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

(e) The tax credit shall be prorated based on months or the fraction thereof that the equipment is used in the state. The base period for this proration is 12 months.

(f) Taxpayers who purchase qualified recycling equipment and have unused credits on December 31, 1996 can carry forward the tax credit to subsequent periods subject to the limitations contained in (b)2, 3, 4 and 5 above.

(g) The equipment must be used in New Jersey during the year to be eligible for the tax credit.

Example: XYZ Corporation begins to use qualified recycling equipment in this State on January 2, 1990. The cost of the equipment, excluding sales tax, shipping and installation, is $100,000 and the taxpayer did not receive any loans from the recycling fund to help with the purchase of the equipment. The taxpayer receives an enterprise zone employee tax credit of $5,000 and their corporate tax liability after the credit is $30,000. The credit for the taxpayer is the lesser of $10,000 ($100,000 cost x 50 percent (total credit allowable) x 20 percent maximum yearly credit), or $15,000 (50 percent of the tax liability after the enterprise zone tax credits). In this case the allowable credit for XYZ Corporation is $10,000, the lesser of the two amounts.

(h) The Commissioner of the Department of Environmental Protection's certificate and an affidavit from the taxpayer representing use in New Jersey must be a part of the return claiming any credit.

New Rule, R.1988 d.413, effective September 6, 1988.
See: 20 N.J.R. 48(b), 20 N.J.R. 2318(a).
Amended by R.1992 d.479, effective December 7, 1992.
See: 24 N.J.R. 2809(a), 24 N.J.R. 4411(b).
(a): Added "Cost of recycling equipment"; (g): Added text to Example.
Amended by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).
In (b)4, added reference to N.J.A.C. 18:7-3.17 for priority of tax credits.

18:7-3.19 Smart moves for business program (formerly employer trip reduction program) tax credit

(a) Corporate taxpayers are allowed a credit under N.J.S.A. 27:26A-15 for the cost of commuter transportation benefits provided to employees. See N.J.A.C. 16:50-9 for information on the tax credit.

(b) For the purposes of verifying eligibility for the credit, the Director of the Division of Taxation will compare the claim with a list of those employers certified by the Commissioner of the Department of Transportation or have registered with the Department of Transportation or have an approved compliance plan or an approved amended compliance plan.

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

(d) To claim the credit, the taxpayer must complete Form 307 and attach it to the Corporation Business Tax return (Form CBT-100 or CBT-100S) being filed.

New Rule, R.1995 d.148, effective March 20, 1995.
See: 26 N.J.R. 4976(a), 27 N.J.R. 1201(a).
Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
In (a), changed N.J.A.C. reference; and in (b), deleted a former first sentence.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Added new (c), recodified former (c) as (d).

18:7-3.20 Enterprise zone employees tax credits

See N.J.A.C. 18:7-3A for credits against the total tax applicable for "qualified businesses" located within "urban enterprise zones."

New Rule, R.1984 d.496, effective November 5, 1984.
See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).
Recodified from 18:7-3.17 by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).
Amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
Updated the N.J.A.C. reference, inserted a period following "zones", and deleted the period following the closing quotation mark at the end.

18:7-3.21 Manufacturing equipment and employment investment tax credit

(a) The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

"Base year" means the tax year immediately preceding the year in which a qualified investment was placed in service.

"Cost of qualified equipment" means, and is determined according to, the following criteria:

1. With respect to self-constructed equipment, the term means the cost amount properly charged to the capital account for depreciation in accordance with the Federal income tax law. This includes all charges incurred to produce a particular manufacturing piece of equipment. Costs include engineering designs, drafting, and other consultations required, as well as the physical construction costs associated with the finished product.

2. With respect to purchased equipment, the term is determined to be the net cost or net monetary consideration provided for acquisition of title and/or ownership of the subject property.

3. With respect to equipment acquired by written lease, the term is the minimum amount required by the agreement to be paid over the term of the lease, provided that the minimum amount shall not include any amount required to

be paid after the expiration of the useful life of the equipment. Property which a taxpayer leases, rents or licenses to another person is not qualified equipment.

4. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion.

"Credit allowable" means the credit available after applying limitations listed under (b)2i and ii below.

"Credit available" means the credit earned plus any unused carryover from prior years.

"Credit earned" means the manufacturing equipment portion of the credit plus the employment investment portion of the credit in a given tax year.

"Employee equivalents" means the aggregate hours of qualified part-time employees who worked for the taxpayer for at least 20 hours per week for at least six months. This amount is used to determine the total number of full-time employees and equivalents necessary when calculating the employment investment portion of the credit. The employees must be New Jersey residents domiciled in this State who are working at locations in New Jersey.

"Measurement year" means the tax year immediately following the year in which a qualified investment was placed in service.

"Placed in service," with respect to qualified equipment, means and occurs in the earlier of the following tax years:

1. The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to N.J.S.A. 54:32B-8.13a, having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use. Lease renewals, subleases, or assignments shall not be considered as qualified equipment. See N.J.A.C. 18:24-4.2.

"Useful life" used to distinguish three-year property from all other property, is determined in accordance with section 168 of the Federal Internal Revenue Code.

(b) A corporate taxpayer that acquires qualified manufacturing equipment either by purchase or lease and/or has an increase in New Jersey employees due to the equipment investment is entitled to a corporation business tax credit.

1. The credit earned is subject to the following limitations:

i. The manufacturing equipment portion is limited to two percent of the cost of qualified equipment placed in service up to a maximum credit for the tax year of $1,000,000, provided that if a taxpayer has 50 or fewer employees (an average number of full-time employees and full-time employee equivalents of 50 or less) and entire net income to be used as a measure of the tax determined pursuant to N.J.S.A. 54:10A-6 of less than $5,000,000 for the tax year, the taxpayer shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 in an amount equal to four percent of the investment credit base of qualified equipment placed in service in the tax year, up to a maximum allowed credit for the tax year of $1,000,000.

ii. The employment investment portion is limited to three percent of the cost of qualified equipment, not to exceed a maximum allowed amount of $1,000 multiplied by the increase in the average number of qualified employees and/or employee equivalents. It is valid for each of the two tax years next succeeding the tax year for which the manufacturing equipment portion is allowed.

2. The two portions combined plus any carryover (the credit available as defined herein) is also subject to the following limitations:

i. The amount of the tax credit shall not reduce the tax liability below 50 percent of the tax liability otherwise due for any tax year or below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

ii. See N.J.A.C. 18:7-3.17.

(c) If the total credit earned in the current or prior years is unused due to the limitations contained in (b)2i and ii above, the unused portion may be carried over to the seven tax years succeeding the year in which the credit was earned.

(d) The credit assigned to property that has been disposed of, or which ceases to be qualified equipment prior to the end of its categorized useful life, should be redetermined using the ratios specified below:

THREE-YEAR PROPERTY	ALL OTHER PROPERTY
Number of months qualified use	Number of months qualified use
36	60

(e) Property subject to lease agreements shall have a minimum term of four years with a maximum not to exceed 20 years to be considered qualified equipment.

(f) The following example illustrates the application of the credit:

Example:	1993	1994	1995	1996
Cost of qualified equipment placed in service	None	$3,000,000	$5,000,000	$1,000,000
Average employees and/or employee equivalents	125	140	150	160

1994: XYZ Corporation places qualified manufacturing equipment in service in New Jersey during 1994. The cost of the manufacturing equipment, excluding shipping and installation, is $3,000,000. The taxpayer receives a recycling equipment tax credit of $10,000 and its corporate tax liability is $400,000. The manufacturing equipment portion of the credit is $60,000 ($3,000,000 cost x two percent, not to exceed $1,000,000), and the employment investment portion is unavailable until the two years following placement of equipment in service. Therefore, the credit is the lesser of $60,000 or $190,000 (50 percent of the tax liability less the recycling equipment credit). In this case the allowable credit for XYZ Corporation is $60,000, the lesser of the two amounts.

1995: XYZ Corporation places additional qualified equipment in service during 1995, which was acquired through a lease agreement. The lease agreement required $5,000,000 to be paid over the term of the lease. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is $220,000. The manufacturing equipment portion of the credit is $100,000 ($5,000,000 total lease cost x two percent, not to exceed $1,000,000). The employment investment portion is $25,000 (150 measurement year average - 125 base year average = average increase of 25 x $1,000, not to exceed three percent of the cost of qualified equipment placed in service in New Jersey in 1994). Therefore, the credit is the lesser of $125,000 ($100,000 + $25,000) or $110,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $110,000, the lesser of the two amounts. The difference between the total of the two credit portions ($125,000) and the credit allowable ($110,000), or $15,000 may be carried over for a maximum of seven years.

1996: Qualified equipment is placed in service during 1996 at a cost of $1,000,000. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is $350,000. The manufacturing equipment portion of the credit is $20,000 ($1,000,000 total lease cost x two percent, not to exceed $1,000,000). The employment investment portion is $45,000, based on calculations for the 1994 and 1995 investments (150 measurement year average - 125 base year average = average increase of 25 x $1,000 or $25,000 for the 1994 investment AND 160 measurement year average - 140 base year average = average increase of 20 x $1,000 or $20,000 for the 1995 investment). Therefore, the credit is the lesser of $80,000 ($20,000 + $45,000 + $15,000 carryover from 1995) or $175,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $80,000, the lesser of the two amounts.

New Rule, R.1995 d.460, effective August 21, 1995.
See: 27 N.J.R. 838(a), 27 N.J.R. 3208(a).
Amended by R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
Rewrote (b)1i; and in (b)2ii, updated the N.J.A.C. reference.

18:7-3.22 New jobs investment tax credit

(a) Corporate taxpayers are allowed a credit against the portion of the corporation business tax that is attributable to, and the direct consequence of, the taxpayer's qualified investment in a new or expanded business facility in this State which results in the creation of new jobs.

1. For a small business taxpayer, as defined in N.J.S.A. 54:10A-5.5, at least five new jobs must be created. For any other taxpayer, at least 50 new jobs must be created. The median annual compensation for the new jobs must be at least $27,000, adjusted for inflation beginning January 1, 1994 as provided in N.J.S.A. 54:10A-5.6e. Notice of the adjustment shall be published in the New Jersey Register. The employer should rank the new employees by annual compensation. If the middle employee has compensation less than $27,000, the lowest ranking jobs should be deleted from the list until the median of the remaining list is at least $27,000. (If there are an even number on the list, the top half must be greater than $27,000.) The number of employees on this revised list is the number of new jobs created for purposes of this credit.

2. For privilege periods beginning on and after January 1, 2002, the eligibility standards for the New Jobs Investment Tax Credit Act have been expanded to include small or mid-size business taxpayers. For tax year 2002 such taxpayers shall have annual payroll of $5,000,000 or less and annual gross receipts of not more than $10,000,000. Such amounts will be adjusted annually for inflation commencing January 1, 2003 by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50.00. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

i. In addition for privilege periods beginning on and after January 1, 2002, for eligible taxpayers the applicable new jobs factor for five new jobs is 0.01. For each five additional new jobs over the additional five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding to it 0.01, up to a maximum new jobs factor 0.20.

(b) The amount of the credit shall be determined by multiplying the amount of the taxpayer's qualified investment, as defined in N.J.S.A. 54:10A-5.8, in property

purchased for business relocation or expansion, as defined in N.J.S.A. 54:10A-5.5, by the taxpayer's new job factor determined under N.J.S.A. 54:10A-5.9.

1. The amount of the credit shall be taken over a five year period, at the rate of one-fifth of the amount per taxyear, beginning with the tax year in which the taxpayer places the qualified investment into service or use in this State.

(c) The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during a prior tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year.

1. The amount of the credit shall not reduce the tax liability by more than 50 percent of that portion of the taxpayer's tax liability otherwise due for all tax years which is attributable to and the direct result of the taxpayer's qualified investment.

2. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5.7b.

3. If the credit exceeds the limitations in (c) through (c)2 above, the amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50 percent of the sum of the amount of property taxes timely paid in the taxable year pursuant to N.J.S.A. 54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to N.J.S.A. 54:4-1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment. Any excess amount may not be carried forward.

(d) The credit shall only be applied against corporation business tax liability attributable to, and the direct result of, the taxpayer's qualified investment.

1. If the taxpayer's liability for corporation business tax, local property tax, and implicit property tax paid through rental or lease on property subject to local tax and for which taxes another party that is not a related person is liable, are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of tax due under those tax acts for the tax year by the ratio of compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey whose positions are directly attributable to the qualified investment, to total compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey.

2. Any credits allowable under N.J.S.A. 54:10A-5.3 (recycling tax credit), N.J.S.A. 52:27H-78 (urban enterprise zone credit), and N.J.S.A. 55:19-13 (urban development corporation credit) shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under the act for the tax year, unless their application is otherwise prohibited by the applicable credit statutes.

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due to fire, flood, storm or other casualty, pursuant to the provisions of N.J.S.A. 54:10A-5.10 and 5.11. Except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years pursuant to the calculation under N.J.S.A. 54:10A-5.10b. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law.

1. If the average number of employees attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit was based, the credit shall be redetermined and the excess forfeited for the current tax year and for each succeeding year pursuant to the calculations required under N.J.S.A. 54:10A-5.10c.

(f) N.J.S.A. 54:10A-5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT-100 or CBT-100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT-200T. The recordkeeping requirements of N.J.S.A. 54:10A-5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in 1994 purchases and installs the following at location D in New Jersey:

1. A newly constructed building for $1,000,000;
2. Equipment with three year life for $100,000;
3. Equipment with five year life for $200,000; and
4. An airplane for $100,000.

At location E in New Jersey, the corporation makes repairs on existing facilities for $250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for $500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

ABC in 1993 had 50 employees, all at location E, with annual payroll of $2,000,000 and gross receipts of $5,000,000. In 1994 ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above $30,000, and has gross receipts of $10,000,000 and payroll of $5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of $3,000,000. The corporation business tax liability for ABC in 1994 is $10,000.

ABC should compute its 1994 New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1-95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

Qualified investment:		
line 4(a) with three year life	0.35 × $ 100,000 =	$ 35,000
line 4(b) with five year life	0.70 × 200,000 =	140,000
line 4(c) with seven year or more life	1.00 × 1,000,000 =	1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)		$1,175,000

The investment base is $1,175,000.

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A-5.5 and N.J.A.C. 18:7-3.22(b).)

Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor:

line 6(a) Average New Jersey employment for this tax year	120
line 6(b) Average New Jersey employment for last tax year	50
line 6(c) Subtract line 6(b) from line 6(a)	70
line 6(d) Divide line 6(a) by 2	60
line 6(e) Number of eligible new jobs	65
line 6(f) Smaller of 6(c), 6(d), or 6(e)	60
line 7(a) Divide line 6(f) by 50 with no remainder	1
line 7(b) Multiply line 7(a) by .005	.005
line 7(c) Enter the smaller of .10 or line 7(b)	.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with $10,000,000 in gross receipts, not a small taxpayer in 1994.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) × line 2 × .2 .005 × $1,175,000 × .2 =	$1,175
line 9 Qualified investment from prior two years	0
line 10 Aggregate Annual Credit: (Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))	$1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey attributable to the qualified investment	$3,000,000
line 12 Total compensation of all employees in New Jersey	$5,000,000
line 13 Divide line 11 by line 12	.60
line 14 Enter tax liability from front page of CBT	
line 15 Multiply line 13 by line 11 CBT-100 page 1	6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent	$3,000
line 17 Enter the smaller of line 10 or line 16	1,175

New Rule, R.1995 d.461, effective August 21, 1995.
See: 27 N.J.R. 840(a), 27 N.J.R. 3209(a).
Administrative correction.
See: 27 N.J.R. 4908(a).
Public Notice: Inflation adjustments.
See: 27 N.J.R. 4921(a).
Public Notice: Inflation adjustments.
See: 29 N.J.R. 708(a).
Public Notice: Inflation adjustments.
See: 30 N.J.R. 1330(c).
Public Notice: Inflation adjustments.
See: 31 N.J.R. 1112(a).
Public Notice: Inflation adjustments.
See: 32 N.J.R. 1087(b).
Public Notice: Inflation adjustments.
See: 33 N.J.R. 903(a).
Public Notice: Inflation adjustments.
See: 34 N.J.R. 1057(a).
Public Notice: Notice of Corporation Business Tax; New Jobs Investment Tax Credit Revised Inflation Adjustment.
See: 35 N.J.R. 280(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), added 2.
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.
Petition for Rulemaking.
See: 36 N.J.R. 589(b).
Public Notice: Notice of Inflation Adjustments.
See: 37 N.J.R. 1895(b).
Public Notice: Division of Taxation: Corporation Business Tax; New jobs investment tax credit: inflation adjustments.
See: 38 N.J.R. 1477(a).
Public Notice: Notice of inflation adjustments.
See: 39 N.J.R. 1827(a).
Public Notice: Notice of inflation adjustments.
See: 40 N.J.R. 2296(b).

18:7-3.23 Research credit

(a) A taxpayer shall be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with IRC Section 41 as in effect on June 30, 1992, provided that IRC Section 41(h) relating to termination of the availability of the credit in 1995 shall not apply.

(b) For purposes of this section, the term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

1. In-house research expenses; and

2. Contract research expenses.

(c) In general, the term "in-house research expenses" means:

1. Any wages paid or incurred to an employee for qualified services performed by such employee;

2. Any amount paid or incurred for supplies used in the conduct of qualified research; and

3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection IRC 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) The term "supplies" means any tangible property other than:

1. Land or improvements to land; and

2. Property of a character subject to allowance for depreciation.

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by IRC Section 3401(a).

2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of IRC Section 401(c)(1)), the term "wages" includes the earned income (as defined in IRC Section 401(c)(2)) of such employee.

3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under IRC Section 51(a).

(g) In general, the term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

1. If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(h) Trade or business requirement may be disregarded for in-house research expenses of certain start-up ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. Of the taxpayer; or

2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under IRC subsection 41(f)(1).

(i) Base amount requirements are as follows:

1. In general, the term "base amount" means the product of:

i. The fixed-base percentage; and

ii. The average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (hereinafter referred to as the "credit year").

2. In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

3. Fixed-base percentage requirements are as follows:

i. Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

ii. Start-up companies shall comply with the following:

(1) For taxpayers to which this subparagraph applies, the fixed-base percentage shall be determined under this subparagraph if there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(2) In a case to which this subparagraph applies, the fixed-base percentage is:

(A) Three percent for each of the taxpayer's first five taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses;

(B) In the case of the taxpayer's sixth such taxable year, one-sixth of the percentage which the aggregate qualified research expenses of the taxpayer for the fourth and fifth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(C) In the case of the taxpayer's seventh such taxable year, one-third of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth and sixth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(D) In the case of the taxpayer's eighth such taxable year, one-half of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, and seventh such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(E) In the case of the taxpayer's ninth such taxable year, two-thirds of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, and eighth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(F) In the case of the taxpayer's tenth such taxable year, five-sixths of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, eighth, and ninth such taxable years is of the aggregate gross receipts of the taxpayer for such years; and

(G) For taxable years thereafter, the percentage which the aggregate qualified research expenses for any five taxable years selected by the taxpayer from among the fifth through the tenth such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(3) The Director may in future prescribe rules providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under (i)3ii(1) and (2) above.

iii. In no event shall the fixed-base percentage exceed 16 percent.

iv. The percentages determined under (i)3i above shall be rounded to the nearest 1/100th of one percent.

4. Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

i. The Director may in future prescribe rules to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

5. For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade of business within the United States.

(j) Qualified research, for purposes of this subsection, is defined as follows:

1. The term "qualified research" means research:

i. With respect to which expenditures may be treated as expenses under IRC section 174;

ii. Which is undertaken for the purpose of discovering information

(1) Which is technological in nature; and

(2) The application of which is intended to be useful in the development of a new or improved business component of the taxpayer;

iii. Substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in (j)3 below; and

iv. Does not include any activity described in (j)4 below.

2. For purposes of this subsection, the following tests shall be applied separately to each business component:

i. In general, paragraph (j)1 above shall be applied separately with respect to each business component of the taxpayer.

ii. The term "business component" means any product, process, computer software, technique, formula, or invention which is to be:

(1) Held for sale, lease, or license; or

(2) Used by the taxpayer in a trade or business of the taxpayer.

iii. Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

3. For purposes of (j)1iii above, the following are purposes for which research may qualify for credit:

i. In general, research shall be treated as conducted for a purpose described in this paragraph if it relates to:

(1) A new or improved function;

(2) Performance; or

(3) Reliability or quality.

ii. Research shall, in no event, be treated as conducted for a purpose described in this paragraph if such research relates to style, taste, cosmetic, or seasonal design factors.

4. The term "qualified research" shall not include, nor shall credit be allowed for, any of the following:

i. Research after commercial production, that is, any research conducted after the beginning of commercial production of the business component;

ii. Adaptation of existing business components, that is, any research related to the adaptation of an existing business component to a particular customer's requirement or need;

iii. Duplication of existing business component, that is, any research related to the reproduction of an

existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component;

iv. Surveys, studies, or similar activities as follows:

(1) Efficiency survey(s);

(2) Activity relating to management function or technique;

(3) Market research, testing, or development (including advertising or promotions);

(4) Routine data collection; or

(5) Routing or ordinary testing or inspection for quality control;

v. Except to the extent provided in rule, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in:

(1) An activity which constitutes qualified research (determined with regard to this subparagraph); or

(2) A production process with respect to which the requirements of (j)1 above are met;

vi. Foreign research, that is, any research conducted outside the United States;

vii. Any research in the social sciences, arts, or humanities; or

viii. Funded research, that is, any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(k) Credit allowable with respect to certain payments to qualified organizations for basic research shall be as follows:

1. In general, in the case of any taxpayer who makes basic research payments for any taxable year;

i. The amount of basic research payments taken into account under (k)2 below shall be equal to the excess of such basic research payments, over the qualified organization base period amount.

ii. That portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of this paragraph.

2. Basic research payments shall be defined, for purposes of this subsection, as follows:

i. In general, the term "basic research payment" means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if:

(1) Such payment is pursuant to a written agreement between such corporation and such qualified organization; and

(2) Such basic research is to be performed by such qualified organization.

ii. In the case of a qualified organization described in (k)6iii or iv below (k)2i(2) above shall not apply.

3. For purposes of this subsection, the term "qualified organization base period amount" means any amount equal to the sum of the minimum basic research amount, plus the maintenance-of-effort amount.

4. Concerning the minimum basic research amount, for purposes of this subsection:

i. In general, the term "minimum basic research amount" means an amount equal to the greater of:

(1) One percent of the average of the sum of amounts paid or incurred during the base period for:

(A) Any in-house research expenses; and

(B) Any contract research expenses; or

(2) The amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

ii. Except in the case of a taxpayer which was in existence during the taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

5. Concerning the maintenance of effort amount, for purposes of this subsection:

i. In general, the term "maintenance-of-effort" amount means, with respect to any taxable year, an amount equal to the excess (if any) of an amount equal to: the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins, over the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a taxpayer to any qualified organization described in (k)6i below:

(1) For which a deduction was allowable under IRC section 170; and

(2) In which was not taken into account:

(A) In computing the amount of the credit under this provision (as in effect during the base period) during any taxable year in the base period; or

(B) As a basic research payment for purposes of this section.

iii. Cost-of-living adjustment shall be defined as follows:

(1) In general, the cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under IRC section 1(f)(3), by substituting "calendar year 1987" for "calendar year 1989" in subparagraph (B) of Code Section 1(f)(3).

(2) If the base period of any taxpayer does not end in 1983 or 1984, IRC section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which the base period ends for 1989. Such substitution shall be in lieu of the substitution under (k)5iii(1) above.

6. For purposes of this subsection, the term "qualified organization" means any of the following organizations:

i. Educational institutions, that is, any educational organization which:

(1) Is an institution of higher education (within the meaning of IRC section 3304(f)), and

(2) Is described in IRC section 170(b)(1)(A)(ii).

ii. Certain scientific research organizations, that is, any organization not described in (k)6i above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a);

(2) Is organized and operated primarily to conduct scientific research; and

(3) Is not a private foundation.

iii. Scientific tax-exempt organizations, that is, any organization which:

(1) Is described in:

(A) IRC section 501(c)(3) (other than a private foundation); or

(B) IRC section 501(c)(6);

(2) Is exempt from tax under section IRC 501(a);

(3) Is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph i pursuant to written research agreements; and

(4) Currently expends:

(A) Substantially all of its funds; or

(B) Substantially all of the basic research payments received by it, for grants to, or contracts for basic research with, an organization described in (k)6i above.

iv. Certain grant organizations, that is, any organization not described in (k)6ii or iii above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a) (other than a private foundation);

(2) Is established and maintained by an organization established before July 10, 1981, which meets the requirements of (k)6iv(1) above;

(3) Is organized and operated exclusively for the purpose of making grants to organizations described in (k)6i above pursuant to written research agreements for purposes of basic research; and

(4) Makes an election, revocable only with the consent of the U.S. Secretary of the Treasury, to be treated as a private foundation for purposes of U.S. Code Title 26 (other than IRC section 4940, relating to excise tax based on investment income).

(*l*) Definitions and special rules shall be as follows:

1. The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include:

i. Basic research conducted outside of the United States; or

ii. Basic research in the social sciences, arts, or humanities.

2. The term "base period" means the three-taxable-year period ending with the taxable year immediately preceding the first taxable year of the taxpayer beginning after December 31, 1983.

3. For purposes of determining the amount of credit allowable under subsection (k)1 above, for any taxable year, the amount of the basic research payments taken into account under subsection (k)2 above:

i. Shall not be treated as qualified research expenses under (k)1i above; and

ii. Shall not be included in the computation of base amount under (k)1ii above.

4. For purposes of applying (b) above to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of (g)1 above).

5. The term "corporation" shall not include:

i. An S corporation;

ii. A personal holding company (as defined in IRC section 542); or

iii. A service organization (as defined in IRC section 414(m)(3)).

(m) For Special Rules, see IRC section 41(f).

(n) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (u) below, a credit can be claimed for only those research activities that are performed in New Jersey.

(o) Notwithstanding any provision in this section to the contrary, a credit for increased research activities is allowed based on qualified expenditures made in taxable years beginning on and after January 1, 1994.

(p) The filing of a consolidated tax return by a controlled group of corporations shall not be permitted.

(q) Section references are to the Internal Revenue Code, unless otherwise noted.

(r) The research credit shall be generally allowed for qualified research. Qualified research is that which is limited to scientific experimentation or engineering activities designed to aid in the development of a new or improved product, process, technique, formula, invention, or computer software program held for sale, lease, or license, or used by the taxpayer in a trade or business. For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business. The research credit shall generally not be allowed for the following types of activities:

1. Research conducted after the beginning of commercial production;

2. Research adapting an existing product or process to a particular customer's need;

3. Duplication of an existing product or process;

4. Survey or studies;

5. Research relating to certain internal-use computer software;

6. Research conducted outside the State of New Jersey;

7. Research in the social sciences, arts, or humanities; or

8. Research funded by another person (or government entity.)

(See IRC Section 41 and regulations thereunder for other definitions and special rules concerning the research credit.)

(s) The research and expenditure tax credit is determined as follows:

1. First, calculate fixed-base percentage. Fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983 and before January 1, 1989 is of the aggregate gross receipts of the taxpayer for such taxable years.

Example:

Year	Qualified Research Expenses	Gross Receipts
1984	$ 2,000,000	$ 10,000,000
1985	4,000,000	15,000,000
1986	6,000,000	20,000,000
1987	8,000,000	30,000,000
1988	10,000,000	25,000,000
Total	$30,000,000	$100,000,000

$30,000,000 / $100,000,000 = 3% fixed base percentage

2. Next, compute the base amount. The base amount is the average gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (credit year) multiplied by the fixed base percentage.

Example:

Year	Gross Receipts
1990	$ 25,000,000
1991	20,000,000
1992	35,000,000
1993	30,000,000
Total	$120,000,000
	divided by 4 =
Average Gross Receipts	$ 30,000,000
Fixed Base Percentage	x 3%
Base Amount	$ 900,000

3. Then, compute current qualified research expenses.

	Total Costs Incurred	Research Tax Credit Qualified Research Expenses
Wages	$ 750,000	$ 500,000
Supplies	250,000	250,000
Depreciation	100,000	-0-
Overhead	250,000	250,000
Total	$1,350,000	$1,000,000

Then compute the research tax credit.

Current year qualified research expenses	$1,000,000
Less: Base Amount	(900,000)
Total incremental research expenses	$ 100,000
Research tax credit %	x 10%
New Jersey research tax credit	$ 10,000

(t) Credit for increased research activities shall take priority as specified by N.J.S.A. 54:10A–5.24b. If any amount of property or expenditures is included in the calculation of the research credit, or for which a credit is allowed, then no such amounts can be allowed for the recycling credit, manufacturing and employment investment credit, and the new jobs credit.

(u) If taxpayer has research within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for the period beginning after December 31, 1983 and before January 1, 1989, calculate the amount to be used in the numerator of the ratio to arrive at the fixed base percentage as follows: take the figure for qualified research and development expenses everywhere for the period and multiply it by the average of the average of the payroll fraction and the property fraction used on the corporation business tax returns for the corresponding years in question. This amount becomes the numerator of a fraction whose denominator is taxpayer's aggregate gross receipts everywhere for the period.

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

(w) For privilege periods beginning before January 1, 2012, the credit allowable in any given privilege period cannot exceed 50 percent of the tax liability otherwise due on the return and cannot reduce the tax liability to an amount less than the statutory minimum provided in N.J.S.A. 54:10A-5(e).

(x) For privilege periods beginning on or after January 1, 2012, the credit allowable in any given privilege period cannot reduce the tax liability to any amount less than the statutory minimum provided in N.J.S.A. 54:10A-5(e).

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

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

New Rule, R.1995 d.462, effective August 21, 1995.
See: 27 N.J.R. 842(a), 27 N.J.R. 3210(a).
Administrative correction.
See: 28 N.J.R. 4509(a).
Amended by R.2012 d.111, effective June 4, 2012.
See: 44 N.J.R. 142(a), 44 N.J.R. 1727(a).
Rewrote (w) and (x).

18:7-3.24 Effluent equipment tax credit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18:7-3.25 Economic recovery tax credit

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

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

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

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

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

"Full-time position equivalent" means the combined hours of the part-time positions filled by employees of the taxpayer, amounting to the requirement for "full-time position," 140

hours per month on a permanent basis, not including employment that is temporary or seasonal. Example: Taxpayer employs two employees in part-time positions, working 20 hours per week for at least three months during the credit year. The total hours worked per month by the two employees is 160 hours (20 hours per week, 80 hours per month, for each of two total employees for a total of 160 hours). The taxpayer-employer, therefore, has one "full-time position equivalent," because the taxpayer-employer has two part-time positions that have a total of at least 140 hours. The "full-time position equivalent" qualifies for the credit.

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

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

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

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

1. That has been subject to the supervision of a financial review board pursuant to the "Special Municipal Aid Act," N.J.S.A. 52:27D-118.24 et seq., for at least one year;

2. That has been subject to the supervision of the Local Finance Board pursuant to the "Local Government Supervision Act (1947)," N.J.S.A. 52:27BB-1 et seq. for at least one year; and

3. Which, according to its most recently adopted municipal budget, is dependent upon State aid and other State revenues for not less than 55 percent of its total budget.

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

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

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

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

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

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

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

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

18:7-3.26 HMO assistance fund tax credit

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

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

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

(d) No member organization may reduce its tax liability by more than 20 percent of the amount (determined without regard to any other credits allowed pursuant to law) otherwise due for a privilege period.

(e) If a member organization should cease doing business in this State, any credit amounts not yet applied against its liability may be applied against its Corporation Business Tax liability for the privilege period that it ceases to do business in this State.

(f) If a member organization receives a refund of an assessment from the association pursuant to N.J.S.A. 17B:32B-9g, the refund will be deemed to be an assessment for which a credit was already allowed. If the member organization has already applied the credit, then 50 percent of the amount of the refund from the association must be paid by the member organization to the Division of Taxation until the amounts paid equal the amounts applied as credit.

(g) To claim the credit, the member organization/taxpayer must complete Form 310 and attach it to the Corporation Business Tax return (Form CBT-100 or CBT-100S) being filed.

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

18:7-3.27 Neighborhood revitalization State tax credit

(a) A business entity may be eligible under N.J.S.A. 52:27D-492 for a certificate authorizing a tax credit if it has provided funding for a qualified project that has been approved by the Commissioner of Community Affairs in accordance with N.J.S.A. 52:27D-493. The credit may be up to 50 percent of the approved funding. See N.J.A.C. 5:47 for information on the tax credit.

(b) The credit may not exceed $500,000 or the total tax liability of the business entity for the taxable year, whichever is less. The credit is not allowed for activities for which the business entity is already receiving another credit. See N.J.A.C. 18:7-3.17 for coordination and limitations on the credit.

(c) The credit is allowed only for funding provided in the same year in which the certificate was issued, or if funding was approved for more than one year, within the year in which payment was scheduled and made.

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

(e) To claim the credit, the taxpayer must complete Form 311 and attach it to the Corporation Business Tax return (Form CBT-100 or CBT-100S) being filed.

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

18:7-3.28 Redevelopment authority project tax credit

(a) A corporation business taxpayer that is actively engaged in the conduct of business, that is manufacturing or other business that is not retail or warehouse oriented, within a project as defined in N.J.S.A. 55:19-3 may apply to claim a credit under N.J.S.A. 55:19-13.

(b) The credit is $1,500 for each new employee employed at that location who is a resident of the qualified municipality, and who immediately prior to such employment was unemployed at least 90 days or was dependent upon public assistance as the primary source of income.

(c) A credit for which a taxpayer qualifies under this section shall be allowed in the tax year following the tax year of qualification, and may be continued into a second tax year if the qualification continues, but it will be allowed only for those new employees who were employed for at least six consecutive months by the taxpayer in the year of qualification.

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

(e) To claim the credit, the taxpayer must complete Form 302 and attach it to the Corporation Business Tax return (CBT-100 or CBT-100S) being filed. Inquiries regarding the project should be directed to the New Jersey Redevelopment Authority, PO Box 790, Trenton, NJ 08625-0790.

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

SUBCHAPTER 3A. URBAN ENTERPRISE ZONES ACT

18:7-3A.1 General

(a) The New Jersey Urban Enterprises Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60 et seq., approved August 15, 1983, provides for the establishment of up to 10 urban enterprise zones in urban areas suffering from high unemployment and economic distress. P.L. 1985, c. 391 made certain changes to eligibility requirements for designation as a zone. P.L. 1988, c. 93 modified the definition of a qualified business, made adjustments to the eligibility requirements for the employee tax credit, and provided for an alternative investment tax credit. P.L. 1993, c. 367 further modified the definition of a qualified business and provided for the designation of 10 additional enterprise zones. Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain corporation tax and other benefits to businesses existing in, or formed in, enterprise zones, which have met the definition of a qualified business. This subchapter of the corporation tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any or all of these corporation tax benefits. Rules on the sales

and use tax and urban enterprise zones are in N.J.A.C. 18:24-31. For Urban Enterprise Zone Authority rules and policies, see N.J.A.C. 5:120 and 5:121.

(b) No business can obtain tax benefits under this subchapter unless it meets the definition of a "qualified business" in N.J.A.C. 18:7-3A.2.

Amended by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).
Recodified from N.J.A.C. 18:7-15.1 and amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
In (a), substituted "c. 391" for "c.391", "c. 93" for "c.93", and "c. 367" for "c.367"; and in (b), updated the N.J.A.C. reference.
Administrative correction.
See: 41 N.J.R. 1512(a).

18:7-3A.2 Definitions

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

A "qualified business" means either:

1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Resident within the zone, within another zone, or within a qualifying municipality;

ii. Either unemployed, while residing in New Jersey, for at least six months prior to being hired, or recipients of New Jersey public assistance programs, for at least six months prior to being hired;

iii. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 U.S.C. §§ 1501 et seq.). Section 1503(8) of that Act defines the term as follows:

"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, state or local welfare program; (B) has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."

For purposes of the corporation business tax credits, the "qualified business" must be a corporation.

"Enterprise zone" or "zone" means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60 et seq.

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which the municipality makes application for enterprise zone designation, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the state average annual unemployment rate; except that any municipality that qualifies for state aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the state average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor. For purposes of P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), the seven municipalities in which the six enterprise zones are to be designated pursuant to criteria according priority consideration for designation of these zones pursuant to section 7 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-66) shall be deemed qualifying municipalities.

Amended by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In "qualified business", deleted the last sentence in the last paragraph of 2iii.
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.
Recodified from N.J.A.C. 18:7-15.2 and amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
In 2iii of the definition "qualified business", substituted "U.S.C. §§" for "United States Code"; in definition "Enterprise zone", deleted the comma preceding "et seq."; and in definition "Qualifying municipality", substituted "c. 14 (N.J.S.A. 52-27D-178 et. seq.)" for "c.14 (C. 52-27D-178, et seq.)" and "c. 303" for "c.303" two times.

18:7-3A.3 (Reserved)

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Repealed by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

Recodified from N.J.A.C. 18:7-15.3 by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

18:7-3A.4 Credits against total tax for new employees and investments in urban enterprise zones

(a) Section 19 of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-78, is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 19 applicable when the enterprise zone was designated. Under section 19, any qualified business (as defined in N.J.A.C. 18:7-3A.2) which is actively engaged in the conduct of a business from a location within an enterprise zone (as defined in N.J.A.C. 18:7-3A.2), which business in that location consists primarily of manufacturing or other business which is not primarily considered as a retail sales business, or as a warehousing business, shall receive an enterprise zone employees tax credit against the amount of tax imposed under N.J.S.A. 54:10A-5 (N.J.S.A. 54:10A-1 et seq., the Corporation Business Tax Act). The credit shall only be available for new employees hired on or after the date of designation of the enterprise zone, or the date of commencement of business in the enterprise zone, whichever is later.

(b) A one-time credit against the tax of $1,500 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-3A.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who was, immediately before employment by the taxpayer, unemployed for at least 90 days, or dependent upon public assistance as the primary source of income. Further qualifications for this benefit are in (e) and (f) below.

(c) A one-time credit against the tax of $500.00 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-3A.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who does not meet the requirements of (b) above, and who was not, immediately before employment by the taxpayer, employed at a location within the qualifying municipality in which the qualified business is located. Further qualifications for this credit are in (e) and (f) below.

(d) See N.J.S.A. 52:27H-78c for alternate tax benefit. The statute allows a corporation tax credit to qualified small businesses (under 50 employees) that were in business in the zone prior to designation of the zone and that make an investment in the zone. These businesses may obtain an eight percent investment credit, to be applied against corporation business tax, by entering into an agreement, approved by the Urban Enterprise Zone Authority, with the zone city, to make an investment in the zone which contributes substantially to the economic attractiveness of the zone. These expenditures may include improvement of the appearance or customer facilities of its place of business or improvements in landscaping, recreation, police and fire protection, etc., in the zone.

(e) The enterprise zone employee tax credits provided in (b) and (c) above, shall be allowed in the tax year immediately following the tax year in which the new full-time, permanent employee was first employed by the taxpayer, but shall only be allowed if the employee for whom credit is claimed was employed by the taxpayer for at least six continuous months during the tax year for which the credit is claimed. The credit shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or in any tax year of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the corporation business tax under N.J.S.A. 54:10A-1 et seq., whichever is later. The termination of designation as an enterprise zone at the end of the 20 year designation period shall not terminate the eligibility period under this section.

(f) The employee tax credit is available only for new full-time, permanent employees who have been employed by the qualified business for at least six continuous months during the year for which the credit is claimed. For a new employee to be considered a full-time, permanent employee, the total number of full-time, permanent employees, including the new employee, employed by the qualified business during the calendar year must exceed the greatest number of full-time, permanent employees employed in the zone by the qualified business during any prior calendar year since the zone was designated. "Calendar year" means the year the new employees are hired. The comparison is made to the peak employment on any date during the calendar years prior to the calendar year in which the new employees are hired, not the employment level on the last date of prior calendar years. The new employees must then continue to be employed during the following year in which the credit is claimed for six continuous months.

Example 1: ABC Company is a qualified business. The highest number of full-time permanent employees the company has employed in any prior calendar years since the zone was designated was 100. ABC Company employs 100 employees in 1985 and hires five new employees in June 1995. The five new employees reside in the qualifying municipality in which the zone is located and, immediately prior to employment by the qualified business, were unemployed for at least 90 days. The five new employees remain with the company through June 30, 1996. ABC may claim the employee tax credit for the 1996 tax year for the employees hired in 1995. The employees remained employed by ABC Company for at least six continuous months during the year for which the credit is claimed (1996). The five new employees are considered full-time permanent employees because the total number of full-time permanent employees, including the new employees, employed by ABC during the 1995 calendar year (105) exceeded the greatest number of full-time permanent

employees employed in the zone by ABC in prior calendar years (100). The total credit is $7500 ($1500 x 5).

Example 2: Same facts as above except that in March 1996 ABC Company terminated two of the employees hired in 1995, and in April 1996 hires three new employees. The new employees reside in the qualifying municipality in which the zone is located and, although they were not unemployed for at least 90 days prior to employment by the qualified business or on public assistance, they were not employed, immediately prior to employment by the qualified business, within the qualifying municipality in which the qualified business is located. The new employees remained with ABC through December 1997. ABC may claim the $1,500 credit for tax year 1996 only for the three employees hired in 1995 who were not terminated, since the two terminated employees would not have worked for six continuous months during the year for which the credit is claimed. ABC may claim the $500.00 credit for tax year 1997 for each of the three employees hired in 1996 since they remained with ABC for six continuous months in 1997 and the highest number of employees in 1996 (106) exceeded the highest number of full-time permanent employees (105) in prior calendar years. The $1,500 credit could not be claimed for the three employees hired in 1996 because they were not unemployed or on public assistance.

(g) Enterprise zone employee tax credits or enterprise zone investment tax credits under this section shall not reduce the taxpayer's tax liability under N.J.S.A. 54:10A-1 et seq. in any tax year by more than 50 percent or the amount otherwise due, but any unused employee or investment tax credits may be carried forward by the taxpayer to the next succeeding tax year and be applied against 50 percent of that year's tax, but not beyond the 20 year totals set forth in (e) above.

(h) The credit shall not exceed an amount which would reduce the total tax liability below the statutory minimum. For minimum tax see N.J.A.C. 18:7-3.4.

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.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).
Recodified from N.J.A.C. 18:7-15.4 and amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
In (a), substituted "N.J.S.A. 52:27H-78," for "(N.J.S.A. 52:27H-78)", updated the N.J.A.C. references and deleted the comma preceding "et seq."; and in (b) and (c), updated the N.J.A.C. references.

18:7-3A.5 Qualification for benefits

There is no formal procedure for registration as a qualified business for the purpose of obtaining the corporation tax benefits. However, each annual CBT-100 Corporation Business Tax Return which claims any urban enterprise zone corporation tax benefits must include proof that it is a qualified business. This proof may consist of a certificate or other proof of status as a qualified business for sales tax purposes under N.J.A.C. 18:24-31. If a sales tax certificate or some other form of proof has not been obtained, the taxpayer should attach a statement setting forth how it qualifies as a "qualified business" as defined in N.J.A.C. 18:7-3A.2, with sufficient detail to permit verification by the Division of Taxation.

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.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).
Recodified from N.J.A.C. 18:7-15.5 and amended by R.2007 d.203, effective July 2, 2007.
See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).
Updated the final N.J.A.C. reference.

SUBCHAPTER 3B. FILM AND DIGITAL MEDIA TAX CREDITS

18:7-3B.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Division of Taxation in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority to implement P.L. 2005, c. 345 and P.L. 2007, c. 257. P.L. 2005, c. 345 establishes a corporation business tax and gross income tax benefit and tax certificate transfer program not in excess of $10,000,000 per year, for fiscal years 2006 through 2015 for up to 20 percent of certain film production expenses. P.L. 2007, c. 257 added provisions establishing a corporation business tax benefit and tax certificate transfer program not in excess of $5,000,000 per fiscal year.

Amended by R.2009 d.143, effective May 4, 2009.
See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).
Inserted "and P.L. 2007, c. 257", substituted the second occurrence of "P.L. 2005, c. 345" for "That act", inserted "tax" preceding "certificate", and inserted the last sentence.

18:7-3B.2 Definitions

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

"Authority" means the New Jersey Economic Development Authority.

"Buying business" means a taxpayer with the financial ability to purchase unused tax credits.

"Certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of film tax credit being sold. The certificate shall state that the transferor waives its right to claim the credit shown on the certificate. The certificate shall show the program year to which it is applicable and the vintage year in which the expenses were paid. Certificates may be issued annually.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text,

graphics, photographs, animation, sound and video content. Digital media content does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale website); websites or content offerings that contain obscene material as defined pursuant to N.J.S.A. 2C:34-2 and 2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into taxpayer's digital media content.

"Film" means a feature film, a television series or a television show of 15 minutes or more in length, intended for a national audience. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, game show, sports event, award show or other gala event, a production that solicits funds, a production containing obscene material as defined under N.J.S.A. 2C:34-2 and 3, or a production primarily for private, industrial, corporate or institutional purposes.

"Film Commission" means the New Jersey Motion Picture and Television Commission.

"Loan out company" means a personal service corporation that employs an actor or actress, hired by a production company. The loan out company is owned or controlled by the actress or actor being hired. Such production company expenditures paid to a loan out company may appear to be a different type of production expenditure, but some or all of the expenditure may actually constitute a payment for the employment of the actor or actress.

"New full-time employee" means a person employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a taxpayer that is an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and who is determined by the Authority to work in a newly created permanent position according to criteria it develops. "New full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer.

"Post-production costs" means the costs of the phase of production that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects. Such costs include, but are not limited to, insurance, publicity, product placement, general expenses, insurance claims, and completion costs contingency.

"Principal photography" means the filming of major and significant portions of a qualified film that involves the lead actors or actresses.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act. See N.J.S.A. 54:10A-4(j).

"Production phases for an animated film" means generally that time after the preproduction phase when models are drawn on paper and then created in the computer, and the actual production phase begins when the models are finished and the staff begins to choreograph, animate, and render the animations. However, much of the post-production work may be done simultaneously with the work done in the production phase because the two are so interlinked.

"Program" means the Film Production Expenses Tax Certificate Transfer Program.

"Program year" means the fiscal year of the State during which the program is in operation. For example, July 1, 2005 through June 30, 2006 is Program year 2006; July 1, 2006 through June 30, 2007 is Program year 2007.

"Qualified digital media content production expense" means an expense incurred in New Jersey for the production of digital media content. Qualified digital media content production expenses shall include, but not be limited to, wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due; the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing and the rental of facilities and equipment. Qualified digital media content production expenses shall not include expenses incurred in marketing, promotion or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be qualified digital media content production expenses.

"Qualified film production expenses" means expenses incurred in New Jersey for the production of a film, including post-production costs incurred in New Jersey. Such expenses shall include, but shall not be limited to:

1. Wages and salaries of individuals employed in the production of a film on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due;

2. The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment;

3. Payments made for the story and other rights, writing, producer and staff, director and staff, talent, and fringe benefits, provided that the seller of the property or service is subject to income or franchise taxation in New Jersey; and/or

4. Payments made to a loan out company, authorized to do business in New Jersey, that are attributable to acting, writing, or directing but not payments made to a loan out company that are attributable to marketing or advertising. In-State loan out companies do qualify, as long as the star is on call within the State. If the star spends any part of the day in-State, that constitutes a day. A business telephone call made from outside the State does not qualify, unless the star also is physically present in the State.

Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

"Selling business" means a taxpayer that has unused tax credits, which it wishes to sell.

"Taxable year" means the calendar or fiscal accounting period for which a tax is payable under the Gross Income Tax Act. See N.J.S.A. 54A:1-2(k).

"Taxation" means the New Jersey Division of Taxation.

"Tax credit vintage year" means the applicant's last taxable year or privilege period in which the expenses were incurred. Seller's and Buyer's vintage years are not equated.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

Amended by R.2009 d.143, effective May 4, 2009.
See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).
Added definitions "Digital media content", "New full-time employee", "Qualified digital media content production expense" and "Total digital media content production expenses".

18:7-3B.3 Eligibility

(a) A taxpayer shall be eligible to apply to the program if the Authority finds that:

1. The taxpayer will incur qualified film production expenses during a privilege period, provided that at least 60 percent of the total production expenses, exclusive of post-production costs, will be incurred for services performed and goods used or consumed in New Jersey; and

2. Principal photography within 150 days after the approval of the application for the credit.

(b) For the purpose of determining eligibility for the amount of any grant of corporation business tax credits for qualified film production expenses, the Authority shall not include amounts from any job that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) or a business retention and relocation grant pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

Amended by R.2009 d.143, effective May 4, 2009.
See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).
Added (b).

18:7-3B.4 Application to the program

(a) Applications shall be submitted to the Authority and shall be considered for approval on a first in time basis.

(b) A completed application shall include, but not be limited to, the following:

1. A projected budget for the film project with a breakout of costs, including post-production costs;

2. A breakout of costs, including post-production costs, to be incurred for services performed and goods used or consumed in New Jersey;

3. A breakout of costs, including post-production costs, to be incurred in New Jersey;

4. If a film project will extend to more than one privilege period or taxable year, applications shall be submitted with the information required in (b)1, 2, and 3 above for each such privilege period or taxable year;

5. A description of the project, which must include:

i. A plot summary;

ii. The genre and subject matter;

iii. The anticipated film rating, if applicable;

iv. Principals;

v. Actors; and

vi. Filming locations;

6. The filming schedule;

7. The anticipated or actual date of commencement of principal photography;

8. If the applicant is a partnership or limited liability company, a list of members or owners applying for a tax credit under this program, including the percentage of ownership interest of each; and

9. The applicant's New Jersey privilege period or taxable year.

(c) The overestimation of qualified production expenses will decrease the credit by the amount of the overestimation.

18:7-3B.5 Award of tax credits

(a) Film production tax credits shall be awarded subsequent to the occurrence of each and all of the following:

1. Receipt by the Authority of written confirmation from the Film Commission that principal photography commenced within 150 days of approval;

2. Receipt by the Authority of actual budgets and proof of qualified film production expenses, including a listing of the name of the company or person paid, his, her or its Federal identification number and a certified public accountant's certification that expenses claimed by the applicant were incurred in New Jersey;

3. Verification by Taxation of partners or members of pass through entities such as partnerships or LLCs; and

4. Final approval of the credit by Taxation and the Board of the Authority, taking into account the applicant's full compliance with applicable tax laws and with the law and rules relating to the application process.

(b) Taxation shall issue tax credit certificates within 30 days of receipt from the Authority evidencing its final approval.

1. In the case of entities taxed as partnerships for New Jersey purposes, the certification shall be issued to the entity, and the names of the partners will appear on the certificate. The credit shall be allocated to the partners based on profit and loss sharing agreements. Each partner shall claim its proportionate share of its credit on its own tax return.

(c) Only the members of the Authority can deny an applicant's eligibility for the program established by P.L. 2005 c. 345. (Eligibility criteria for the Program are set forth in N.J.A.C. 18:7-3B.2.)

(d) When the members of the Authority deny a request, the minutes of the meeting at which such denial occurs are submitted to the Governor.

(e) The members' action is effective 10 working-days after the Governor's receipt of the minutes, provided no veto has been issued.

(f) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation of how the applicant has met the program criteria. The Authority cannot consider any new information about the project developed after the June 30 submission deadline. Only that information that clarifies the application filed shall be reconsidered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

(g) The amount of the credit applied under N.J.S.A. 54:10A-5.39 against the corporation business tax for a privilege period, when taken together with any other credits allowed against that tax, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c. 162.

(h) The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be determined by the Director of the Division of Taxation.

(i) The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of the section or under other provisions of the corporation business tax, may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

18:7-3B.6 Transfer of tax credits; evaluation process

(a) When all of the required information is received, the Authority shall perform its review based on the following minimum criteria:

1. The threshold criteria of eligibility shall be the applicant's expenses meeting the definition of qualified film production expenses and principal photography beginning within 150 days of approval.

2. If a taxpayer wishes to sell tax credits that it is entitled to claim, then within 60 days of the completion of the film, the taxpayer shall provide the Authority with:

i. A certification of the actual expenditures incurred for the film;

ii. A statement that the credit has not and will not be claimed on a tax return;

iii. A signed request that a tax transfer certificate should be issued; and

iv. An executed buy-sell agreement showing the party to whom the taxpayer has agreed to sell the credits, the value agreed to between them, and the name of the buyer of the credits.

(b) After completing its review under (a) above, the Authority shall make a preliminary determination of the merits of the request and the applicant's adherence to the statutory requirements of the program. Upon this determination being made, the applicant shall receive notification of preliminary approval that will state the conditions that must be met before the Authority will issue final approval, if any. The notification of preliminary approval shall state that the Authority will forward the application to Taxation only upon receipt of the following:

1. A Buying Business/Taxpayer Information Sheet, which identifies the buyer, the amount of tax benefits to be sold, and the selling price;

2. A Tax Benefit Identification Form on which the applicant has listed the amount of tax benefits it wishes to sell and the years in which film production expenses were incurred; and

3. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit.

(c) Within 30 days of receipt of a completed transfer request, the Authority shall review the buy-sell agreement and other documentation supporting the transfer request. If the Authority approves the transfer request, then the Authority shall provide Taxation a copy of the signed agreement and a statement advising Taxation of the amounts of the expenditures that are creditable to specific fiscal years of the State of New Jersey. If the transfer certificate is being issued to a partnership, the names of all partners must be furnished to Taxation. The tax transfer certificate is issued in the name of the partnership or buying business. If the Authority finds that the documentation supporting the transfer request is incomplete, insufficient or unresponsive, it shall issue a letter to the requestor stating that the request has been denied.

(d) Taxation shall issue the new credit certificate in the name of the buying business and its partners, if it is taxed as a partnership.

(e) The amount of consideration from a buying business to a selling business for a tax credit certificate must be at least 75 percent of the value of the tax credit as determined by the Division of Taxation, and the consideration is deemed to be taxable business income for New Jersey gross income tax purposes and corporation business tax purposes.

18:7-3B.7 Examples of prioritization of credits among applicants

The following examples illustrate the method used to make credits available to applicants:

Example 1 On the first day that applications may be submitted, five companies submit applications totaling $10 million, which are all accepted and approved.

Company A applies for a credit with $2 million in eligible expenses.

Company B applies for a credit with $2 million in eligible expenses.

Company C applies for a credit with $2 million in eligible expenses.

Company D applies for a credit with $2 million in eligible expenses.

Company E applies for a credit with $2 million in eligible expenses.

Each company begins principal photography within 150 days of acceptance, and when reviewed each company's actual budgets and documentation pass the 60 percent test.

Since the total applications received and approved do not exceed the $10 million cap per State fiscal period, each applicant is awarded tax credits of $2 million.

Example 2 On the first day that applications may be submitted for fiscal year (FY) 2007, three companies submit applications totaling $8 million, which are all accepted and approved. No other applications are received during the remainder of the State's FY 2007 period.

Company A applies for a credit with $2 million in eligible expenses.

Company B applies for a credit with $3 million in eligible expenses.

Company C applies for a credit with $3 million in eligible expenses.

Each company begins principal photography within 150 days of acceptance and when reviewed each company's actual budgets and documentation pass the 60 percent test.

Company C's actual eligible expenses for the period are $4 million.

Since the total applications received and approved do not exceed the $10 million cap for FY 2007, each applicant is awarded tax credits as requested of $2 million for Company A, $3 million for Company B, and $3 million for Company C. Even though credit funds are still available, Company C is only entitled to claim a credit up to the amount projected and tentatively approved on its original application of $3 million.

Since no prior FY-period-approved applications are pending, the remainder of the $10 million for FY 2007 of $2 million is not available to be used.

Example 3 On the first day that applications may be submitted for FY 2007, three companies submit applications for total credits of $6 million. They are all accepted and approved.

Company F applies for a credit with $2 million in eligible expenses.

Company G applies for a credit with $2 million in eligible expenses.

Company H applies for a credit with $2 million in eligible expenses.

Company J applies for a credit with $7 million in eligible expenses on day two.

Since the total credit applications received and approved on day one do not exceed the $10 million per FY cap of $10 million, Companies F, G, and H are each given a tentative approval for a credit of up to $2 million.

Company J is given a tentative approval of up to $4 million for the FY 2007, the balance of the $10 million cap, and a tentative approval of up to $3 million for the FY 2008 period.

All companies begin principal photography within 150 days of acceptance.

Companies F and G's actual expenditures meet the 60 percent test and eligible expenditures meet the $2 million limit. As such companies F and G can each claim a $2 million film tax credit in their corresponding tax period.

Company H meets the 60 percent test but its eligible expenses are only $1.5 million. As such Company H can only claim a credit of $1.5 million in its corresponding tax period.

The State will notify Company J that an additional $500,000 in tax credits from the FY 2007 period is available for it to use.

Company J meets the 60 percent test and its qualified expenses are at least $7 million.

Company J can claim its FY 2007 credit of $4.5 million in its corresponding tax period and the balance of its tax credit of $2.5 million in its tax period that corresponds with the State's FY 2008 period.

Example 4 On the first day that applications may be submitted for FY 2007, five companies submit applications for total credits of $20 million, which are all accepted and approved.

Company A applies for a credit with $2 million in eligible expenses.

Company B applies for a credit with $6 million in eligible expenses.

Company C applies for a credit with $4 million in eligible expenses.

Company D applies for a credit with $3 million in eligible expenses.

Company E applies for a credit with $5 million in eligible expenses.

All of the companies begin principal photography within 150 days of acceptance, and their eligible expenses meet or exceed that projected in their applications.

Each applicant will receive tentative approval for the FY 2007 on a prorated amount based on the total credits tentatively approved multiplied by the total amount of credits available for the FY of $10 million.

Company A for FY 2007 will receive a tentative credit approval of $1 million.

$2 million/$20 million X $10 million = $1 million

The balance of $1 million is carried forward to FY 2008.

Company B for FY 2007 will receive a tentative credit approval of $3 million.

$6 million/$20 million X $10 million = $3 million

The balance of $3 million is carried forward to FY 2008.

Company C for FY 2007 will receive a tentative credit approval of $2 million.

$4 million/$20 million X $10 million = $2 million

The balance of $2 million will be carried forward to FY 2008.

Company D for FY 2007 will receive a tentative credit approval of $1.5 million.

$3 million/$20 million X $10 million = $1.5 million.

The balance of $1.5 million will be carried forward to FY 2008.

Company E for FY 2007 will receive a tentative credit approval of $2.5 million.

$5 million/$20 million X $10 million = $2.5 million.

The balance of $2.5 million will be carried forward to FY 2008.

The excess application amounts above the $10 million cap for FY 2007 are carried forward to FY 2008. Companies A, B, C, D, and E remain in their same sequence in FY 2008 as they occupied in FY 2007. Each of these companies will receive the balance of their credits in FY 2008 totaling $10 million. Any applications received in FY 2008 will be approved in the order received, but the tentative credits approved will not be available until FY 2009.

Example 5 A corporation that operates on a fiscal reporting period ending November 30 applies for a film credit of $5 million and receives tentative approval from the Authority on April 1, 2007, for a FY 2007 credit of $1.5 million and a FY 2008 credit of $3.5 million. Filming begins May 1, 2007, and is completed on November 1, 2007. The project meets the 60 percent test and eligible expenses for the project exceed $5 million.

The corporation on its New Jersey CBT-100 for tax year ending November 30, 2007 can claim a film credit of up to $5 million, since its tax year bridges both FY 2007 and FY 2008.

Example 6 A corporation that operates on a fiscal reporting period ending April 30 applies for a film credit of $5 million and receives tentative approval from the Authority on February 1, 2007 for a FY 2007 credit of $1.5 million and a FY 2008 credit of $3.5 million. Filming begins March 1, 2007, and is completed on November 1, 2007. The project meets the 60 percent test and eligible expenses for the project exceed $5 million.

The corporation on its New Jersey CBT-100 for tax year ending April 30, 2007, can claim a film credit of up to $1.5 million only since its tax period ends within FY 2007. On its CBT-100 for tax year ending April 30, 2008, it can claim any unused portion of the FY 2007 credit and the FY 2008 credit of $3.5 million.

18:7-3B.8 Credit for qualified digital media content production expenses

(a) A credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 162, (N.J.S.A. 54:10A-5) shall be allowed in an amount up to 20 percent, as determined by the Authority, of the qualified digital media content production expenses of the taxpayer during a privilege period.

(b) In order to be eligible for the credit, the taxpayer shall incur at least $2,000,000 of total digital media content production expenses of the taxpayer for services performed and goods used or consumed in New Jersey. At least 50 percent of the $2,000,000 of total digital media content production expenses ($1,000,000) shall consist of wages and salaries for full-time digital media employees in New Jersey. The taxpayer shall create and maintain a minimum of 10 new full-time digital media jobs with an annual salary of at least $65,000. The taxpayer shall utilize the remainder of the expense requirement to create full-time digital media jobs with an annual salary of at least $36,000.

(c) In determining the amount of any grant of tax credits for qualified digital media content production expenses, the Authority shall consider the number of new full-time jobs created by the taxpayer, as well as the quality of the full-time jobs created, including, but not limited to, the salaries and benefits provided to new full-time employees.

(d) For the purpose of determining eligibility for or the amount of any grant of corporation business tax credits for qualified digital media content production expenses, the Authority shall not include amounts from any job that is included in the calculation of a business employment incentive (BEIP) grant pursuant to the provisions P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) or a business retention and relocation grant (BRRAG) pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.). If a business participating in a BEIP grant or receiving assistance from the BRRAG Program for the same capital investment, employees or site, seeks to qualify for the digital media tax credit program, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program or Business Retention and Relocation Assistance Grant Program, as applicable, before applying for the digital media tax credit program.

(e) In the event the taxpayer fails to maintain the new full-time jobs that were included in calculating the qualified digital media content production expenses of the taxpayer, the grant of tax credits for qualified digital media content production expenses shall be recaptured according to the following schedule: failure to maintain the jobs during the first year following the award of tax credits: 100 percent recapture; failure to maintain the jobs during the second year following the award of tax credits: 66 percent recapture; failure to maintain the jobs during the third year following the award of tax credits: 33 percent recapture. Recapture tracking will begin once the applicant has received the tax credits.

(f) Qualified digital media content production expenses credits shall be awarded subsequent to the occurrence of each and all of the following:

1. Receipt by the Authority of documentation of current digital media jobs, plans for new jobs, BEIP/BRRAG grants received by the taxpayer and current non-digital media jobs;

2. Receipt by the Authority of actual budgets and proof of at least $2,000,000 of qualified digital media content production expenses incurred, including at least $1,000,000 of such expenses are for digital media salaries of new full-time employees in New Jersey, the creation of 10 new quality full-time digital media jobs in New Jersey paid annually at least $65,000, with the remainder of qualifying full-time digital media employees counted in the $1,000,000 of qualifying expenses, paid annually at least $36,000 each. The application shall include a listing of

each person paid, his or her Federal identification number and a certified public accountant's certification that verifies the total digital media content production expenses claimed by the applicant were incurred in New Jersey, at least 50 percent of the total digital media content production expenses were for digital media salaries and that the applicant has met all the requirements and conditions of the statute and rules; and

3. Final approval of the credit by Taxation and the Authority, taking into account the applicant's full compliance with applicable tax laws and with the law and rules relating to the application process.

(g) The value of qualified digital media content production expenses credit and tax credit transfer certificates approved by Taxation and the Authority shall not exceed $5,000,000 in any fiscal year to apply against the corporation business tax. If the total amount of qualified digital media content production expenses credit and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year exceeds the amount of credits available for that year, then in the order in which they have submitted an application, taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credit and tax credit transfer certificates are not in excess of the amount of credits available.

New Rule, R.2009 d.143, effective May 4, 2009.
See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).

SUBCHAPTER 4. ENTIRE NET WORTH

18:7-4.1 (Reserved)

Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added last sentence to (a). Added last sentence to (b)5.
Amended by R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).
(c) added.
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 "Entire net worth; definition; computation".

18:7-4.2 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(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 "Effect on net worth of investment in subsidiaries".

18:7-4.3 (Reserved)

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 in subsidiaries allows proportionate reduction for calculating net worth".

18:7-4.4 (Reserved)

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 "Net worth; right of director to independently determine".

18:7-4.5 Indebtedness owing directly or indirectly

(a) "Indebtedness" is not limited in scope by the duration thereof and thus includes all debts due, whether money, goods or services, including, inter alia, accruals of salaries, bonuses and dividends, as well as interest accrued on all indebtedness.

(b) "Indebtedness owing directly or indirectly" includes but is not limited to all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own or beneficially own 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(c) "Immediate family" includes the collective body of persons, consisting of parents, children and other relatives, living together in one household in a permanent and domestic character under one head or management.

(d) Direct indebtedness: In the case of a creditor, corporate or otherwise (other than an individual), including an estate, trust or other entity, indebtedness is includible by reason of direct holding of taxpayer's stock by the creditor whether or not the creditor is functioning as a mere conduit of funds from a third party source.

(e) Indirect indebtedness: Indebtedness must be owing directly or indirectly to a 10 percent shareholder. Indebtedness owing by a taxpayer to a commonly controlled creditor is presumed to be owing indirectly to the common parent. However, indebtedness between commonly controlled debtors and creditors may not be attributable as owing indirectly to the common shareholder if it can be shown that the common shareholder was in no way the source of the funds. The taxpayer must establish that the common shareholder was not the source of the funds since it has the burden of defeating the presumption. The taxpayer must conclusively establish that:

1. The creditor is merely a conduit of funds from an unrelated third party source; or

2. The indebtedness was from funds generated by the creditor from its own operations and clearly not in any way attributable to or funded by the common shareholder.

Example 1: A corporation owns 100 percent of the stock of B Corporation and C Corporation, and these subsidiaries are engaged in their respective businesses. B Corporation has generated unneeded cash from its operation or has sold some of its securities to third persons (other than to the parent corporation) and the proceeds are available for loans. B Corporation then advances some of that money to C Corporation. C Corporation's indebtedness is not indirectly owed to A Corporation.

Example 2: D Corporation owns 100 percent of the stock of E Corporation and F Corporation and these subsidiaries are engaged in their respective businesses. D Corporation sold securities and advanced the proceeds to E Corporation, which in turn made loans to F Corporation. This indebtedness would be indirectly owed to D Corporation.

Example 3: G Corporation owns 100 percent of the stock of H Corporation and K Corporation and these subsidiaries are engaged in their respective businesses. G Corporation made advances to H Corporation that had also obtained funds by borrowings from non-related creditors. K Corporation borrows from H Corporation. It is presumed that K Corporation's indebtedness is indirectly owed to G Corporation. However, the presumption is not conclusive. To the extent that K Corporation can establish that its indebtedness to H Corporation is in no way funded by the advances from G Corporation to H Corporation, that indebtedness would not be owing indirectly to the parent G Corporation.

(f) For the purpose of determining the degree of stock ownership of a corporate creditor, the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary, or affiliate of the corporate creditor shall not be aggregated.

Example: L corporation owns 100 percent of M corporation which in turn owns 100 percent of N corporation. M corporation has a valid business purpose. L corporation made loans or otherwise provided funds directly to N corporation. The source of such funds is not from M corporation. The indebtedness from N corporation to L corporation is not indebtedness owing directly or indirectly to a 10 percent stockholder.

Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(a), 17 N.J.R. 2677(a).
Substantially amended.
Amended by R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Examples 1 and 2 added to (f).
Amended by R.1992 d.289, effective June 20, 1992.
See: 24 N.J.R. 175(a), 24 N.J.R. 2628(b).
Revised (f).
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(d), (e).

Case Notes

Taxpayer was entitled to exclude from its net income calculation interest expense paid on notes. Rollins Leasing Corp. v. Director, Div. of Taxation, 14 N.J.Tax 289 (A.D.1994), published 14 N.J. Tax 289.

Indebtedness was direct, not indirect, and under Corporation Business Tax Act taxpayer had to include loan in its net worth and could not deduct interest on loan to extent prohibited by the Act. Rollins Leasing Corp. v. Director, Div. of Taxation, 13 N.J.Tax 359 (1993), reversed 14 N.J.Tax 289.

Corporation was not holder of taxpayer's stock, and, thus, debt owed to owner did not affect taxpayer's net worth. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Rule governing corporate debt for net worth purposes was ultra vires. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Division of taxation can not make inquiry to determine loan is loan or contribution to capital. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Inquiry may be made into source of funds, for purposes of calculating net worth. Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation, 10 N.J.Tax 473 (1989), affirmed 241 N.J.Super. 16, 574 A.2d 448.

Taxpayer corporation, which possessed 100 percent ownership of investment in French and Brazilian corporations directly and through its wholly-owned Dutch subsidiary, was entitled to 100 percent exclusions for the dividends received from the French and Brazilian corporations. International Flavors & Fragrances, Inc. v. Taxation Div. Director, 5 N.J.Tax 617 (Tax Ct.1983), affirmed per curiam 7 N.J.Tax 652 (App.Div.1984), affirmed 102 N.J. 210, 507 A.2d 700 (1986).

Liability owed by taxpayer to sister corporation was includable in the taxpayer's net worth for purposes of determining the amount of franchise tax, notwithstanding the fact that the indebtedness originated prior to affiliation; ninety percent of the interest on the indebtedness could not be excluded as a deduction in net worth base tax computation. Skyline Industries, Inc. v. Taxation Div. Director, 3 N.J.Tax 612 (Tax Ct.1981).

Liability owed by taxpayer to affiliate was not includable in the taxpayer's net worth tax base where the affiliate was a mere conduit through which indebtedness was owed and paid to unrelated real creditor third parties and where opportunities for balance sheet manipulations were minimal; ninety percent of interest paid was not disallowable for computing corporation business tax liability (also cited as N.J.A.C. 18:7–5(a)(7)). Mobay Chemical Corp. v. Taxation Div. Director, 3 N.J.Tax 597 (Tax Ct.1981), affirmed per curiam 6 N.J.Tax 445 (App.Div.1982).

Liability owed wholly-owned subsidiary by taxpayer which was a wholly-owned subsidiary of another corporation was includable in the taxpayer's net worth base for purposes of the franchise tax; 90 percent of the interest paid to the subsidiary by the taxpayer was not deductible (citing former rule). Fedders Financial Corp. v. Taxation Div. Director, 3 N.J.Tax 576 (Tax Ct.1981), affirmed per curiam 6 N.J.Tax 444 (App.Div.1982), reversed.

18:7–4.6 Receivables offset against indebtedness owing directly or indirectly

(a) The taxpayer may offset against includible indebtedness owed to any creditor the amount of any receivable due from that creditor.

Example 1: P Corporation owns 100 percent of the capital stock of S Corporation. S Corporation has indebtedness owing directly or indirectly to P Corporation as well as a lesser receivable due from them. Indebtedness owing

directly or indirectly to P Corporation is the amount of the indebtedness reduced by the receivable due from that creditor.

Example 2: P Corporation owns 100 percent of the capital stock of both S1 Corporation and S2 Corporation. S1 Corporation has indebtedness owing directly or indirectly to P Corporation. S1 Corporation also has a receivable due from S2 Corporation which, had it been a debt, would also have been indebtedness owing directly or indirectly to P Corporation. S1 Corporation may not offset the receivable due from S2 Corporation from its indebtedness owing directly or indirectly to P Corporation since it is not a receivable due from that creditor.

Example 3: P Corporation owns 100 percent of the capital stock of S1 Corporation. S1 Corporation owns 100 percent of the capital stock of S2 Corporation. S1 Corporation has indebtedness owing directly or indirectly to P Corporation and has a receivable due from S2 Corporation which, had it been a debt, would also have been indebtedness owing directly or indirectly to P Corporation. S1 Corporation may not offset the receivable due from S2 Corporation from its indebtedness owing directly or indirectly to P Corporation since it is not a receivable due from that creditor.

Amended by R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Examples 1 through 3 added.

18:7–4.7 Governmental obligations and securities

In the determination of net income, interest and other income from governmental obligations and securities are includible.

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)(2)(B) as to interest and income from securities includible in determination of net income.

18:7–4.8 (Reserved)

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 "Treasury stock; when includible in net worth".

18:7–4.9 (Reserved)

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 "Treasury stock; certified rider required".

18:7–4.10 (Reserved)

Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Changed "total" to "the average value of" real and tangible personal property. Added real estate investment trust. Added 3, to (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 "Total property base; alternate method of computing net worth tax".

18:7–4.11 Subsidiary corporations; definition

(a) A subsidiary is defined as any corporation in which the taxpayer is the owner of either:

1. At least 80 percent of the total combined voting power of all classes of stock of the subsidiary entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. –The investment shall be determined only with reference to investment in capital stock and shall exclude any loans or advances to any such subsidiaries; or

2. At least 50 percent but less than 80 percent of the total combined voting power of all classes of stock of the subsidiary entitled to vote, and at least 50 percent but less than 80 percent of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. The investment shall be determined only with reference to investment in capital stock and shall exclude any loans or advances to any such subsidiaries.

(b) An entity organized under the laws of a foreign country shall be considered a subsidiary if the foregoing requisite degree of ownership is met and if the entity is considered a corporation for any purpose under the United States Federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed-paid foreign tax credits or purpose of status as a controlled foreign corporation.

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).
Substantially amended.
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 (a), added "either" following "owner of" in the introductory paragraph and added 2.
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–9 as to definition of a "subsidiary."

18:7–4.12 (Reserved)

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).
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 "Subsidiary deductions from net worth".

18:7-4.13 (Reserved)

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 "Effect of short tax table on subsidiary deductions".

18:7-4.14 (Reserved)

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(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 "Parent must report book value of subsidiary corporation".

18:7-4.15 (Reserved)

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 "Consolidated returns for subsidiary corporations".

Case Notes

Taxpayer corporation, which possessed 100 percent ownership of investment in French and Brazilian corporations directly and through its wholly-owned Dutch subsidiary, was entitled to 100 percent exclusions for the dividends received from the French and Brazilian corporations. International Flavors & Fragrances, Inc. v. Taxation Div. Director, 5 N.J.Tax 617 (Tax Ct.1983), affirmed per curiam 7 N.J.Tax 652 (App.Div.1984), affirmed 102 N.J. 210, 507 A.2d (1986).

18:7-4.16 (Reserved)

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 "Valuation of securities".

18:7-4.17 (Reserved)

New Rule, R.1984 d.496, effective November 5, 1984.
See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Urban enterprise zones".

18:7-4.18 (Reserved)

SUBCHAPTER 5. ENTIRE NET INCOME; DEFINITION, COMPONENTS AND RULES FOR COMPUTING

18:7-5.1 Entire net income; definition

(a) "Entire net income" means total net income from all sources, whether within or without the United States, and includes:

1. The gain derived from the employment of capital or labor, or from both combined, as well as

2. Profit gained through a sale or conversion of capital assets.

(b) For the purpose of the New Jersey tax, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the 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, subject to the adjustments set forth in this Subchapter.

(c) Consistent with N.J.A.C. 18:7-11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Example 1: Corporation A is part of a consolidated group filing for Federal purposes which as a group incurred a net operating loss for the year. Corporation A, however, on a separate entity basis had net income of $100,000 before its charitable contribution expense of $15,000 is taken into account. Based on a separate, non-consolidated calculation under the Internal Revenue Code, and the contribution limitations applicable to all corporations for the period under review (that is, 10 percent), Corporation A's reportable net income for New Jersey purposes is $90,000 ($100,000 - ($100,000 x .10)).

Example 2: Corporation B is part of a consolidated group filing for Federal purposes which sold goods in the ordinary course of business to Corporation C, also a member of the same consolidated group filing. The selling price between Corporation B and C was at arm's length and included a profit element in it. The Federal corporate consolidated filing would recognize but defer the gain on the sale of the goods between Corporation B and C since Corporation C had not disposed of the property outside the group at year end. For New Jersey purposes, however, Corporation B must report the gain on the sale of the property for net income purposes, and Corporation C must include the full sales price of the property in its inventory value.

(d) Entire net income shall be determined as if no election had been made under 26 U.S.C. 1371 (Subchapter S of the Federal Internal Revenue Code).

Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
(c) added.
Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).
Added examples to (c); deleted (e).

Law Reviews

How New Jersey treats the acquisition of assets. John M. Metzger, 147 N.J.L.J. 1356 (1997).

Statutory References

See N.J.S.A. 54:10A-4(k) as to definition and scope of "entire net income."

Case Notes

Regulations were valid. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

State's prohibition against filing of consolidated income tax returns by related corporations does not immunize subsidiary corporation from state taxation of any gain realized as result of deemed sale of its assets.

General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

New York S corporation's distribution to New Jersey taxpayer would be treated as being from corporation's accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 135 N.J. 301, 639 A.2d 301.

Absent showing that S corporation's income was from current earnings it would be assumed that distribution was from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 135 N.J. 301, 639 A.2d 301.

18:7-5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as Federal taxable income, is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

1. Add to Federal taxable income:

i. The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, where such specific exemption or credit has been deducted in computing Federal taxable income;

ii. All interest income from sources within the United States which has not been included in computing Federal taxable income, including interest on State and Municipal bonds and certain obligations of the United States and its instrumentalities, less interest expense incurred to carry such investments, to the extent such interest expense has not been deducted in computing Federal taxable income;

iii. All dividend income from sources within the United States which has not been included in computing Federal taxable income;

iv. All Federal taxes on or measured by income or profits which were deducted in computing Federal taxable income;

v. All New Jersey franchise taxes paid or accrued under the Corporation Business Tax Act, whether measured by net worth, net income or otherwise, to the extent such taxes were deducted in computing Federal taxable income; and, with respect to accounting years beginning after July 7, 1993, taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part by "net taxable capital" to the extent such taxes were deducted in computing Federal taxable income;

vi. All taxes paid or accrued to any foreign country, state, province, territory or subdivision, on or measured by profit or income or business presence or business activity, to the extent such taxes were deducted in computing Federal taxable income with respect to accounting beginning on or after January 1, 2002;

vii. Taxes paid or accrued with respect to subsidiary dividends should be added back to the extent dividends are excluded from entire net income and such taxes were deducted in computing Federal taxable income;

viii. Net operating losses sustained during any year or period other than that covered by the return, which were deducted in computing Federal taxable income, but a net operating loss deduction shall be allowed to the extent provided by N.J.A.C. 18:7-5.12 through 5.17.

ix. For accounting or privilege periods ending on or before January 10, 1996, the amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written statement. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent of more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder which owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or $1,000, whichever is larger. Thus, if the amount of such interest is $1,000 or less, then none of said amount need be added back. (For definition of and guidance in determining "directly" and "indirectly" see N.J.A.C. 18:7-4.5(d), (e) and (f).) However, there shall be allowed as a deduction:

(1) Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who is prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

(2) Any part of a deduction for interest that relates to financing of motor vehicle inventory held for sale to customers, provided that the underlying indebtedness is owing to a taxpayer customarily and routinely providing this type of financing. The portion of such interest which may be deducted is limited to interest on indebtedness relating to floor-planning of motor vehicles evidenced by a trust receipt or similar document and is also limited to interest on unsold inventory items. The interest must be paid or accrued directly to a creditor which is a taxpayer under the act and not indirectly to any related entity. That taxpayer, or a corporation which is a parent or subsidiary of that taxpayer must be the manufacturer or the motor vehicles financed; and

(3) Any deduction for interest that relates to debt of a "financial business corporation" owed to an

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;

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; and

xxii. For privilege periods beginning after December 31, 2008 and before January 1, 2011, the amount of discharge of indebtedness income excluded for Federal income tax purposes pursuant to subsection (i) of section 108 of the Federal Internal Revenue Code of 1986 (26 U.S.C. §108); and

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.)

viii. For privilege periods beginning on or after January 1, 2014 and before January 1, 2019, the amount of discharge of indebtedness income included for Federal income tax purposes, pursuant to subsection (i) of section 108 of the Federal Internal Revenue Code of 1986 (26 U.S.C. §108).

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".
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (a)1xx, deleted "and" from the end; in (a)1xxi, substituted "; and" for a period at the end; and added (a)1xxii and (a)2viii.

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.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under Section 38 of the Internal Revenue Code.

i. This depreciation may not be taken as a deduction in computing the New Jersey net income tax base.

ii. Depreciation taken for New Jersey net income tax purposes must be reported at the same amount as reported for Federal income tax purposes for the same period.

Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
(a)2 deleted; (a)1 amended; 3 and 4 renumbered as 2 and 3.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-5.5 Entire net income; determining stock ownership

(a) The provisions of N.J.A.C. 18:7-4.5 and 4.6 relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(b) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1: Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludible from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from Corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C				20%
Investment in Corporation B	90%			
Investment of Corporation B in Corporation C	70%			
Indirect investment in Corporation C	.90	× .70	=	63%
Aggregate ownership by Corporation A of the stock of Corporation C				83%

Example 2: Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludible from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F				20%
Investment in Corporation E	90%			
Investment of Corporation E in Corporation F	60%			
Indirect investment in Corporation F	.90	× .60	=	54%
Aggregate ownership by Corporation D of the stock of Corporation F				74%

New Rule, R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Old rule repealed.

Cross References

See N.J.A.C. 18:7-4.5 (Net worth; indebtedness includible) and 18:7-4.6 (Receivables offset against includible indebtedness) as to computing net worth.

18:7-5.6 Adjustment of entire net income to period covered by return; how computed

(a) If the entire net income required to be reported is for a period other than a period covered by the taxpayer's Federal income tax return, the taxpayer shall compute its net income as follows:

1. Its Federal taxable income is first adjusted in the manner set forth on N.J.A.C. 18:7-5.1 through 5.4;

2. The result is then divided by the number of calendar months or parts thereof covered by the Federal income tax return;

3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Act. A part of a month shall be deemed to be a month.

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-17.

18:7-5.7 Right of Director to independently determine net income

If in the opinion of the Director the method employed in N.J.A.C. 18:7-5.6 does not properly reflect the taxpayer's net

income properly apportionable to New Jersey under the Act for the period covered by its New Jersey return, the Director may determine entire net income solely on the basis of the taxpayer's income during such period.

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-17(a).

18:7-5.8 Calculation of gain in certain instances

(a) A selling parent corporation in a Federal I.R.C. 338(h)(10) transaction does not recognize gain on the sale of target stock for New Jersey purposes for acquisition dates occurring on or after January 14, 1992.

(b) Where a target corporation recognizes gain as the result of an I.R.C. 338(h)(10) election, the target reports and pays tax on such gain pursuant to N.J.A.C. 18:7-5.1(a).

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Procedure for computing short period return".
New Rule, R.1996 d.378, effective August 5, 1996.
See: 28 N.J.R. 2515(a), 28 N.J.R. 3810(a).

Case Notes

As a taxpayer presented clear and cogent evidence that income resulting from the deemed sale of its assets under an I.R.C. § 338(h)(10) election was "nonoperational" income under N.J.S.A. 54:10A-6.1(a), income from the sale was not allocable to New Jersey and had to be assigned to California, the taxpayer's principal place of business. McKesson Water Prods. Co. v. Dir., 23 N.J. Tax 449, 2007 N.J. Tax LEXIS 12 (Tax Ct. 2007).

Having explicitly recognized, in N.J.A.C. 18:7-5.8, an I.R.C. § 338(h)(10) election for purposes of corporation business taxation, the Director of the New Jersey Division of Taxation is bound to accept all of the consequences of the election, that is, a deemed sale of assets by the target corporation followed by its liquidation with the distribution to the parent corporation of the proceeds of the deemed sale. McKesson Water Prods. Co. v. Dir., 23 N.J. Tax 449, 2007 N.J. Tax LEXIS 12 (Tax Ct. 2007).

Under N.J.S.A. 54:10A-6.1(a), a parent company's deemed sale of assets and liquidation of a taxpayer pursuant to an I.R.C. § 338(h)(10) election is not the acquisition, management and disposition of property as an integral part of the taxpayer's regular trade or business operations. Therefore, the gain resulting from the sale is neither operational income nor investment income serving an operational function where no operational function of the taxpayer continues after the deemed sale of assets and liquidation, and the parent company does not invest the proceeds of the sale in a business similar to that conducted by the taxpayer. McKesson Water Prods. Co. v. Dir., 23 N.J. Tax 449, 2007 N.J. Tax LEXIS 12 (Tax Ct. 2007).

18:7-5.9 (Reserved)

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Formerly entitled "Procedure for computing when taxpayer alters corporate identity".

18:7-5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, or net income of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his or her discretion and in whatever manner he or she may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1. Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor; or

2. Any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the Director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from the transaction.

3. For purposes of this section, "fair and reasonable tax" is the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests.

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of 20 percent or more of the outstanding shares of any class of stock. For purposes of arriving at this level of ownership the stock attribution rules of IRC section 318 will be used.

5. Under N.J.S.A. 54:10A-10(b) interest should be charged on loans or advances made by one related party to another from the day after the debt arises until the debt is satisfied. With respect to intercompany trade receivables of related taxpayers, interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month.

i. If the creditor is regularly engaged in the business of making loans or advances, the arm's length interest rate should be charged. Upon failure to do so, the Division of Taxation can determine what interest should have been charged. Where the creditor is not in the business of loaning money or making advances, either an arm's length rate based on the facts and circumstances or a safe haven rate is acceptable. However, the safe haven rule does not apply to any loan or advance in which the interest or principal amount is expressed in a currency other than U.S. dollars.

ii. For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100 percent and 130 percent of the Applicable Federal Rate (AFR) as determined under Internal Revenue Code Section 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100 percent of the AFR and adjustments for excessive interest would be made at 130 percent of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110 percent of the AFR. In determining the rate of interest actually charged on a written loan or advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

6. Where a service by one member of a group to another member is rendered for less than an arm's length charge, the Division of Taxation may make appropriate allocations to reflect an arm's length charge for that service. The arm's length charge is equal to the costs or deductions incurred by the member performing the service, except in cases where the service is an integral part of the business activity of either member.

7. If tangible property is made available by one member of the group to another, the latter should be charged the arm's length rental charge.

8. Where one member of a group of controlled entities sells or otherwise disposes of tangible property to another at other than an arm's length price, a proper allocation will be made between the seller and the buyer using the following methods.

i. Comparable uncontrolled price method: This method must be used if there are comparable uncontrolled sales (sales between outsiders or a member and an outsider where the property sold and the circumstances involved are identical, or nearly identical, to those in the controlled sale). To the extent they are not identical, adjustments are made.

ii. Resale price method: If there are not comparable uncontrolled sales, the resale price method must be used if the standards for its application are met. A typical situation where this method is required is where a manufacturer sells products to a related distributor which, without further processing, resells the products to unrelated parties.

iii. Cost plus method: If the standards for application of the resale price method are not satisfied, either that method or the cost plus method is used, depending on which is more feasible and will produce a more accurate arm's length price. Normally, the cost plus method is appropriate where a manufacturer sells products to a related entity which performs substantial manufacturing, assembly, or other processing of the product or adds significant value by use of its intangible property (trademark, for example) before resale.

iv. Comparable profits method: In general, the comparable profits method evaluates whether the amount charged in a controlled transaction is arm's length based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities under similar instances.

v. Profit split method: In general, the profit split method evaluates whether the application of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. The combined operating profit or loss must be derived from the most narrowly identifiable business activity of the controlled taxpayers for which data is available that includes the controlled transactions (relevant business activity).

vi. Unspecified methods: In general, methods not specified in (a)8i, ii, iii, iv, and v above may be used to evaluate whether the amount charged in a controlled transaction is arm's length. Any method used under this paragraph should be applied in accordance with the provisions of U.S. Treas. Reg. § 1.482-1.

9. Under both the comparable uncontrolled price method and the resale price method, market conditions faced by the affiliate are taken into account. Thus, goods may be sold, for a period, at a price which is below the full cost of manufacture in order to establish or maintain a market.

i. Assuming that the requirements of one of the methods in (a)8 above are met, it must be used unless the taxpayer can show that some other method is clearly more appropriate. Where none of the first five methods listed can reasonably be applied, some other appropriate method can be used.

ii. Where a taxpayer makes controlled sales of many different products or many sales of the same product and it is impractical to calculate an arm's length price for each product or sale, it is permissible to apply the proper method of pricing to product lines or other groupings. Also, the Division of Taxation may use statistical sampling techniques to verify or determine the arm's length price of all sales to a related entity.

10. The Division will apply equitable principles to prevent unjust situations from occurring.

(b) The application of this section is not limited to an agreement, understanding or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance are not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports or any other factor in determining the appropriate transfer price for goods, services, intangibles or other dispositions made to related parties. Where the Director determines that there is an adjustment to net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c) Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, the Director may adjust and redetermine items on any affected taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey. The following example is an illustration only and in no way shall be interpreted as a standard for calculating wages in a particular case.

Example: Corporation D entered into an employment agreement with its sole shareholder's spouse for the performance of services as an accounting clerk. The agreement called for the shareholder's spouse to monitor 10 accounts. For the service performed, the spouse is to receive an annual salary of $100,000 along with a substantial benefit package. The Director, upon audit, learns that the spouse works only five hours per week in completely performing the duties. The Director, based upon the going wage for such services, determines that the total compensation package would not exceed $10,000 a year and adjusts the taxpayer's expense to determine properly the net income and the taxpayer's wage fraction of the allocation factor and to provide dividend treatment for the disallowed wage compensation.

(d) Where any taxpayer, 20 percent or more of whose capital stock is owned either directly or indirectly by or through the same interests as those of the taxpayer, conducts any activity, transaction, or business with such interests which either directly or indirectly creates an artificial loss, net income, or allocation factor, the Director may adjust and redetermine such items on any taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey.

Example 1: Corporation E, the great grandparent of the taxpayer, borrows $1 million from the taxpayer. The agreement calls for the principal and interest at the rate of two percent per annum to be paid at the end of one year. Upon audit, the Director determines that a market interest rate given the economic conditions at the time of the loan and the circumstances of the borrower is 13 percent per annum. Therefore, he adds the additional income to the taxpayer's net income as reported, and adjusts the expense on the great grandparent's return, if it files in New Jersey.

Example 2: Corporation F is the parent company of over 10 subsidiaries and provides all administrative services for the 10 subsidiaries. Corporation F receives dividend income from its subsidiaries, interest income from other investments, and service fee income from the subsidiaries for the administrative services it performs on their behalf which are an integral part of the business activity of the parent. All costs incurred by the parent are charged to the subsidiaries based solely upon the total assets of each subsidiary. Upon audit, the Director determines that the service fee includes no profit element and that the allocation of the costs of the administrative services bears no relationship to the services provided to each subsidiary. Accordingly, the Director imputes an element of profit, and assigns the charges to each subsidiary by a method reflecting the actual costs incurred in providing the services to each subsidiary.

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price which might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price which might have been paid or received.

Example 2: L Corporation is the parent corporation in a vertically integrated oil company. Its marketing subsidiary is a taxpayer. The marketing corporation reports a significantly lower gross profit than other taxpayers selling the same generic products in volume.

L Corporation has set its transfer prices to its marketing subsidiary at a price $0.02 per gallon higher than published New York tanker port prices for its product because it deems, in good faith, that its brand name value and economies of scale are more properly attributable to the parent corporation. It also uses this transfer price to sell its product to all its independent retailers.

The fair price which might have been paid for the product sold by the marketing subsidiary would not be based upon "New York tanker prices" plus the lesser of representative contract carrier costs or the actual costs incurred for delivery. The Director would recognize the $0.02 per gallon higher price since that is the same price used for comparable sales to all uncontrolled entities for the audit period.

(f) Whenever the Director deems it necessary, in order properly to reflect entire net income of the taxpayer, he or she may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him or her to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.

Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).
Revised section.
Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
In (a)8, added iv through vi; and in (a)9i, deleted "three" preceding "methods in" in the first sentence, and substituted "first five" for "three" preceding "methods" in the second sentence.

Statutory References

See N.J.S.A. 54:10A–4(k)(3) as to right of Director to determine the year in which an item of income or a deduction shall be included without regard to taxpayer's method of accounting, and 54:10A–10 as to Director's right to redetermine tax due when taxpayer's business records appear distorted.

Case Notes

Rule that a corporation's "net income" can be reduced by only 10 percent of the interest on indebtedness to a person or entity which owns 10 percent or more of the corporation's capital stock held applicable to corporate indebtedness owed to a corporation's parent; Division Director held without authority to recompute corporation's taxes to exclude such indebtedness from income; 10 percent rule held not violative of due process or equal protection; statutory amendments eliminating the 10 percent rule could not be applied retroactively. GATX Terminals Corp. v. Taxation Div. Director, 5 N.J.Tax 90 (Tax Ct.1982), affirmed in part, remanded in part per curiam 7 N.J.Tax 659 (App.Div.1985), certification denied 102 N.J. 337, 508 A.2d 213.

18:7–5.11 Right of Director to require consolidated filing, and certain disclosures

(a) The entire net income of a taxpayer exercising its franchise in this State 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 shall be determined by eliminating all payments to, or charges by other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind.

(b) Notwithstanding the elimination of all inter-group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the Director may, at the Director's discretion, require the taxpayer to file a consolidated return of the entire operations of the affiliated group or controlled group, including its own operations or income to the extent permitted under the Constitution and statutes of the United States. The Director shall determine the true amount of entire net income earned by the taxpayer in this State.

(c) The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the Director requires pursuant to N.J.S.A. 54:10A–1 et seq. to be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The Director may require a consolidated return without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

(d) A consolidated return required by this rule shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48–1 et seq.

(e) The member of an affiliated group or controlled group shall incorporate in its return required under this rule information needed to determine its taxable entire net income, and shall furnish any additional information the Director requires within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48–1 et seq.

(f) Each taxpayer that files a return and is a member of an affiliated or a consolidated group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, shall within 90 days of notice of a request of the Director disclose in its return for the privilege period the amount of all inter-member costs or expenses, including, but not limited to, management fees, rents, and other services, for the privilege period.

(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. Notwithstanding the foregoing, a net operating loss for any privilege period ending after June 30, 2009 shall be permitted as a net operating loss carryover to each of the 20-privilege periods following the privilege period of the loss.

(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			

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**
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.
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (a), inserted the last sentence.

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.

iv. "Domestic subsidiary" means a business entity incorporated under the laws of any state within the United States;

v. "Intangible property" to which intangible expenses and costs relate, means and includes, but is not limited to, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, film, information technology, and similar types of intangible assets;

vi. "Intangible expenses and costs" means and includes:

(1) Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq.;

(2) Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

(3) Royalty, patent, technical and copyright fees;

(4) Licensing fees; and

(5) Other similar expenses and costs;

vii. "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under section 163 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 163, for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property;

viii. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

(1) A related entity;

(2) A component member as defined in subsection (b) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563;

(3) A person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563; or

(4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (b)5viii(1) through (3) above of this definition;

ix. "Related entity" means a stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, shall apply for purposes of determining whether the ownership requirements of this definition have been met;

x. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of:

(1) The name of the related member;

(2) The country of domicile of the related member;

(3) The amount paid to the related member; and

(4) The nature of payment or, alternatively, by providing a copy of Federal form 5472 or its equivalent as an attachment to form NJ CBT-100;

6. Examples:

Example 1: Large Co. A.G., a foreign corporation, domiciled in a jurisdiction that has entered into a comprehensive tax treaty with the United States of America, owns directly or indirectly 100 percent of the outstanding shares of three U.S. domestic subsidiaries (Red Corp., White Corp. and Blue Corp.) and 100 percent of the outstanding shares of Funding, N.V., a foreign subsidiary. Red Corp. and White Corp. utilize certain technology developed by Large Co. A.G. in their daily operations of manufacturing products for resale. Blue Corp. was formed to hold and does hold the U.S. rights to certain technologies developed by Large Co. A.G., Red Corp. and White Corp. pay a royalty to Blue Corp. for the ability to use the technology developed by Large Co. A.G. in its daily operations. Blue Corp. pays an annual royalty to Large Co. A.G. based on the amount of royalties it receives from Red Corp. and White Corp. Amounts paid to Blue Corp. by Red Corp. and White Corp. would not be subject to disallowance. Also the amounts paid by Blue Corp. to Large Co. A.G. would not be subject to disallowance.

Example 2: Same facts as Example 1 except that Large Co. A.G. has entered into an agreement to securitize certain financial assets. Red Corp. sells its receivables to White Corp., a bankruptcy remote, special purpose company, at a discount. White Corp. pledges the receivables to a lending institution that issues commercial paper backed by those receivables. Large Co. A.G. and Red Corp. have guaranteed that 100 percent of any receivable pledged is collectible. The discount on the sale of the receivables by Red Corp. to White Corp. is not subject to disallowance.

Example 3: A limited partner receives guaranteed payments for its investment in a limited partnership. The payment is similar to a payment on preferred stock. The related member rules apply if the guaranteed payment is above market/arm's length values.

Special New Rule, R.2003 d.135, effective (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003, with changes effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In (a), inserted "regardless of whether a tax was actually paid on the related member," following "foreign nation" in 1iii, inserted "except any traced to domestic sources or countries that do not have a comprehensive treaty with the United States," following "White Pine, Inc." in Example 3 of 5, rewrote Example 5, added Example 6 and 7 and deleted Examples 4 and 5 in 6.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. ALLOCATION

18:7-7.1 General instructions regarding allocation of net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State. Notwithstanding the foregoing, for privilege periods beginning on or after July 1, 2010, a corporation is not required to maintain a regular place of business outside New Jersey in order to allocate any part of its entire net income outside New Jersey.

(b) In the absence of a regular place of business, 100 percent of its entire net income must be allocated to New Jersey.

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's net income to New Jersey.

(d) Where the taxpayer does not maintain a regular place of business outside New Jersey and its allocation factor is 100 percent and the taxpayer in fact pays a tax based on or measured by income to another state, see N.J.A.C. 18:7-8.3 which provides for the eligibility and method in computing a reduction in the tax for such taxpayer.

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).
"Corporation" substituted for "taxpayer" and added "or real estate investment trust."
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.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (a), inserted the last sentence.

Statutory References

See N.J.S.A. 54:10A-6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

Case Notes

Taxpayer was denied a refund of taxes paid, pursuant to New Jersey's Corporation Business Tax, N.J.S.A. 54:10A-1 through 54:10A-32, as the taxpayer failed to meet its burden of proving that it maintained a regular place of business outside of New Jersey, based on an employee's home office in the State of Connecticut, to entitle it to apportion its income under the more favorable formula set forth in N.J.S.A. 54:10A-6. Instead, the Director of the New Jersey Division of Taxation properly apportioned 100 percent of the taxpayer's income to New Jersey under N.J.S.A. 54:10A-8 and allowed for a credit for taxes actually paid to other states. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

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).

18:7-7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following will assist in the determination of what is a regular place of business.

1. Bona fide office: An office in which an employee in attendance performs significant duties related to the business of the taxpayer. A token office, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.

2. Space of the taxpayer: The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building

Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styles perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation, retools and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.

Administrative Correction to (c), added Examples to section.
See: 23 N.J.R. 1024(a).

Case Notes

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.

18:7-5.15 Net operating loss

(a) A net operating loss is the excess of allowable deductions over gross income used in computing entire net income.

(b) Neither a net operating loss deduction nor any exclusions from entire net income are allowable deductions in computing a net operating loss.

(c) There is no net operating loss for any year that a Corporation Business Tax Return (CBT-100) is not filed or if filed does not report entire net income as a negative amount.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

18:7-5.16 Effect of audit adjustments

An audit adjustment to entire net income shall serve to revise the amount of any net operating loss for the year of the change and the net operating loss carryover to which it relates.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

18:7-5.17 Suspension of net operating loss carryover

(a) Except as provided below, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subsection, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years. This section shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to N.J.S.A. 34:1B-7.42a and shall not restrict the application of corporation business tax certificates pursuant to N.J.S.A. 54:10A:4-2.

Example 1:

Minnow, Inc. is a calendar year taxpayer. In 2000, it filed a NJ CBT-100 that reported a $1,000,000 net operating loss. In 2001, the taxpayer had the following income:

Operating Income	$100,000
Dividends from wholly owned subsidiary	$50,000
Subtotal	$150,000

In 2001, Minnow, Inc. uses an NOL deduction of $150,000 decreasing its prior year NOL to $850,000. It does not use any dividend received deduction (DRD) in 2001.

The Business Tax Reform Act suspended the NOL deduction in tax years 2002 and 2003. Assuming the same facts set forth above, in filing the return after the law changes the use of taxpayer's NOL deduction is suspended.

In 2003, Minnow, Inc. would use a DRD of $50,000 and pay taxes on Entire Net Income of $100,000. The company would continue to have an NOL carryover of $1,000,000 that it could potentially use in 2004.

Example 2:

Striper, Inc. is a calendar year taxpayer. In 2001, it filed a NJ CBT return reporting a $1,000,000 net operating loss. In 2002, Striper, Inc. reported the following items:

Operating Loss	($100,000)
Dividends from wholly owned subsidiary	$40,000

In 2002, as it would have done before the law change, the taxpayer offsets $40,000 of current year loss against the dividend received deduction. The taxpayer secures an additional NOL of $60,000 that will be available in 2004.

Example 3:

In 2001, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program but did not use them in 2001. They can be used in 2002.

Example 4:

In 2002, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program. They can be used in 2002 notwithstanding the general suspension of NOL deductions in 2002 and 2003. Tax Benefit Certificates can be both acquired and applied during the NOL suspension period.

(b) For privilege periods beginning during calendar year 2004 and calendar year 2005, there shall be allowed as a deduction for the privilege period so much of the net operating loss carryover as reduces entire net income otherwise calculated by 50 percent. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this section, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by a period equal to the period for which application of the net operating loss was disallowed by this section.

(c) Any net operating deduction that was disallowed by the prohibition, and would have expired, in return periods beginning in 2002 and 2003 is extended for two years. Any net operating loss deduction that was disallowed by the prohibition, and would have expired in return periods beginning in 2004 and 2005, is extended for one return period for each return period that it was disallowed.

Special New Rule, R.2003 d.135, effective (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.
Amended by R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
Inserted designation (a); and added (b) and (c).

18:7-5.18 Related party transactions

(a) Interest paid, accrued or incurred to a related member shall not be deducted in calculating entire net income, except that a deduction shall be permitted:

1. To the extent that the taxpayer establishes that:

i. A principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due;

ii. The interest is paid pursuant to arm's length contracts at an arm's length rate of interest; and

iii. The related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, regardless of whether a tax was actually paid on the related member, a measure of the tax includes the interest received from the related member, and the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State;

2. If the taxpayer establishes that the disallowance of a deduction is unreasonable by showing the extent the related party pays tax in New Jersey on the income stream, or the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment; or

3. To the extent that the taxpayer establishes that the interest is directly or indirectly paid, accrued or incurred to:

i. A related member in a foreign nation which has in force a comprehensive income tax treaty with the United States, provided, however, that the taxpayer shall disclose on its return for the privilege period:

(1) The name of the related member;

(2) The amount of the interest;

(3) The relevant foreign nation; and

(4) Such other information as the Director may prescribe; or

ii. An independent lender through a related member as conduit, provided that the taxpayer legally guarantees the debt on which the interest is required;

4. For purposes of this subsection:

i. "Foreign nation" means as an established sovereign government that is recognized as such by the United States Department of State;

ii. "Comprehensive income tax treaty" means as a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information;

iii. "Foreign corporation" means a business entity incorporated or organized under the laws of a foreign nation;

iv. "Domestic subsidiary" means a business entity incorporated under the laws of any state or commonwealth of the United States;

v. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

(1) A related entity;

(2) A component member as defined in subsection (b) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563;

(3) A person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563; or

(4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (a)4v(1) through (3) above of this definition;

vi. "Related entity" means a stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, shall apply for purposes of determining whether the ownership requirements of this definition have been met;

vii. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of:

(1) The name of the related member;

(2) The country of domicile of the related member;

(3) The amount paid to the related member; and

(4) The nature of payment or, alternatively, by providing a copy of Federal form 5472 or its equivalent as an attachment to form NJ CBT–100;

viii. "Rate of tax" means allocation factor times the tax rate percentage;

5. Examples:

Example 1: Royal Palm, Ltd., a foreign parent corporation, owns directly or indirectly 100 percent of the outstanding shares of a U.S. domestic subsidiary, Red Oak, Inc. and 100 percent of the outstanding shares Little Palm, Ltd., a foreign subsidiary, a corporation. Royal Palm, Ltd. and Little Palm, Ltd. are domiciled in jurisdictions subject to a comprehensive income tax treaty with the United States of America. Red Oak, Inc. is in need of short term and/or long term funding. Little Palm, Ltd. is established by Royal Palm, Ltd. to represent the worldwide affiliated group and issue commercial paper, or enter into financing arrangements with lending institutions, or borrow funds from unrelated parties on behalf of the affiliated group. The proceeds of these transactions are then used to fund the operating or capital investment activities of one or more of the members of the worldwide affiliated group. Interest expense attributable to amounts lent by Little Palm, Ltd. the foreign subsidiary to Red Oak, Inc. the U.S. domestic subsidiary, and any costs associated with the origination of the lending which are assessed to Red Oak, Inc. as expense recovery of the lending originations would not be added back to Red Oak's Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 2: Same facts as Example 1, but Royal Palm, Ltd., the foreign parent, will borrow the funds and lend directly to the operating companies including Red Oak, Inc., the domestic subsidiary. Interest expense attributable to amounts borrowed by Red Oak, Inc., the domestic subsidiary, from Royal Palm, Ltd., the foreign parent, and any costs associated with the lending which are assessed to Red Oak, Inc. as an expense recovery of the lending originations would not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 3: Same facts as Example 1, but Little Palm, Ltd., the foreign subsidiary, or Royal Palm, Ltd., the foreign parent, establishes a second domestic subsidiary, White Pine, Inc., to facilitate the borrowing and on-lending activities. White Pine, Inc. will be authorized to borrow from Little Palm, Ltd., the foreign subsidiary, or from third party sources such as commercial paper markets or bond markets either inside the United States or outside the United States. White Pine, Inc. will lend the proceeds of the borrowings to Red Oak, Inc. Red Oak, Inc. will pay interest to White Pine, Inc. on the borrowings. All interest expense attributable to amounts borrowed by Red Oak, Inc. from White Pine, Inc. except any traced to domestic sources or countries that do not have a comprehensive treaty with the United States, and any costs associated with the origination of the lending which are assessed to Red Oak, Inc. as expense recovery of the lending originations would not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 4: Same facts as Example 1, but Little Palm, Ltd., the foreign subsidiary, forms White Pine, Inc. White Pine, Inc. borrows funds from Little Palm, Ltd. and holds the funds. The funds are made available for loan to Red Oak, Inc. and Blue Spruce, Inc., another affiliated domestic subsidiary on an as needed basis. White Pine, Inc. manages the lending transactions for two or more affiliated entities within the United States. White Pine, Inc. will loan funds to Red Oak, Inc. and Blue Spruce, Inc. White Pine, Inc. will charge an origination fee to cover the costs charged by Little Palm, Ltd., the foreign subsidiary to White Pine, Inc., a domestic subsidiary. Red Oak, Inc. and Blue Spruce, Inc. will make periodic interest payments and/or principle payments, depending on the terms of the notes. The

interest and loan origination expenses paid by Red Oak, Inc. and Blue Spruce, Inc. to White Pine, Inc. will not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 5: A parent corporation has two operating subsidiaries, one solely in New Jersey (NJ) and one solely in State X both making $100.00 of profit, each having equal apportionment factors. This enterprise files a combined return in State X. On its NJ separate entity return it shows taxable income of $100.00 from its separate NJ operations. In State X, the combined return shows $200.00 in profit and apportions 50 percent to State X. $100.00 is subject to tax, thus producing an equitable result.

However, if the State X corporation made a loan to the NJ corporation generating an interest deduction in NJ of $100.00 and interest income to the State X affiliate of $100.00, an inequity results if the interest is deductible. The NJ corporation would file a return showing no taxable income. However, the State X corporation would still only report 50 percent of the $200.00 combined income (the combined income—NJ $0 and State X $200.00—has not changed) or $100.00 since it files a combined return.

While the interest income is, in fact, included as a tax determinate in State X, so is the interest deduction. The apportionment factors are not affected. As a result, NJ loses revenue, the State X result is neutral, and the taxpayer gets a windfall. The reform act was intended to address this type of situation. Thus, the interest expense must be taxed in a non-unitary state for one of the exceptions to apply.

Example 6: Mr. Jones, a New Jersey resident, owns 100 percent of the shares of Zippy Corp., a corporation properly capitalized and organized and doing business in New Jersey. Zippy Corp. has not made a NJ S election. Mr. Jones loans Zippy Corp. money at an arm's length rate under an arm's length contract. Zippy Corp. may take an interest deduction, provided that one of the exceptions applies: For example, if Mr. Jones pays NJ Gross Income Tax at a rate within three percent of nine percent, then Zippy Corp. may take the deduction. If Zippy Corp. does not get a deduction, Mr. Jones may not exclude the interest income from his gross income tax taxable income.

Example 7: Mr. Smith, a New Jersey resident, owns 100 percent of the shares of Pin Corp., a corporation organized and doing business in New Jersey. Pin Corp. has not made a NJ S election. Mr. Smith lends Pin Corp. $5,000 at an arm's length rate under an arm's length contract. When Pin Corp. files its CBT–100, the Stockholder's Equity reflected on its Balance Sheet, Schedule B, is $200.00. Mr. Smith paid Gross Income Tax on the payments received from Pin Corp. However, Pin Corp. may not claim an interest deduction for interest paid to Mr. Smith. The "loan" is actually a contribution to capital, since the corporation is undercapitalized.

(b) 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 shall not be deducted in calculating entire net income, except that a deduction shall be permitted:

1. If the interest expenses and costs and intangible expenses and costs are directly or indirectly paid, accrued or incurred to a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States. In claiming this exception, the taxpayer shall disclose on its return:

i. The name of the related member;

ii. The amount of the interest expenses and costs and intangible expenses and costs deducted;

iii. The relevant foreign nation; and

iv. Such other information as the Director may prescribe;

2. If the interest expenses and costs and the intangible expenses and costs that the taxpayer establishes meet both of the following:

i. The related member during the same income year directly or indirectly paid, received, accrued or incurred the portion to or from a person that is not a related member; and

ii. The transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax;

3. If the taxpayer establishes that the adjustments are unreasonable by showing the extent that the payee pays tax to New Jersey on the income stream; or

4. If the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment;

5. For purposes of this subsection:

i. "Foreign nation" means an established sovereign government that is recognized as such by the United States Department of State;

ii. "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information;

iii. "Foreign corporation" means a business entity incorporated or organized under the laws of a foreign nation;

iv. "Domestic subsidiary" means a business entity incorporated under the laws of any state within the United States;

v. "Intangible property" to which intangible expenses and costs relate, means and includes, but is not limited to, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, film, information technology, and similar types of intangible assets;

vi. "Intangible expenses and costs" means and includes:

(1) Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq.;

(2) Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

(3) Royalty, patent, technical and copyright fees;

(4) Licensing fees; and

(5) Other similar expenses and costs;

vii. "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under section 163 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 163, for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property;

viii. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

(1) A related entity;

(2) A component member as defined in subsection (b) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563;

(3) A person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563; or

(4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (b)5viii(1) through (3) above of this definition;

ix. "Related entity" means a stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 318, shall apply for purposes of determining whether the ownership requirements of this definition have been met;

x. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of:

(1) The name of the related member;

(2) The country of domicile of the related member;

(3) The amount paid to the related member; and

(4) The nature of payment or, alternatively, by providing a copy of Federal form 5472 or its equivalent as an attachment to form NJ CBT-100;

6. Examples:

Example 1: Large Co. A.G., a foreign corporation, domiciled in a jurisdiction that has entered into a comprehensive tax treaty with the United States of America, owns directly or indirectly 100 percent of the outstanding shares of three U.S. domestic subsidiaries (Red Corp., White Corp. and Blue Corp.) and 100 percent of the outstanding shares of Funding, N.V., a foreign subsidiary. Red Corp. and White Corp. utilize certain technology developed by Large Co. A.G. in their daily operations of manufacturing products for resale. Blue Corp. was formed to hold and does hold the U.S. rights to certain technologies developed by Large Co. A.G., Red Corp. and White Corp. pay a royalty to Blue Corp. for the ability to use the technology developed by Large Co. A.G. in its daily operations. Blue Corp. pays an annual royalty to Large Co. A.G. based on the amount of royalties it receives from Red Corp. and White Corp. Amounts paid to Blue Corp. by Red Corp. and White

Corp. would not be subject to disallowance. Also the amounts paid by Blue Corp. to Large Co. A.G. would not be subject to disallowance.

Example 2: Same facts as Example 1 except that Large Co. A.G. has entered into an agreement to securitize certain financial assets. Red Corp. sells its receivables to White Corp., a bankruptcy remote, special purpose company, at a discount. White Corp. pledges the receivables to a lending institution that issues commercial paper backed by those receivables. Large Co. A.G. and Red Corp. have guaranteed that 100 percent of any receivable pledged is collectible. The discount on the sale of the receivables by Red Corp. to White Corp. is not subject to disallowance.

Example 3: A limited partner receives guaranteed payments for its investment in a limited partnership. The payment is similar to a payment on preferred stock. The related member rules apply if the guaranteed payment is above market/arm's length values.

Special New Rule, R.2003 d.135, effective (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003, with changes effective September 15, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
In (a), inserted "regardless of whether a tax was actually paid on the related member," following "foreign nation" in 1iii, inserted "except any traced to domestic sources or countries that do not have a comprehensive treaty with the United States," following "White Pine, Inc." in Example 3 of 5, rewrote Example 5, added Example 6 and 7 and deleted Examples 4 and 5 in 6.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. ALLOCATION

18:7-7.1 General instructions regarding allocation of net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State.

(b) In the absence of a regular place of business, 100 percent of its entire net income must be allocated to New Jersey.

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's net income to New Jersey.

(d) Where the taxpayer does not maintain a regular place of business outside New Jersey and its allocation factor is 100 percent and the taxpayer in fact pays a tax based on or measured by income to another state, see N.J.A.C. 18:7-8.3 which provides for the eligibility and method in computing a reduction in the tax for such taxpayer.

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).
"Corporation" substituted for "taxpayer" and added "or real estate investment trust."
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-6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

Case Notes

Taxpayer was denied a refund of taxes paid, pursuant to New Jersey's Corporation Business Tax, N.J.S.A. 54:10A-1 through 54:10A-32, as the taxpayer failed to meet its burden of proving that it maintained a regular place of business outside of New Jersey, based on an employee's home office in the State of Connecticut, to entitle it to apportion its income under the more favorable formula set forth in N.J.S.A. 54:10A-6. Instead, the Director of the New Jersey Division of Taxation properly apportioned 100 percent of the taxpayer's income to New Jersey under N.J.S.A. 54:10A-8 and allowed for a credit for taxes actually paid to other states. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

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).

18:7-7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following will assist in the determination of what is a regular place of business.

1. Bona fide office: An office in which an employee in attendance performs significant duties related to the business of the taxpayer. A token office, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.

2. Space of the taxpayer: The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building

and being listed in the taxpayer's name in a telephone book.

3. Regularly maintained, occupied and used by the taxpayer in carrying on its business: The taxpayer must regularly maintain, occupy and use the premises by employing one or more regular employees who are in attendance during normal working hours. Premises are not regularly maintained, occupied and used in the event employees are in attendance only on a part time basis and, in their absence, telephone messages are received by an answering service or recording device.

4. Regular employee: A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the compensation paid to an individual (such as a W-2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7-8.14.):

i. The facilities of a public warehouse located outside New Jersey and utilized to store property of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer where the warehouse is not the space of the taxpayer.

ii. The facilities of an independent contractor located outside of New Jersey and used to store, convert, process, finish and/or improve the goods of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer.

iii. A job site, field office or other facility which is not regularly maintained, occupied and used in taxpayer's business or where administrative duties, such as performing payroll functions, telephoning, recordkeeping, banking, accounting, the hiring and firing of employees and similar functions are not performed, is not a regular place of business.

iv. The location of inventories outside of New Jersey in the possession of employees in their homes, or in trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) A taxpayer does not have a regular place of business outside New Jersey solely by consigning goods to an independent factor outside New Jersey for sale at the direction of either the consignor or consignee.

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdictions shall not be determinative as to whether the taxpayer maintains a regular place of business outside of New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).
(a)1-2 deleted and new text (a)1-4 substituted; (c) added.

Statutory References

See N.J.S.A. 54:10A-6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

Case Notes

Apportionment of franchise tax for multi-state corporations which maintain a regular place of business outside New Jersey other than a statutory office is not applicable to a corporation whose out-of-state offices consist of space in corporate engineers' personal homes used for their own convenience in connection with their employment. Hoeganaes Corp. v. Director, Div. of Taxation, 145 N.J.Super. 352, 367 A.2d 1182 (App.Div.1976) and dissenting opinion.

Taxpayer was denied a refund of taxes paid, pursuant to New Jersey's Corporation Business Tax, N.J.S.A. 54:10A-1 through 54:10A-32, as the taxpayer failed to meet its burden of proving that it maintained a regular place of business outside of New Jersey, based on an employee's home office in the State of Connecticut, to entitle it to apportion its income under the more favorable formula set forth in N.J.S.A. 54:10A-6. Instead, the Director of the New Jersey Division of Taxation properly apportioned 100 percent of the taxpayer's income to New Jersey under N.J.S.A. 54:10A-8 and allowed for a credit for taxes actually paid to other states. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

Corporation which did not pay rent out of state did not maintain regular place of business out of state. Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

Reduction in corporation business tax based on an allocation of tax basis due to maintenance of a regular place of business outside of the State denied because New York office was not a "regular place of business", since it was leased in the name of the parent corporation, the taxpayer paid no rent and did not maintain control over the premises, and because the full time employees at the office were all employees of the parent corporation. Shelter Development Corp. v. Taxation Div. Director, 6 N.J.Tax 547 (Tax Ct.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).

Corporation held not entitled to apportion part of its net income to other states because it did not maintain a regular place of business in other states; "regular place of business" test held not to violate commerce clause. Rocappi Inc. v. Taxation Div. Director, 3 N.J.Tax 311, 182 N.J.Super. 163, 440 A.2d 96 (Tax Ct.1981).

18:7-7.3 "Allocating" and "non-allocating" companies; definition

(a) A taxpayer which allocates a portion of its entire net income outside this State is referred to as an "allocating" taxpayer.

(b) A taxpayer which does not allocate any part of its entire net income outside this State is referred to as a "non-allocating" taxpayer.

(c) A taxpayer that maintains a regular place of business outside New Jersey for less than 50 percent of the period of time covered by a return is referred to as a "part year allocating" taxpayer.

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

Statutory References

See N.J.S.A. 54:10A-4(b) as to definition of "allocation factor," and 54:10A-6 as to how to determine allocation factor for a taxpayer who maintains a regular place of business outside New Jersey.

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).

18:7-7.4 Allocation factor; definition

"Allocation factor" means the proportionate part of a taxpayer's entire net income used to determine a measure of its tax 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(b) as to definition of "allocation factor."

18:7-7.5 Allocation factor; application

(a) If the taxpayer had a regular place of business outside New Jersey during the period covered by the return, its tax liability under the New Jersey Corporation Business Tax Act is measured by that part of its entire net income allocated to New Jersey according to a formula called the business allocation factor.

(b) If the taxpayer is deemed to be a "part year allocating" taxpayer because it had a regular place of business outside New Jersey for less than 50 percent of the period of time covered by the return, it will determine its overall business allocation factor by prorating the overall business allocation factor computed by the number of months, or part thereof, that a regular place of business was maintained and adding this to 100 percent prorated by the number of months or part thereof a regular place of business was not maintained.

Example: Corporation X establishes its only regular place of business outside New Jersey on November 16 of its 12 month calendar year. The overall business allocation factor computed on Schedule J for the entire period was 62.2424 percent. The prorated allocation factor would be 93.7071 percent computed as follows:

$$\frac{(62.2424 \times 2) + (100 \times 10)}{12}$$

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.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Designated paragraph as (a), added (b).

Historical Note

Laws of 1968, Chapter 250 eliminated the use of the asset factor for the purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968.

Statutory References

See Laws 1968, Chapter 250 as to elimination of asset factor for purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968. See N.J.S.A. 54:10A-4(b) as to definition of "allocation factor." See N.J.S.A. 54:10A-6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

18:7-7.6 Corporate partners and partnerships

(a) A foreign corporation that is a general partner in a general or limited partnership or is deemed to be a general partner in a limited partnership doing business in New Jersey satisfies the subjectivity requirements set forth in N.J.S.A. 54:10A-2. A foreign corporation that is a general partner of a general or limited partnership doing business in New Jersey is subject to filing a corporation business tax return in New Jersey and paying the applicable tax under the terms of the corporation business tax to New Jersey. Such a corporation is also deemed to be employing or owning capital or property in New Jersey, or maintaining an office in New Jersey, if the partnership does so.

(b) Subsection (a) above may apply to foreign corporations, otherwise not subject to the New Jersey corporation business tax, whose only connection to this State is restricted to owning one or more limited partnership interests in one or more limited partnerships doing business in New Jersey, provided the taxpayer's connection with this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States. See N.J.A.C. 18:7-1.6.

(c) A foreign corporate limited partner of a limited partnership doing business in New Jersey is considered exercising its franchise to do business in this State, doing business in this

State or employing capital in this State, and, therefore, is subject to tax under N.J.S.A. 54:10A-2 and filing a corporation business tax return, if:

1. The limited partner is also a general partner of the limited partnership;

2. The foreign corporation limited partner, in addition to the exercise of its rights and powers as a limited partner, takes an active part in the control of the partnership business;

3. The foreign corporate limited partner meets the criteria set forth in N.J.A.C. 18:7-1.9 or 1.6; or

4. The business of the partnership is integrally related to the business of the foreign corporation.

(d) Tax filing and payment responsibilities of partnerships are set forth in N.J.A.C. 18:7-17. For the partnership processing fee, see N.J.A.C. 18:35-11.

(e) It shall be the burden of the taxpayer to prove to the Director by clear and cogent evidence that the facts and circumstances surrounding its involvement with the limited partnership or limited liability company do not subject it to tax under the Act.

(f) For purposes of this section, the term "partnership" has the same meaning as is set forth under I.R.C. § 7701(a)(2) and the regulations issued thereunder. Partnerships that are not treated for Federal tax purposes as pass-through entities are also not treated as pass-through entities under this section. The term "partnership" shall include limited liability companies treated as partnerships.

(g) For purposes of apportionment (allocation) of corporate income, where the subject corporation and the partnership are not part of a single unitary business, including a business carried on directly by the foreign corporate partner, separate accounting apportionment should be used to arrive at corporate income. If the New Jersey business of the partnership is part of a single unitary business including a business carried on directly by the foreign corporate partner, flow through accounting apportionment should be used with respect to the incomes of the two entities.

1. Separate accounting apportionment, for purposes of this section only, means use of the following method: The corporation's distributive share of the partnership's business income would be apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the corporate partner's share of the receipts, payroll and property of the business that the partnership carries on directly. Second, the corporation's entire net income, excluding its distributive share of the partnership's income is apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the receipts (excluding receipts from the partnership namely, receipts from intercompany transactions), payroll and property of the business that the corporation carries on directly. Third, these two amounts would be added together to arrive at the corporation's entire net income apportioned to New Jersey.

2. Flow through accounting apportionment, for purposes of this section only, means use of the following method: Taxpayer shall separately compute the property, payroll and receipts fractions attributable to the partnership activity. The taxpayer next computes the property, payroll and receipts fractions attributable to the corporate activity. An allocation factor combining the factors of the corporation and the partnership is then applied to the corporation's entire net income including its distributive share of the partnership's income.

3. Facts that either singly or in combination may suggest that the corporation and partnership are part of a unitary business and hence that a flow through approach may be appropriate include, without limitation thereto:

i. Substantial intercompany-partnership transactions;

ii. The partnership interest is the only or the most substantial asset of the corporation;

iii. The partnership interest produces all or most of the income of the corporation;

iv. The corporation and the partnership are in the same line of business;

v. There is substantial overlapping of employees and offices; and/or

vi. There is sharing of operational facilities, technology and/or know-how.

4. For purposes of determining the application of the small corporation tax rate, the entire net income of a general partner (actual or deemed) should include the partner's proportionate share of the unapportioned net income of the partnership and the entire net income of a limited partner should include the partner's proportionate share of the unapportioned net income of the partnership.

(h) The accounting methods described in (g) above are also applied to domestic corporate partners. If a domestic corporation is a partner in a foreign partnership that does not conduct business in New Jersey, and the corporation's own business and that of the partnership are not unitary, then the corporation's income from the partnership shall not be included in the corporation's tax base, and the partnership's receipts, payroll and property shall not be considered in determining the apportionment factor to apply to the corporation's income from its own business. If, however, the two businesses are unitary, then the flow through method should be used in apportioning the corporation's income.

1. Solely for purposes of this section, 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. Relief pursuant to N.J.A.C. 18:7–8.3 is permitted to domestic partners with respect to partnership income duplicated on a return of a domestic corporate partner filed with another state. By virtue of its subjectivity under the Corporation Business Tax, a corporate partner may seek relief under N.J.S.A. 54:10A–8 if taxpayer believes that tax computed does not result in a fair apportionment.

(i) A "tiered partnership," for the purposes of this section, is a partnership whose partners are partnerships. A corporation that is a partner in a partnership that in turn is a partner in yet another partnership is not immune from New Jersey taxation simply because of the tiered partnership. The ultimate tax burden and loss benefit falls on the corporate partner. The corporation shall file a New Jersey corporation business tax return taking account of its ultimate distributive share of the tiered partnership's income or loss from New Jersey activities.

(j) The classification of partnership items of income, expense or loss as operational or nonoperational is to be determined in accordance with N.J.S.A. 54:10A–6.1. Whether or not a partnership is unitary or nonunitary with its corporate partner is a different issue from the issue of taxability of operational or nonoperational income or the deductibility of operational or nonoperational expenses or losses.

(k) Any New Jersey corporate tax credits for which a subject corporate partner may qualify other than the credit pursuant to N.J.S.A. 27:26A–15, Commuter Transportation Rideshare Credit, which is a reduction of partnership income, shall pass through to the corporate partner. The corporate partner may claim its proportionate share of such credit on its New Jersey corporation business tax return.

1. If the partnership is unitary with the corporation then the amount of the total credit permitted to the corporate taxpayer after flow through is subject to the 50 percent cap as provided in N.J.A.C. 18:7–3.17(b).

2. Where the corporation is not unitary with the partnership, the credit will flow through to the corporation and may be used to offset up to 50 percent of the incremental tax attributable to the partnership's income contribution to the corporate taxpayer.

EXAMPLE I

Corporation ABC is a foreign corporation which allocates to New Jersey, and also has 50 percent share in a partnership that is doing business in New Jersey, but is not unitary with the corporation. The corporation would calculate its allocation factor and allocated income exclusive of the activities of the partnership. The partnership would calculate its allocated income based upon its own attributes, and the allocated income from both entities are combined to make Allocated Net Income.

	ABC Corp.	Fraction in NJ	General Partnership	Fraction in NJ	
Property NJ	9,000		500		
Everywhere	10,000	.900000	1,000	.500000	
Receipts NJ	3,000		5,000		
Everywhere	10,000	.300000	20,000	.250000	
Double Weighting of Receipts Fraction		.300000		.250000	
Payroll NJ	6,000		250		
Everywhere	10,000	.600000	1,000	.250000	
Total		2.100000		1.250000	
Allocation Factor (Total divided by 4)		.525000		.312500	
Net Income of Corporation					$5,000
Corporation's Distributive Share of Partnership Income					$1,000
Total Net Income					$6,000
Corporation's Income		5,000			
Corporation's Allocation Factor		.525000			
Corporation's Allocated Net Income					$2,625
Partnership Income				1,000	
Partnership Allocation Factor				.312500	
Partnership Allocated Income					$313
Total Allocated Net Income					$2,938

EXAMPLE II

Corporation DEF is a foreign corporation which has no nexus with New Jersey other than a 50 percent general partnership interest in a partnership, which is not unitary with the corporation. The corporation would calculate its allocation factor and allocated income exclusive of the activities of the partnership. In this case, the allocation factor is zero and the corporation does not allocate any of its income to New Jersey. The partnership would allocate its income as a separate entity. The allocated income from both calculations are then combined to compute the tax liability of the corporation.

	DEF Corp.	Fraction in NJ	General Partnership	Fraction in NJ	
Property NJ	0		750		
Everywhere	10,000	0.000000	1,000	.750000	
Receipts NJ	0		10,000		
Everywhere	10,000	0.000000	20,000	.500000	
Double Weighting of Receipts Fraction		0.000000		.500000	
Payroll NJ	0		750		
Everywhere	10,000	0.000000	1,000	.750000	
Total		0.000000		2.500000	
Allocation Factor (Total divided by 4)		0.000000		.625000	
Net Income of Corporation					$5,000
Corporation's Distributive Share of Partnership Income					$1,000
Total Net Income					$6,000
Corporation's Income		5,000			
Corporation's Allocation Factor		.000000			
Corporation's Allocated Net Income					$0
Partnership Income				1,000	
Partnership Allocation Factor				.625000	
Partnership Allocated Income					$625
Total Allocated Net Income					$625

EXAMPLE III

Corporation XYZ is unitary with a partnership and holds a 50 percent general partnership interest in a general partnership. The taxpayer should use the flow through method of allocation since there is a sufficient integration of assets and business activities between the corporation and partnership.

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

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

EXAMPLE IV

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

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

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

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Optional short tax table in lieu of allocation of net worth".
New Rule, R.1997 d.430, effective October 6, 1997.
See: 29 N.J.R. 1686(a), 29 N.J.R. 4327(a).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
In (a), deleted the last sentence; rewrote (b); in (c), amended the N.J.A.C. reference in 3 and added 4; rewrote (d); in (f), deleted the last sentence; deleted (*l*).
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

18:7-7.7 (Reserved)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

18:7-8.1 Business allocation factor; computation

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

1. Average value of real and tangible personal property in New Jersey over the average value of such property both within and without New Jersey (this is usually referred to as the property fraction);

2. Receipts allocable to New Jersey over receipts both within and without New Jersey (this is usually referred to as the receipts fraction in this subchapter but may also be referred to as the sales fraction. The terms may be used interchangeably for fiscal periods beginning on or after July 1, 1996);

3. Payrolls allocable to New Jersey over payrolls within and without New Jersey (this is usually referred to as the payroll fraction).

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

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

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

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

(d) For privilege periods beginning on or after January 1, 2012, the business allocation factor is computed according to the following schedule:

1. For privilege periods beginning on or after January 1, 2012, but before January 1, 2013, 15 percent of the property fraction plus 70 percent of the sales fraction plus 15 percent of the payroll fraction;

2. For privilege periods beginning on or after January 1, 2013, but before January 1, 2014, five percent of the property fraction plus 90 percent of the sales fraction plus five percent of the payroll fraction; and

3. For privilege periods beginning on or after January 1, 2014, 100 percent of the sales fraction.

(e) For taxpayers with fiscal year privilege periods, the business allocation factor is computed according to the following schedule:

1. For a taxpayer that has a privilege period that begins in 2011 and ends in 2012, the business allocation factor is computed with the numerator consisting of the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four (double weighted sales factor allocation method);

2. For the taxpayer that has a privilege period that begins in 2012 and ends in 2013, the sales fraction will account for 70 percent of the allocation, and the property and payroll fractions will each account for 15 percent of the allocation;

3. For the taxpayer that has a privilege period which begins in 2013 and ends in 2014, the sales fraction will account for 90 percent of the allocation, and property and payroll fractions will each account for five percent of the allocation; and

4. For privilege periods beginning in 2014 and for all subsequent privilege periods, the sales fraction will account for 100 percent of the allocation.

Example: Company A has a privilege period that begins August 1, 2011, and ends on July 31, 2012. For the Company A's 2011-2012 privilege period, Company A must use the double weighted sales factor allocation method. For Company A's 2012-2013 privilege period, Company A must use the 70% sales factor allocation method. For Company A's 2013-2014 privilege period, Company A must use the 90% sales fraction method. For Company A's 2014-2015 privilege period and all subsequent privilege periods, Company A will use the 100% sales factor allocation method.

(f) For privilege periods beginning on or after January 1, 2012, the determination of the sales factor for airlines is as follows:

1. The sales fraction for the transportation revenues of a taxpayer that is an airline shall be determined as the ratio of revenue miles in this State divided by total revenue miles.

2. For a taxpayer that is an airline engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio shall be determined by an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals, respectively.

(g) As used in (f) above, "revenue miles" means passenger revenue miles for passengers, ton revenue miles for freight, or aircraft revenue miles for aircraft rentals.

1. The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the vehicle by the distance traveled in New Jersey divided by the number of revenue-paying passengers aboard the vehicle multiplied by the distance traveled everywhere.

2. The freight revenue mile fraction is determined by dividing the revenue freight ton miles in New Jersey by the revenue freight to miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

3. The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Substantially amended section.
Amended by R.2012 d.111, effective June 4, 2012.
See: 44 N.J.R. 142(a), 44 N.J.R. 1727(a).
Added (d) through (g).

Statutory References

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

Case Notes

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

Corporate taxpayer was entitled to credit for corporate income tax paid in another state. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Net worth determination that did not result in unfair or unreasonable tax would not be modified on judicial review. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Interpretation of amendment to corporate tax governing safe harbor leasing provisions did not constitute rulemaking. 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 include the property in the 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.

18:7-8.2 Method of arithmetic computation required

In computing allocation percentages, division must be carried to six decimal places, for example .201614 or 20.1614 per cent.

Statutory References

N.J.S.A. 54:10A-8.

18:7-8.3 Right of Director to independently compute allocation factor

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A-8 and this rule—100 percent allocation factor:

1. Eligibility:

i. Where the Business Allocation Factor under Section 6 of the Act is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, it may, under Section 8 of the Act, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7-1.6 as if the New Jersey Corporation Business Tax Act were the law of that foreign state.

Example: S corporation does not maintain a regular place of business outside New Jersey, other than a statutory office. It was not a domestic corporation in State X, nor did it meet any of the other criteria described at N.J.A.C. 18:7-1.6 in that State which would have created a taxable status in New Jersey. Although it was not itself doing business in State X, it was a member of an affiliated group of corporations which conducted a unitary business in that State and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, it did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. It must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions and the computation of the tax paid to the foreign state. It must also submit a schedule apportioning all property, receipts and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

(1) It may be based upon only so much of adjusted entire net income appearing on its Corporation Business Tax Return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the Business Allocation Factor as determined under Section 6 of the Act and these rules;

(3) It must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1: Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, its Business Allocation Factor is 100 percent. It sold land for $250,000 which had a tax basis and book value of $100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to that State and is taxed at an eight percent rate. It may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	$500,000	
Net gain on sale of land	+150,000	$150,000
Total income	650,000	
Deductions	-447,778	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments—N.J. Corporation Business Tax Deducted—add back	+20,000	
Entire net income	$222,222	
Tax at 9% — before reduction	$20,000	
Formula apportionment not used in State Y		100%

	New Jersey Tax Income Base	Duplicated in State Y
Duplication of income		150,000
Reduction—may not exceed 9%		.08
Tax paid to State Y		$ 12,000
Reduction	-12,000	
Paid with return	$8,000	

Example 2: Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Its Business Allocation Factor is 100 percent. It did however start and complete a construction job in State Z and paid an income tax to that State at a ten and one-half percent rate. It may determine the portion of its Corporation Business Tax measured by net income as follows:

For accounting periods beginning before July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$227,500	$227,500
Add ACRS	$ 15,000		
Less NJ depreciation	12,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		–0–
†Add back of NJCBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back—NJ	7,000	7,000	
Municipal Bond Interest add back—State Z	-0-		–0–
Net Operating Loss—NJ	4,500	(4,500)	
Net Operating Loss—State Z	5,000		(5,000)
Dividend Exclusion—NJ	10,000	(10,000)	(10,000)
Dividend Exclusion—State Z	-0-		
Entire Net Income		$275,000	
Portion of ENI duplicated			$241,300
Apportionment (computed below)			.250000
Apportioned duplicated ENI			$ 60,325
Tax at 9% on New Jersey Income Base		$ 24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI			$ 6,334
Reduction—at 9% of Apportioned duplicated ENI ($60,325)		$ 5,429	
New Jersey tax after credit		$ 19,321	

† For accounting periods beginning on or before July 7, 1993 only, New Jersey CBT was required to be added back in computing New Jersey E.N.I.

For accounting periods beginning on or after July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$227,500	$227,500
Add ACRS	$15,000		
Less NJ depreciation	15,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		–0–
Add back of NJCBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back—NJ	7,000	7,000	
Municipal Bond Interest add back—State Z	-0-		–0–
Net Operating Loss—NJ	4,500	(4,500)	
Net Operating Loss—State Z	5,000		(5,000)
Dividend Exclusion—NJ	10,000	(10,000)	(10,000)
Dividend Exclusion—State Z	–0–		
Entire Net Income		$275,000	
Portion of ENI duplicated			$241,300
Apportionment (computed below)			.245000
Apportioned duplicated ENI			$59,118
Tax at 9% on New Jersey Income Base		$24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI			$6,207
Reduction—at 9% of Apportioned duplicated ENI ($59,118)		$5,321	
New Jersey tax after credit		$19,429	

Corporation B computed the apportionment on its State Z return as follows:

	State Z	Every-where	Portion in State Z
Property Fraction			
Owned (Valued under State Z law and regulation)	$140,000	$ 500,000	
Leased (at 8 times annual rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$180,000	$ 600,000	0.300000
Receipts Fraction	$200,000	$1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			1.000000
Allocation Factor using State Z Law and Regulation (Total divided by four)			0.250000

For accounting periods beginning before July 1, 1996, if the formula apportionment had been determined in State Z consistent with the N.J. Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under N.J.C.B.T. Act)	$100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$140,000	$ 500,000	0.280000
Receipts Fraction	$200,000	$1,000,000	0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.780000
Allocation Factor using N.J.C.B.T. Act (Total divided by three)			0.260000

For accounting periods beginning on or after July 1, 1996, if the formula apportionment has been determined in State Z consistent with the N.J. Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under N.J.C.B.T. Act)	$100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$140,000	$ 500,000	0.280000
Receipts Fraction	$200,000	$1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.980000
Allocation Factor using N.J.C.B.T. Act (Total divided by four)			0.245000

For the period beginning prior to July 1, 1996, since the apportionment fraction (.250000) used in State Z does not exceed the Business Allocation Factor as it would have been determined under the Act and this subchapter, it is used for purposes of determining the reduction.

For the period beginning on or after July 1, 1996, since the apportionment fraction (.250000) used in state Z exceeds the Business Allocation Factor as it would have been determined under the Act and this subchapter, the New Jersey Factor (.245000) would be used for purposes of determining the reduction.

Amended by R.1984 d.594, effective January 7, 1985.
See: 16 N.J.R. 3001(a), 17 N.J.R. 115(c).
(b) added.
Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Rewrote tables in (b)2i(3).
Administrative correction.
See: 40 N.J.R. 6477(a).

Statutory References

See N.J.S.A. 54:10A-8 as to right of Director to independently adjust a taxpayer's allocation factor.

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Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

Apportionment of 100 percent of a taxpayer's income to New Jersey under N.J.S.A. 54:10A-8, and allowance for a credit for taxes actually paid to other states, instead of applying the more favorable formula under N.J.S.A. 54:10A-6, was constitutional under both the Due Process and Commerce Clauses; the Corporation Business Tax (CBT) applied to the taxpayer was internally and externally consistent since it did not lead to a grossly distorted result. Based on various apportionment factors, there was a sufficient nexus between the taxpayer's business activities and New Jersey such that the CBT passed Due Process analysis, and the 100 percent apportionment with regulatory credits given for taxes paid to other states was rationally related to the taxpayer's activities conducted in New Jersey. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

Taxpayer was denied a refund of taxes paid, pursuant to New Jersey's Corporation Business Tax, N.J.S.A. 54:10A-1 through 54:10A-32, as the taxpayer failed to meet its burden of proving that it maintained a regular place of business outside of New Jersey, based on an employee's home office in the State of Connecticut, to entitle it to apportion its income under the more favorable formula set forth in N.J.S.A. 54:10A-6. Instead, the Director of the New Jersey Division of Taxation properly apportioned 100 percent of the taxpayer's income to New Jersey under N.J.S.A. 54:10A-8 and allowed for a credit for taxes actually paid to other states. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

Corporate taxpayer was entitled to credit for income tax paid in another state. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Redetermination of net worth tax which was not unreasonable or unfair would not be disturbed. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Statutory three-factor was appropriate for corporate taxpayer that had paid taxes in another state. Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

18:7-8.4 Property fraction; "tangible personal property"; definition and scope; special situations

(a) The term "tangible personal property" shall mean corporeal personal property, such as machinery, fixtures, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest in property and evidences of debt.

(b) Tangible personal property within New Jersey.

1. Tangible personal property is within New Jersey if and so long as it is physically situated or located here, even though it may be stored in a bonded warehouse in this State.

2. Property of the taxpayer held in New Jersey by an agent, consignee or factor is (and property held outside New Jersey by an agent, consignee or factor is not) situated or located within New Jersey.

3. Mobile or movable property, such as construction equipment or trucks, is within New Jersey based on the ratio of time the property is used within the state to the time the property is used everywhere during the period covered by the return.

4. Ships are within New Jersey based on the ratio of time the vessels are in operation in New Jersey to the time the vessels are in operation everywhere, and including all sailing days, days in port for loading, unloading, ordinary repairs, refueling or provisioning as operation.

5. Aircraft used by airlines are within New Jersey based on the ratio of takeoffs in regular scheduled or charter flights that occur during revenue service from points in New Jersey to the total of all such takeoffs everywhere. Aircraft used other than by airlines in revenue service are within New Jersey based on the ratio of takeoffs from points in New Jersey to the total of all takeoffs everywhere when the aircraft are in use.

6. Consistent with N.J.S.A. 54:10A-6(b), satellites used in the communications industry are included in the denominator of the property fraction but the numerator shall include a portion of such property based upon the ratio of ground stations serviced in New Jersey to the number of all such ground stations.

(c) Tangible personal property in transit.

1. Property in transit from a point in New Jersey to another point in New Jersey is situated or located in New Jersey.

2. Property in transit from a point outside New Jersey to another point outside New Jersey is situated or located without New Jersey.

3. Property, while in transit from a point outside New Jersey to a point in New Jersey or vice-versa does not have a fixed situs either within or without the State and, therefore, will not be deemed to be "situated" or "located" either within or without New Jersey and accordingly, such property while so in transit should be omitted from both the numerator and the denominator of the property fraction.

4. Property ceases to be in transit when it is delivered to or becomes subject to actual possession by the owner at the point of destination.

Amended by R.1987 d.137, effective March 16, 1987.
See: 18 N.J.R. 627(a), 19 N.J.R. 464(a).
(b)3.-6. added.
Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Changed section name.

Statutory References

See: N.J.S.A. 54:10A-6(A) as to computation of the property fraction.

Case Notes

Tax benefits obtained through safe harbor leases do not constitute "real intangible personal property" for purposes of Corporation Business Tax Act which permits corporation to include only its real and tangible personal property in the property fraction of the formula used for determining that portion of the corporation's net income and net worth attributable to its activity within the state. Reuben H. Donnelley Corp. v. Director, Div. of Taxation, 128 N.J. 218, 607 A.2d 1281 (1992).

18:7-8.5 Business allocation factor; property fraction derived from average values

(a) The percentage of the taxpayer's real and tangible personal property within New Jersey is determined by dividing the average value of such property within New Jersey by the

average value of real and tangible personal property within and without New Jersey.

1. Average values in both the numerator and denominator shall be determined without deduction of any encumbrance.

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

(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.

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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. "Postapportionment 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. Notwithstanding the foregoing, for privilege periods beginning on or after July 1, 2010, 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 are not required to be excluded from the denominator of the sales fraction found in N.J.S.A. 54:10A-6(B).

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:

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

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

Property		Payroll		Double Receipts		Allocation Percentage
$\left(\frac{80}{100}\right.$	+	$\frac{80}{100}$	+ $\frac{30}{60}$	+	$\left.\frac{30}{60}\right) \div 4 =$	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).
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (d), inserted a comma following "jurisdictions" and inserted the last sentence.

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 trans-shipped 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 = 80% x $300 (net gain) = $240
Total Gains $500

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- = 0% x $300 (net gain) = -0-
Total Gains $500

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 = 100% x $300 (net gain) = $300
Total Gains $500

(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 taxpayer's 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 Agree-

ment 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)4ii 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.
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (c)4ii(1), inserted a comma preceding "such" and following "trailers", and substituted "(c)4ii" for "(c)4iii".

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.)

(c) Wages, salaries and other compensation are computed on the cash or accrual basis, in accordance with the method of accounting used by the taxpayer in reporting for Federal income tax purposes.

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-6(c) as to treatment of wages, salaries and other personal service compensation of taxpayer's employees.

18:7-8.14 Definition of officers and employees

(a) Those officers and employees whose wages, salaries and other personal service compensation are required to be included in the computation of the payroll fraction of the business allocation factor include every individual, officer and general executive officer whose relationship with the taxpayer is that of employee and employer.

(b) Generally, the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by him but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method or designation of the compensation, are immaterial.

(c) Compensation paid to officers, such as the Chairman, President, Vice-President, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, Comptroller, and any other officer charged with and performing general executive duties of the corporation must also be included.

(d) A director of a corporation is not an employee; therefor compensation paid to directors for acting as such should not be included in either the numerator or denominator in computing the payroll fraction.

Statutory References

See N.J.S.A. 54:10A-6(c) as to includibility of wages, salaries, and other personal service compensation of officers of taxpayer, and 54:10A-7 as to definition and scope of "compensation" of officers and employees.

18:7-8.15 Compensation of officers and employees within New Jersey

(a) Compensation of officers and employees within this State shall include the entire amount of wages, salaries and other personal service compensation for services performed within or both within and without this State if:

1. The service is performed entirely within this State; or

2. The service is performed both within and without this State, but the service performed without the State is incidental to the individual's service within the State. For example, service which is temporary or transitory in nature or which consists of isolated transactions;

3. The service is not performed entirely in any state but some of the service is performed in this State; and

i. The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this State; or

ii. The base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State;

4. Contributions are not required or paid with respect to such service under an unemployment compensation law of any other state.

Statutory References

See N.J.S.A. 54:10A-6(C) as to includibility of compensation of officers of taxpayer, and 54:10A-7 as to definition and scope of "compensation" of officers.

18:7-8.16 Allocation: International Banking Facilities

Any banking corporation, having an international banking facility, which maintains a regular place of business (other than a statutory office) outside of New Jersey, which elects to take the deduction from entire net income provided by N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor under this subchapter in the usual way. For the purpose of allocation, however, all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in N.J.A.C. 18:7-16.1, shall be included in both the numerator and denominator of the fractions described in this subchapter, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

(See: N.J.A.C. 18:7-16 regarding international banking facilities.)

R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-8.17 Non-operational income

Non-operational income of taxpayers is not subject to allocation but shall be specifically assigned. One hundred percent of non-operational income from taxpayers having their principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State, unless another state has nexus to all of the income.

New Rule, 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).
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.

Law Review and Journal Commentaries

Unitary Taxation in New Jersey. John Mackay Metzger, 28 Seton Hall L. Rev. 162 (1997).

18:7-8.18 (Reserved)

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. SECTION 8 ADJUSTMENTS

18:7-10.1 Discretionary adjustments of business allocation factor by Director

(a) Generally, the allocation formula described in this chapter will result in a fair apportionment of the taxpayer's net worth and net income within and without New Jersey. However, experience in this and other states which impose similar franchise taxes has shown that due to the nature of certain businesses the formula may work hardships in some cases, and not do justice either to the taxpayer or the State. Accordingly, provision is made in such cases for the Director to use some other formula which will more accurately reflect the business activity within New Jersey.

(b) Section 8 of the Act provides that where it shall appear to the Director that the business allocation factor, determined pursuant to Section 6 of the Act, does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of a taxpayer reasonably attributable to New Jersey, he may in his discretion adjust the business allocation factor by:

1. Excluding one or more of the fractions therein;

2. Including one or more other elements, such as expenses, purchases, contract values (minus subcontract values);

3. Excluding one or more assets in computing entire net worth;

4. Excluding one or more assets in computing an allocation factor; or

5. Applying any other similar or different method calculated to effect a fair and proper allocation of the entire net income and the entire net worth reasonably attributable to the State.

(c) Adjustment of the business allocation factor may be made by the Director upon his own initiative or upon request of a taxpayer.

1. No taxpayer may vary the regular statutory formula without the prior consent of the Director.

2. A taxpayer making application for an adjustment of its business allocation factor must file its return and compute and pay its tax in accordance with the regular statutory formula.

3. The taxpayer must also attach a rider to the return with a Form A-3730 setting forth in full the data on which its application is based, together with a computation of the amount of tax which would be due under the proposed method.

Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Addition of form number to requirements at (c)3.

Statutory References

See N.J.S.A. 54:10A-8 as to right of Director to readjust taxpayer's business allocation factor when he believes it to be inaccurate.

Case Notes

Essence of N.J.A.C. 18:7-10.1(a) is that the Director of the Division of Taxation has discretion to adjust the business allocation factor to accurately reflect business activity in New Jersey when N.J.S.A. 54:10A-6 does not properly reflect this activity; the regulation is not inconsistent with the scope of authority of the Director as defined in common law. Brunswick Corp. v. Dir., Div. of Taxation, 11 N.J. Tax 530, 1991 N.J. Tax LEXIS 13 (Tax Ct. 1991), affirmed by 13 N.J. Tax 136, 1993 N.J. Tax LEXIS 54 (App.Div. 1993).

Apportionment of 100 percent of a taxpayer's income to New Jersey under N.J.S.A. 54:10A-8, and allowance for a credit for taxes actually paid to other states, instead of applying the more favorable formula under N.J.S.A. 54:10A-6, was constitutional under both the Due Process and Commerce Clauses; the Corporation Business Tax (CBT) applied to the taxpayer was internally and externally consistent since it did not lead to a grossly distorted result. Based on various apportionment factors, there was a sufficient nexus between the taxpayer's business activities and New Jersey such that the CBT passed Due Process analysis, and the 100 percent apportionment with regulatory credits given for taxes paid to other states was rationally related to the taxpayer's activities conducted in New Jersey. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

Taxpayer was denied a refund of taxes paid, pursuant to New Jersey's Corporation Business Tax, N.J.S.A. 54:10A-1 through 54:10A-32, as the taxpayer failed to meet its burden of proving that it maintained a regular place of business outside of New Jersey, based on an employee's home office in the State of Connecticut, to entitle it to apportion its income under the more favorable formula set forth in N.J.S.A. 54:10A-6. Instead, the Director of the New Jersey Division of Taxation properly apportioned 100 percent of the taxpayer's income to New Jersey under N.J.S.A. 54:10A-8 and allowed for a credit for taxes actually paid to other states. N.J. Natural Gas Co. v. Director, Div. of Taxation, 24 N.J. Tax 59, 2008 N.J. Tax LEXIS 9 (Tax Ct. 2008).

Three-factor formula would be used in determining fairness of Director's adjustment of allocation of corporate income. Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

Statutory three-factor formula was applicable when evaluating allocation where corporation received partial credit for taxes paid to other states. Hess Realty Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

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).

18:7-10.2 through 18:7-10.3 (Reserved)

SUBCHAPTER 11. RETURNS

18:7-11.1 Returns; corporations required to file

(a) Returns are required to be filed annually by the following:

1. Every corporation subject to tax, regardless of the amount of its entire net income. (See N.J.A.C. 18:7-1.6, Taxable status; how created.)

2. Every 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 subject to tax 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-2 as to those corporations deemed liable to tax under the Act; 54:10A-4 as to definition of "corporation" and of "taxpayer", and 54:10A-11 as to receivers and others conducting the business of a corporate taxpayer who are subject to tax under the Act.

18:7-11.2 Returns where Federal net income is changed

If the amount of the Federal net income of any taxpayer is changed or corrected by a final determination of the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in said net income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer is required to report its changed or corrected net income or the results of renegotiation and to concede its accuracy or state where it is erroneous.

Statutory References

See N.J.S.A. 54:10A-13 taxpayer report any change correction, or recomputation of its amount of Federally taxable income to New Jersey Corporation Tax Bureau.

18:7-11.3 Effect of deficiency notice

(a) Any deficiency notice (including a notice issued pursuant to a waiver filed by a taxpayer) pursuant to the provisions of the Internal Revenue Code is a final determination unless a timely petition to redetermine the deficiency is filed in the Tax Court of the United States, in which event the judgment of the court of last resort affirming the deficiency, or the redetermination of the deficiency pursuant to the judgment of the court of last resort, is the final determination.

(b) The allowance by the Commissioner of Internal Revenue of a refund of any part of the tax shown on the taxpayer's return or of any deficiency thereafter assessed, whether the refund is made on the Commissioner's own motion or pursuant to judgment of a court, is also a final determination.

(c) A taxpayer who for any reason accepts any portion of a deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code is required to report that portion of the deficiency accepted within 90 days in accordance with N.J.A.C. 18:7-11.8 and N.J.S.A. 54:10A-13.

(d) Only the portion of any deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code that is the subject of a timely petition for redetermination in the Tax Court of the United States may delay the reporting requirements set forth in N.J.A.C. 18:7-11.8 and then only to the extent permitted by (a) above.

Example: The Internal Revenue Service redetermined the net income of a taxpayer's 1983 tax return based on three separate issues, A, B and C. These three issues resulted in increases in net income for New Jersey purposes of $5,000, $30,000 and $110,000 respectively. The taxpayer accepted Issue A resulting in a $5,000 increase in income for New Jersey purposes and requested a hearing before the IRS on Issues B and C. The taxpayer has 90 days from the issuance of the deficiency to report Issue A to the Division of Taxation.

Six months later, the IRS issues a determination that it intends to hold to the entire amount represented by Issues B and C. The taxpayer accepts the determination on Issue B, but appeals Issue C to the Tax Court of the United States. The taxpayer has 90 days from the issuance of the IRS determination to report the $30,000 increase in net income represented by Issue B to the Division.

One year later, the Tax Court issues an unfavorable decision to the taxpayer on Issue C. The taxpayer accepts the verdict and decides not to appeal the issue any further. The $110,000 represented by Issue C must be reported to the Division within 90 days of the court decision.

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.102, effective February 5, 1990.
See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).
Added subsections (c) and (d) and example.

Statutory References

See N.J.S.A. 54:10A-13 as to requirement that taxpayer report any change of amendment in his federally taxed net income to Division of Taxation.

18:7-11.4 Amended return

Any taxpayer filing an amended return with the United States Treasury Department shall also file an amended return with the Division of Taxation. See N.J.A.C. 18:7-11.8.

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-13 to requirement that taxpayer report any amended return for his Federally taxable net income to New Jersey Division of Taxation.

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 Federal report by filing an amended CBT-100 or amended CBT-100S return. To amend CBT-100 or CBT-100S returns, use a CBT-l00 or CBT-100S form for the appropriate tax year and write "AMENDED RETURN" clearly on the front page of that form.

(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 amended CBT-100 or amended CBT-100S return, 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).
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
Rewrote (a); and in (c), substituted "an amended CBT-100 or amended CBT-100S return" for "an IRA-100, or CBT-100-X".

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.

18:7–11.12 Extension of time to file return; interest and penalty

(a) No extension will be granted unless request is made on Tentative Return Form CBT–200T and is actually received by the Division or postmarked on or before the due date of the return. The Tentative Return must:

1. Show the information required, including the exact name, address, New Jersey serial number, the Federal employer identification number, if any, and the amount of the estimated tax liability;

2. Be accompanied by a remittance to cover the unpaid balance of the estimated tax due for the accounting year for which an extension of time to file the return is requested; and

3. Be accompanied by the payment on account of its tentative tax which is due on or before the original due date for filing of the return for which an extension is requested.

(b) Taxpayers using the New Jersey Corporation Business Tax Return Form CBT–100 may request an extension for a period not exceeding six months and will receive automatic approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return Form CBT–200T, and has paid any unpaid balance of its estimated tax.

1. In general, extension requests shall not be granted for any period exceeding six months from the original due date.

2. Initial extensions will be confirmed in writing by the Division.

3. If the final return is not submitted within the extended period, penalties for delinquent filing will be applied as if no extension has been granted.

(c) Banking and financial corporations may request an extension of time to file return subject to the following conditions.

1. No extension will be granted unless request is actually received by the Division or postmarked on or before the due date of the return;

2. The extension shall be made on a copy of page 1 of Form BFC–1, including the exact name, address, New Jersey Serial number, if applicable, the Federal employer identification number, if any, and the amount of tentative tax liability.

3. Be accompanied by a remittance to cover the unpaid balance of the tentative tax due for the accounting year for which an extension of time to file the return is requested; and

4. Be accompanied by a completed copy of Schedule L from Form BFC–1, and a copy of the taxpayer's Federal extension request.

5. In general, extension requests shall not be granted for any period exceeding five months from the original due date.

6. Where the taxpayer has requested a Federal extension, the Division shall grant the taxpayer an extension for a period not exceeding five months. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a two month extension for filing the return if sufficient cause is submitted. Sufficient cause should be interpreted so that it is impossible or wholly impracticable to file a return within two months from the original due date of the return.

(d) Extensions may be confirmed in writing by the Division, if necessary.

(e) If the original return is not submitted within the extended period, penalty for delinquent filing will be applied as if no extension has been granted.

(f) Interest and penalty are chargeable as follows:

1. The total amount of the tax due must be paid on or before the original due date for filing the return.

2. Any unpaid portion of the tax on the final return which is in excess of the amounts paid shall bear interest at the rate of one and one-half percent per month, or fraction thereof from the original due date of the return to the date of actual payment or December 8, 1987. On and after December 9, 1987 the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment. On and after July 1, 1993, the unpaid portion of the tax shall bear interest at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

3. In addition, if the amounts paid up to and including the time for filing of the tentative return total less than the lesser of 90 percent of the amount of tax due, or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a tax liability equal to the tax computed at the rates applicable to the current accounting year applied to the facts shown on the return for and the law applicable to the preceding accounting year, the taxpayer shall be liable for a penalty of five percent per month, or fraction thereof, on the amount of underpayment. In this context, "filing of the return" means filing its tentative return incident to its request for extension, "the time for filing" means the original due date for filing the return, and "amount of underpayment" means the difference between 100 percent of the tax shown on the final return and the total of all installments of estimated tax paid on or before

the original due date for filing the return, as well as any amount paid with the tentative return.

(g) Where taxpayer makes an election on Federal form 8023, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that a CBT–200T has been properly filed in accordance with these rules.

(h) Warning:

1. No request for extension will be considered unless taxpayer has complied with all the filing requirements for extensions set forth in the rule.

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 on an emergency basis, R.1981 d.163, effective May 11, 1981.
Expired July 10, 1981, without readoption.
See: 13 N.J.R. 377(a).
Rule substantially amended to provide for the imposition of interest and penalties on Corporation Business Tax payments made during additional extended period for which an additional extension was granted.
As amended, R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
Section substantially amended.
Amended by R.1983 d.497, effective November 7, 1983.
See: 15 N.J.R. 1366(a), 15 N.J.R. 1872(c).
Text substantially amended.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added text to (f) "or December 8, 1987. On . . .".
Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (g), recodified old (g).
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 the requirement to file an annual return; 10A–17 as to penalties for late filing of returns; 10A–15 as to necessity of certification of taxpayer's return by an authorized corporate officer; 10A–19 as to extension of the due date and interest to be assessed during such extension period; and 49–6 as to right of Director to issue deficiency assessments or reassessments after final return is filed.

18:7–11.13 Place for filing returns and payment of tax

(a) The return together with remittance payable to "State of New Jersey" must be forwarded to the New Jersey Division of Taxation, CN666, Trenton, New Jersey 08646.

(b) A separate remittance is required to be made with each return.

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–15, 18 as to manner and form of tax payment.

18:7–11.14 Secrecy of returns

The returns are deemed secret and confidential and New Jersey law prohibits the unauthorized disclosure of information obtained from the returns or the records pertaining thereto.

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. 54:50–8 as to prohibition against Director or any employee of the Division of Taxation divulging, disclosing, or permitting another to inspect any records or files pertaining to the administration of the tax under the Act.

18:7–11.15 Consolidated returns

(a) Corporations are not permitted to file consolidated returns. Provided, however:

1. Any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof holding a license pursuant to the Casino Control Act shall file a consolidated corporation business tax return as described at N.J.A.C. 18:7–1.17;

2. An air carrier, within the meaning of the term pursuant to 49 U.S.C. § 40102 may elect to file a consolidated return pursuant to N.J.S.A. 54:10A–18.1; and

3. The Director may require consolidated filing pursuant to N.J.S.A. 54:10A–10 and N.J.A.C. 18:7–5.11.

(b) Except as provided in (a) above, where a taxpayer has filed a consolidated return with the Internal Revenue Service for Federal income tax purposes, it must complete its return under the act and must reflect its entire net income and entire net worth as if it had filed its Federal return on its own separate basis.

(c) A taxpayer under (b) above shall also file a copy of the Affiliations Schedule Form 851, which is filed with Form 1120 for Federal income tax purposes.

Amended by R.1985 d.453, effective September 3, 1985.
See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).
Added text to (a): "Provided, however, any... at N.J.A.C. 18:7–1.17."
Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (d) and (e).
Amended by R.1996 d.378, effective August 5, 1996.
See: 28 N.J.R. 2515(a), 28 N.J.R. 3810(a).
Deleted provisions relating to gain on the sale of target stock under IRC 338(h)(10).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote (a).
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 Reviews

How New Jersey treats the acquisition of assets. John M. Metzger, 147 N.J.L.J. 1356 (1997).

Statutory References

See N.J.S.A. 54:10A–2 as to requirement for annual payment of tax and 10A–14 as to right of Director to require copies of pertinent extracts of its Federal income tax return or other records if taxpayer has filed a consolidated Federal income tax return.

Case Notes

Gain recognized by wholly owned subsidiary as result of parent corporation's federal tax law election to treat sale of subsidiary's stock as sale of subsidiary's assets, and to file consolidated tax return, was subject to tax under Corporation Business Tax Act. General Bldg. Products Corp. v. Director, Div. of Taxation, 15 N.J.Tax 213 (A.D. 1995).

Regulations were valid. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

State's prohibition against filing of consolidated income tax returns by related corporations does not immunize subsidiary corporation from state taxation of any gain realized as result of deemed sale of its assets. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994) affirmed 15 N.J. Tax 213.

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).

The term "books of the corporation" includes financial statements prepared in accordance with applicable regulations in the sense encompassed by the term "financial reporting"; definition of the term by rule not necessary due to adequate legislative standard; Director's equity method of accounting in valuation of corporation's investments and subsidiaries not demonstrated to be unfair. Cities Service Co. v. Director, Div. of Taxation, 5 N.J.Tax 257 (Tax Ct.1983).

18:7–11.16 Return to be filed by an S Corporation

(a) Except as may be provided otherwise by this Section, an S corporation, that is, one which has made an election under Section 1361 et seq. of the Internal Revenue Code of 1954 as amended and supplemented, must complete its New Jersey Corporation Business Tax Return on its own separate basis as though no election had been made under the Federal Statute.

(b) Except as may be provided otherwise by this section, in preparing its Corporation Business Tax Return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey Corporation Business Tax purposes, when the taxpayer has elected Federal S corporation treatment. Certain amounts not necessarily limited to I.R.C. Section 179 expenses, and 1120–S dividends that qualify for the dividend exclusion are not included as part of the S corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K–1 Schedule. For Corporation Business Tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C corporation and no Federal S corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of $100,000. However, not included in computation of such amount is a $5,000 Federal I.R.C. Section 179 expense and $10,000 of S Corporation dividends received from a different corporation which qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT–100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

$100,000	Federal Taxable Income
(5,000)	I.R.C. Section 179 Expense
10,000	Qualifying S Corporation Dividends
$105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. Section 337. When disposing of its real property during the 12 month distribution period, the corporation recaptures for Federal tax purposes $5,000 of I.R.C. Section 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the Federal I.R.C. Section 337 election and the I.R.C. Section 1363(b) election. Since the S Corporation is treated as a C Corporation for State tax purposes, the I.R.C. Section 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT–100.

(c) With respect to tax years beginning after July 7, 1993, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. The filing of an election form CBT–2553 with the Division to be recognized as a New Jersey S corporation is required. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided in N.J.S.A. 54:10A–5(c)(2) and (3) and to report and pay its tax liability on Form CBT–100S.

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.1986 d.464, effective November 17, 1986.
See: 18 N.J.R. 1686(b), 18 N.J.R. 2332(a).
(b) added.
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 requirement for annual filing of return under this Act despite other arrangements for filing a Federal return.

Case Notes

Foreign S corporation's distribution to New Jersey taxpayer would be treated as if received from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 639 A.2d 301, 135 N.J. 301.

Absent other evidence, distribution from foreign S corporation to New Jersey taxpayer would be treated as from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 639 A.2d 301, 135 N.J. 301.

Pass-through losses and gains are to be excluded when calculating net gains and losses. Walsh v. State, Dept. of the Treasury, Div. of Taxation, 10 N.J. Tax 447 (1989), affirmed and remanded 240 N.J.Super. 42, 572 A.2d 222.

18:7–11.17 Copies of tax returns or other information required

(a) The Director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return made to any agency of the Federal Government, or of this or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or securities exchange regulation.

(b) The Director may require all taxpayers to keep whatever records he may prescribe, and he may require the production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the tax and its enforcement and collection.

(c) The Director may, also by general rule or special notice, require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax pursuant to such regulations, at whatever times and in whatever form or manner and to whatever extent he may prescribe under law.

(d) Certain corporations that are member affiliated or controlled groups may be required to file consolidated returns pursuant to N.J.S.A. 54:10A–10. See N.J.A.C. 18:7–5.11.

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added (d).
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–14 as to right of the Director to require taxpayer to submit pertinent extracts for its Federal income tax return, other returns to government agencies, or other records.

18:7–11.18 Reproduction of forms

(a) Subject to conditions and requirements of this section, the Director will accept for filing purposes reproductions of the New Jersey Corporation Business Tax Return Forms CBT–100, CBT–100–X, and CBT–200T in lieu of the official forms printed and furnished by the Director. Anyone contemplating the use of reproduced forms is cautioned to observe that the conditions herein stated may vary from the Federal regulations relating to reproduction of Federal tax forms.

(b) In order to be acceptable for filing purposes, reproduction of Forms CBT–100, CBT–100–X, and CBT–200T must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official form, produced by photo-offset, photo-engraving, photo-copying or other similar reproduction processes;

2. Reproductions must be on paper of substantially the same color, weight and texture and of a quality at least as good as that used in the official form;

3. Reproductions must be of the same size as that of the official form, both as to overall dimensions of the paper and the imagery produced;

4. Format of pages shall adhere to following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable.

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each individual page and the fold must be the same as on the official form.

iii. Separate pages must be fastened together in numerical order.

iv. Each separate page must be clearly identified, by listing at the top of the page the corporate name and New Jersey serial number.

5. The color and quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible;

6. The taxpayer's full and correct name and address and identifying serial number as it appears on the prestenciled form furnished by the Director must be typed or printed on the reproduction;

7. All filled-in information on Page 1 of the Return must be typed or printed;

8. Reproductions of forms may be made after insertion of the tax computations and the other required information;

9. All signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process;

10. The Director does not undertake to approve or disapprove the specific equipment or process in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostats do not meet all the above conditions;

11. The Director does not undertake to approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white with hand writing of satisfactory legibility.

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 authority of Director to design tax return forms and determine the information to be required thereon.

18:7-11.19 Electronic filing and payment

(a) For tax years beginning on or after January 1, 2015, tax preparers who file corporation business tax returns must file corporation business tax returns and, if such preparer is instructed by the taxpayer to make all payments of corporation business tax, including estimated payments, such preparer must make those payments electronically.

(b) For tax years beginning on or after January 1, 2016, taxpayers that are subject to the corporation business tax and submit their own returns must file their corporation business tax returns electronically. Payments of corporation business tax liabilities, including estimated payments, must be made electronically whether remitted directly by the taxpayer or by the tax preparer as instructed by the taxpayer.

(c) "Tax preparer" means as defined in N.J.S.A. 54:48-2.

(d) As a result of changes in technology, the Division will determine which electronic filing methods satisfy the requirements imposed in this section. The Division will provide notice as to the authorized electronic filing methods by publication on the Division's website and through other means as the Director may deem appropriate.

New Rule, R.2015 d.015, effective January 20, 2015.
See: 46 N.J.R. 1591(a), 47 N.J.R. 275(a).
Section was "Reserved".

18:7-11.20 through 18:7-11.21 (Reserved)

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7-12.1 Short period returns; when required

(a) In general, every corporation must file a return for each fiscal or calendar accounting period or part thereof during which it has or had a taxable status in New Jersey. In certain cases, the taxpayer will be required to file a return covering an accounting period of less than 12 months. This may necessitate an adjustment of entire net income.

(b) Some of the circumstances which require the filing of short period returns are:

1. A newly organized corporation whose first accounting period established for Federal income tax purposes is less than 12 months;

2. A foreign corporation which acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey Corporation Business Tax return embraces a period less than the accounting period reported upon the Federal income tax purposes;

3. Corporations which dissolve, merge, consolidate, withdraw, surrender or otherwise cease to have a taxable status in New Jersey prior to the close of a full twelve months accounting period;

4. A corporation which changes its accounting period.

(c) If a corporation ceases to exist as the result of an action such as a merger or if its New Jersey S status terminates, for example, the short period return for the disappearing corporation or corporation losing its New Jersey S status would be due on the 15th day of the 4th month after the close of the short year ending on the date of the merger or on the day before the S corporation disqualifying event.

Example: A corporation had been granted New Jersey S status for the period beginning January 1, 1998. The election terminated on April 6, 1998 due to merger. The due date for the return for the short period January 1, 1998 to April 6, 1998 (that is, through the close of business on the date that the merger occurs) is August 15, 1998 which is the 15th day of the 4th month after the close of the period. An automatic six-month extension of the time to file the CBT-100S is available by making a tentative return and paying the tentative tax on form CBT-200T by August 15, 1998.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
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.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
Rewrote (c); and added (d).
Amended by R.2004 d.367, effective Oct. 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Deleted existing (c); recodified (d) as (c).

Cross References

As to the requirements which must be met in order to obtain a change in accounting period, see Change of accounting period, N.J.A.C. 18:7-11.5.

Statutory References

See N.J.S.A. 54:10A-4 as to to definition of "fiscal year" and "privilege period"; 10A-17 as to right of Director to independently determine entire net worth and entire net income when the period covered by the taxpayer's report is other than that covered by his Federal income tax report or when it is a short period.

Case Notes

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

18:7-12.2 Short period returns; proration procedures

(a) Where a short period return is required, the entire net income is permitted to be prorated as follows:

1. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.

2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the number of calendar months or parts thereof covered by the Federal Income Tax Return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.

3. With respect to net income, a foreign corporation whose short period return under the Act covers the same period as the accounting period reported upon for Federal income tax purposes shall not be entitled to prorate its adjusted entire net income.

4. Where a taxpayer is entitled and elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7-12.3.

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-2 as to requirement to file a return under Act for each year taxpayer holds franchise; 10-4 as to definition of allocation factor, net worth, and net income; 10A-5 as to how taxpayer shall compute the amount of tax payable; 10A-6 as to how taxpayer maintaining place of business outside New Jersey shall compute his entire net income and entire net worth; 10A-15 as to fiscal or calendar accounting periods required; and 10A-17 as to right of Director to independently determine entire net worth and entire net income of taxpayer making short period report.

18:7-12.3 Short period returns; allocation

(a) In the case of a taxpayer entitled and electing to allocate less than the full amount of its entire net income to New Jersey, the applicable allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return.

(b) In that case, the allocation factors shall be applied to entire net income only after such entire net income shall have been prorated as indicated in N.J.A.C. 18:7-12.2.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
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.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Deleted (c).

Statutory References

See N.J.S.A. 54:10A-6 as to how taxpayer maintaining regular place of business outside New Jersey shall compute his entire net income, entire net worth, and 10A-17 as to right of Director to independently determine entire net income, entire net worth of taxpayer making short period return.

18:7-12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7-13.1 Assessment and reassessment

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1. The Director shall cause the return to be examined and shall make any audit or investigation or reaudit he may deem necessary;

2. If the Director determines that there is a deficiency with respect to payment of any tax due under the Act, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon it for payment;

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment. On and after July 1, 1993, interest shall be calculated at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

4. If the failure to pay tax when due is explained to the satisfaction of the Director, the Director may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate.

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of

limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect. For tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1. In the case of a false or fraudulent return with intent to evade the tax, the Director may assess the tax at any time.

2. Where no return has been filed as provided by law, the Director may make an estimate of the tax and assess the same at any time.

3. For tax liabilities accruing prior to July 1, 1993, where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For tax liabilities accruing on and after July 1, 1993, the period to assess additional tax is four years.

(c) Where, before the expiration of the period prescribed by law for the assessment of any additional tax, a taxpayer has consented in writing that such period may be extended, the amount of any additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(d) If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in the taxable income, or if a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer shall file a report of the change or correction or an amended return within 90 days after the final determination of any change, correction, renegotiation, computation, or recomputation.

(e) For reports or returns filed prior to July 1, 1993, and within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, but without changing the allocation of entire net income within and without New Jersey as previously computed, and shall so notify the taxpayer. For tax liabilities accruing on and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date of filing the report of change or correction or an amended return. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

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.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added text in (a)3 "December 8, 1987. On ..."; changed percentage points in (a)4 from "three quarters of one percent per month" to "three percentage points above the prime rate, compounded daily."
Administrative Correction: Incorporated (d)1 into (d) and deleted (d)2-3.
See: 22 N.J.R. 3504(a).
Amended by R.1992 d.404, effective October 19, 1992.
See: 24 N.J.R. 3275(a), 24 N.J.R. 3733(a).
Revised (a)4.
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.499, effective September 5, 1995.
See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Cross References

See Additional tax; change in Federal tax, N.J.A.C. 18:7-11.2, 18:7-11.3, 18:7-11.4, 18:7-11.6, 18:7-13.7.

Statutory References

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under the Act should a change, correction, or recomputation of Federally taxable income occur, and 49-6 as to Director's right to recompute and reassess any such deficiency assessment filed by taxpayer.

Case Notes

Computation of interest mitigated by absence of fraud. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

Taxpayer who sought corporate business tax refund while assessment periods for relevant tax years remained open was entitled to offset prior year deficiency against its overpayment. Sharps, Pixley, Inc. v. Director, Div. Of Taxation, 16 N.J.Tax 626 (1997.)

18:7-13.2 Hearing; protest

(a) Rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 90 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:32-1.2, and may request a hearing; and

2. Thereafter the Director shall grant an informal hearing to the taxpayer, if requested.

(b) Hearings before the Division of Taxation are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

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.1991 d.23, effective January 22, 1991.
See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).
Reference to N.J.A.C. 18:1-1.8 added; (b), regarding powers of Director, deleted; (c) recodified to (b).
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: 40 N.J.R. 4605(a).

Statutory References

See N.J.S.A. 54:49-18 as to procedures and time limits for filing a protest against any assessment under the Act, and taxpayer's right to a hearing thereon.

18:7-13.3 Appeal

(a) Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

(b) The filing of a complaint by a taxpayer in the Tax Court shall suspend the running of the statute of limitations for the contested issue or issues for all subsequent privilege periods.

Amended by R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Reference to State Tax Uniform Procedure Law added. Text at (b) and (c) deleted in entirety.
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Designated existing paragraph as (a) and added (b).
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.

Case Notes

Time and security requirements for Corporation Business Tax Act appeal (citing former rule as N.J.A.C. 17:18-1.23); failure to post security did not deprive Division of Tax Appeals of jurisdiction. General Trading Co., Inc. v. Director, Div. of Taxation, 83 N.J. 122, 416 A.2d 37 (1980).

18:7-13.4 Service of notice on taxpayers

(a) Any notice required to be given by the director pursuant to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by that person pursuant to the provisions of the State Tax Uniform Procedure Law, or of any State tax law, or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. A notice may at the prescription of the director include on its face a designation which shall identify the notice for purposes of communication.

(b) An assessment notice pursuant to N.J.S.A. 54:49-5, N.J.S.A. 54:49-6 or N.J.S.A. 54:49-7 shall contain the statements required pursuant to subsections a, b, and f of N.J.S.A. 54:48-6.

(c) An assessment notice pursuant to N.J.S.A. 54:49-5, 54:49-6 or 54:49-7 shall include a statement of the reason for the assessment sufficient to inform a reasonable lay person of the statutory requirements which in the opinion of the Director require the assessment, the actions or omissions of the taxpayer which require the assessment, or the nature of the insufficient documentary evidence, if any, which has prompted the assessment, including:

1. In the case of an underpayment or failure of payment, a statement of the corresponding alleged correct amount and correct date of payment; and

2. In the case of a failure to file a return, a statement of the alleged required filing date.

(d) A refund determination notice pursuant to N.J.S.A. 54:49-15 shall include the statements required pursuant to subsections b, d and f of N.J.S.A. 54:49-6.

(e) A final determination notice pursuant to N.J.S.A. 54:48-18 shall include the statements required pursuant to subsections c and f of N.J.S.A. 54:48-6.

(f) The lack of any statement otherwise required to be included with a notice pursuant to this section or the lack of any description otherwise required pursuant to (c) of above shall not invalidate such notice.

(g) All notices of assessment related to final audit determination and "Notice and Demand for Payment of Tax" letters will be sent by registered or certified mail.

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).

Statutory References

See N.J.S.A. 54:50-6 as to form of service of notice required of the Director to be given to the taxpayer.

18:7-13.5 Closing agreements

(a) The Director is authorized to enter into a written agreement with any taxpayer relating to the liability of such taxpayer in respect to any tax, fee, penalty or interest imposed by the Act, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

1. The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this State; and

2. In any suit, action or proceeding, the above agreement, or any determination, assessment, collection, payment, cancellation, refund, abatement or credit made in accordance with it shall not be annulled, modified, set aside or disregarded.

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. 54:53-1 through 54:53-6 as to effect of closing agreements between Director and taxpayer.

18:7-13.6 Time for payment of tax

(a) The annual franchise tax must be paid to the Director in full on or before the due date of the return. For accounting periods ending on or after December 31, 1980, the annual franchise tax, including any estimated or installment payments required to be made pursuant to N.J.A.C. 18:7-3.13 must be paid to the Director in full on or before the due date of the return.

1. For due dates of returns see N.J.A.C. 18:7-11.7;

2. For penalties upon failure to file returns or pay taxes when due, see N.J.A.C. 18:7-14.1 and 2.

(b) Installment payments are due on or before the respective due dates as set forth in N.J.A.C. 18:7-3.13.

(c) A taxpayer which ceases to be subject to tax under the Act must pay the entire tax for each fiscal or calendar accounting period or part of a period during which it had a taxable status. See N.J.A.C. 18:7-11.11.

Amended by R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
(a) Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "For accounting periods ending on or after December 31, 1980 ... return".
(b) added.
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 requirements for use of fiscal or calendar year accounting periods and due dates thereunder.

18:7–13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment on December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of five percentage points above the prime rate to be compounded daily from the date such tax was originally due to the date of actual payment, and on or after July 1, 1993 at the rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year, from the date such tax was originally due to the date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act and its provision, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

(c) For penalties in case of failure to pay tax when due see N.J.A.C. 18:7–14.1 and 14.2.

Amended by R.1986 d.284, effective July 21, 1986.
See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).
(a) substantially amended.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substantially amended (a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
At (a) annual percentage rate changed from five to three percentage points above prime; at (b) language added in parentheses regarding exception on or after December 9, 1987.
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–13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49–6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

18:7–13.8 Claims for refund; when allowed

(a) For claims accruing prior to July 1, 1993, the two-year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For claims accruing on and after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. All claims barred by the two-year statute of limitations on July 1, 1993 shall continue to be barred. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:11.7(b)). For purposes of this section, the term "due date" means the original due date of the return. The term does not mean or include any extended due date.

(b) For claims accruing prior to July 1, 1993, the two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For claims accruing on and after July 1, 1993, the refund claim period is four years.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT–200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (CBT–100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA–100) (or a CBT–100 X for periods ending on or before June 30, 1994) or a Form CBT–100 or CBT–100S for the appropriate tax year, with the words "AMENDED RETURN" clearly written on the front page of the form, is an amended return.

(d) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7–11.8(a) that results in a diminution of entire net income for any year, the two-year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA–100 is filed with the Division. For claims accruing on and after July 1, 1993, the limitation period is an additional four years from the date that taxable income is finally changed or corrected by the Internal Revenue Service. Such claims for refund must be filed with the Division on Form IRA–100. The Division may require additional information in order to properly determine the operative date of the Internal Revenue Service change or correction.

(e) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return

with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7–11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT–100). For claims accruing on and after July 1, 1993, the claim for refund must be filed within four years.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7–13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49–16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49–14.

(g) Where the Director assesses additional tax by way of an additional assessment or final determination and the taxpayer pays the assessment, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim, unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49–14.b and N.J.A.C. 18:2–5.5(c)1.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A–8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7–8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed returns its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7–10.1. In addition, a claim for refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the Director was made on Form CBT–100 X for periods ended on or before June 30, 1994. To claim a refund and amend CBT–100 or CBT–100S returns for subsequent accounting periods, the Form CBT–100 (or the Form CBT–100S for New Jersey S corporations) for the appropriate tax year shall be used. The words "AMENDED RETURN" shall be clearly written on the front page of the form, and it shall be mailed to:

Corporation Business Tax Refund Section
50 Barrack Street
PO Box 259
Trenton, NJ 08695–0259

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent CBT–100. A penalty for late filing of the CBT–100 may be imposed under N.J.S.A. 54:49–4.

Example 2: One year after filing a CBT–100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files an amended tax return claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days, N.J.S.A. 54:10A–13. The periods of limitation to make deficiency assessments under N.J.S.A. 54:49–6 and to file claims for refund under N.J.S.A. 54:49–14 shall commence to run for additional four-year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

Example 3: Taxpayer receives an additional tax assessment with which it disagrees. It does not contest the assessment with the Division or in the Tax Court within 90 days. It pays the assessment within one year after the end of the 90–day protest period and 90–day appeal period and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within four years of having made its payment of the assessment but beyond 450 days after the 90–day protest period expires. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:49–14.a or follow the refund procedure established by N.J.S.A. 54:49–14.b and N.J.A.C. 18:2–5.5(c)1, the claim must be rejected.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49–5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Services (IRA–100) or a CBT–100 marked "AMENDED RETURN" relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Repeal and New Rule, R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Amended by R.1993 d.660, effective December 20, 1993.
See: 25 N.J.R. 1842(a), 25 N.J.R. 5943(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.1995 d.499, effective September 5, 1995.
See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).
Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).
In (a), added the last sentence; in (d), inserted a reference to Form CBT–100–X in the second sentence; and in (i), changed name and address.
Amended by R.2000 d.21, effective January 18, 2000.
See: 31 N.J.R. 2862(a), 32 N.J.R. 311(a).
Rewrote (c)3 and (d); in (h), substituted a reference to claim for refund for a reference to form CBT–100–X; and in (i), rewrote the introductory paragraph and Example 2, and substituted a reference to CBT–100 for a reference to CBT–100–X in Example 4.
Amended by R.2002 d.153, effective May 20, 2002.
See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).
In (g), substituted "assessment" for "additional" preceding ", the taxpayer may" and inserted ", unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49–14.b and N.J.A.C. 18:2–5.5(c)1" following "refund claim"; in (i), rewrote Example 3.
Administrative change.
See: 35 N.J.R. 3847(b).

Statutory References

See N.J.S.A. 54:49–14 as to claims for refunds.

Case Notes

Corporate taxpayer's refund claims relating to abandonment losses, to the extent those losses were allowed in connection with an audit by the Division of Taxation, were not refund claims based on changes by Internal Revenue Service (IRS) in the computation of the corporation's taxable income, for purposes of statute entitling taxpayer to relief based on IRS change, even though revenue agent's report discussed and allowed the abandonment losses. Lenox Incorporated v. Division of Taxation, 19 N.J.Tax 437 (2001).

Even though revenue agent's report (RAR) did not directly change tax corporate taxpayer's liability for certain tax years, the Internal Revenue Service (IRS) changes relating to reallocation of basis necessarily carried over to later years for which returns were filed before the IRS acceptance of the RAR and, thus, by filing timely reports of changes made by the IRS in the computation of its taxable income, taxpayer qualified for the two-year extended refund claim period as to its refund claims for those years based on the IRS changes contained in RAR. Lenox Incorporated v. Division of Taxation, 19 N.J.Tax 437 (2001).

Increase in the amount of corporate taxpayer's abandonment loss resulting from an Internal Revenue Service (IRS) revenue agent's report qualified under statute entitling taxpayer to relief based on IRS change and statute granting extension of the refund claim period. Lenox Incorporated v. Division of Taxation, 19 N.J.Tax 437 (2001).

Regulation requiring compliance with an express statutory filing requirement, as a part of interpreting the statute to extend the time period for refund claims based on changes made by the Internal Revenue Service (IRS) in computation of corporation's taxable income, is inherently reasonable. Lenox Incorporated v. Division of Taxation, 19 N.J.Tax 437 (2001).

Tax Court would not exercise its equitable jurisdiction and treat corporate taxpayer's reports of changes made by the Internal Revenue Service (IRS) in the computation of corporation's taxable income, which were filed one day late, as timely, where taxpayer completed its reports of changes in a timely fashion, and had the opportunity to file them with the Director of Division of Taxation within the applicable 90-day period, but failed to exercise diligence by electing to use regular certified mail instead of hand or overnight delivery. Lenox Incorporated v. Division of Taxation, 19 N.J.Tax 437 (2001).

Taxpayer failed to carry its burden of demonstrating that there was no conceivable state of facts which would have supported provision of regulation requiring corporate taxpayer's timely filing of reports of changes made by the Internal Revenue Service (IRS) in the computation of its taxable income and, therefore, regulation was valid and barred the corporate taxpayer from prosecuting its refund claims. Lenox Incorporated v. Division of Taxation, 19 N.J.Tax 437 (2001).

Corporation business tax refund period began to run from time of payment of tax upon filing of return and not time of payment of penalty and interest assessed by Division of Taxation; refund claim was time barred. Don Dan Const. Co. v. Director, Div. of Taxation, 14 N.J.Tax 569 (1995).

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

Second corporate business tax return triggered limitations period for seeking refund of corporate taxes paid. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Equitable considerations did not entitle corporate taxpayer to extension of limitations period for seeking refund of corporate taxes. 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).

18:7–13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

(b) If there is no liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

(c) If the Director shall reject the claim for refund in whole or in part, he shall make an order accordingly and serve a notice upon the taxpayer.

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than $1.00. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

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. 54:49–15 as to procedures required of the Director should he determine subsequent to the taxpayer's filing of a claim for refund, either that an overpayment has been made or that the claim should be rejected, and 54:49–15.1 as to interest on overpayments.

18:7–13.10 Refund for erroneous payments

(a) Where no questions of fact or law are involved and it appears from the records of the Director that any moneys have been erroneously or illegally collected from any taxpayer or have been paid by any taxpayer under a mistake of fact or law, the Director may at any time within two years of payment, upon making a record in writing of his reasons therefor, certify to the State Treasurer that the taxpayer is entitled to a refund.

(b) The Treasurer shall then authorize payment from the appropriation for this purpose.

Statutory References

See N.J.S.A. 54:49–16 as to right of Director to order a refund of tax overpaid at any time within two years of overpayment.

18:7–13.11 Lien of tax

(a) The tax imposed by the Act, including the required tax prepayment for accounting periods ending March 31, 1968 and thereafter, shall constitute a lien on all the taxpayer's property and franchises on and after January 1 of the year next succeeding the year in which it is due and payable.

1. All interest, penalties and costs of collection which fall due or accrue shall be added to and become a part of this lien;

2. The lien date is not affected by an extension of time which may be granted for filing the return.

(b) Notwithstanding the provisions of any other law, all such taxes, interest, penalties and costs imposed or incurred under the Act, whether levied or assessed or not, shall unless sooner paid continue and remain a lien on all of the taxpayer's property and franchises until the expiration of ten years after January 1 of the year in which they become due and payable.

Statutory References

See N.J.S.A. 54:10A–15 as to requirement for annual payment of tax under the Act, and 10A–16 as to liability of delinquent taxpayer to lien for overdue taxes, interests, penalties, and costs of collection.

18:7–13.12 Release of property from lien

(a) The Director may release any property from the lien of any tax, interest or penalty imposed upon any corporation in accordance with the provisions of the Act, or of any certificate, judgment or levy procured by him, upon written application made to him and upon payment of a $5 fee, provided:

1. Payment be made to the Director of such sum as he shall deem adequate consideration for release; or

2. Deposit be made of whatever security or bond the Director shall deem proper to secure payment of any debt evidenced by any tax, interest, penalty, cost of collection, certificate, judgment or levy, the lien of which is sought to be released; or

3. The Director is satisfied that payment of the tax is otherwise provided for.

(b) The application for release shall be in such form as shall be prescribed by the Director and shall contain an accurate description of the property to be released together with whatever other information the Director may require. The release shall be given under the seal of the Director and may be recorded in any office in which conveyances of real estate may be recorded.

Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added "cost of collection" to (a)2.

Statutory References

See N.J.S.A. 54:10A–30 as to requirements taxpayer must meet to obtain release of his property from lien for overdue corporation franchise taxes.

18:7–13.13 Certificate as to lien for unpaid corporation franchise taxes

(a) Upon the receipt of a written application accompanied by the fee provided for in subsection (b) of this Section, the Director shall issue to the applicant a certificate certifying with respect to the corporation or corporations listed in the application one of the following:

1. That there are no liens in favor of the State for corporation franchise taxes due pursuant to the provisions of the Act; or

2. That there are liens as stated in the certificate; or

3. That there exists some other status which the Director's records disclose.

(b) The fee for a tax lien status certificate shall be $25.00 for each corporation listed in the application for which a certificate is requested.

(c) The form of the application prescribed by the Director requires that it shall contain a concise and reasonably definite description of the property and of the type of transaction in connection with which the application is made, as well as certain other specified pertinent information.

(d) Any person who shall acquire for a valuable consideration an interest in lands covered by such a certificate in reliance thereon shall hold his interest free from any lien held by the State for unpaid corporation franchise taxes due pursuant to the provision of the Act and not shown on the certificate.

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.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Raised the fee for a tax lien status certificate from "$5.00" to "$25.00".

Statutory References

See N.J.S.A. 54:20A–29 as to right to taxpayer to apply for and obtain certificate declaring its status in regard to liens for unpaid corporate franchise taxes.

18:7–13.14 (Reserved)

SUBCHAPTER 14. PENALTIES, MISCELLANEOUS

18:7–14.1 Penalties

(a) Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law (N.J.S.A. 54:48–1, et seq.) and N.J.A.C. 18:2–2.1 et seq.

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.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Deleted text and substituted new.

Statutory References

See N.J.S.A. 54:10A–15 as to due dates for taxes under the Act, and 10A–17(b) as to daily penalties and monthly interest imposed upon delinquent taxpayers.

18:7–14.2 Extension of time; failure to file or pay on time

See N.J.A.C. 18:7–11.12.

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).
Text deleted and replaced by "See N.J.A.C. 18:7–11.12".

Statutory References

See N.J.S.A. 54:10A–19 as to rate of interest imposed upon taxpayer for when granted period of extension to file a return.

18:7–14.3 Arbitrary assessment where taxpayer withholds return

(a) The law provides that if any taxpayer shall fail to file a return as required by law, the Director may make an estimate of the taxable liability of that taxpayer from any information he may obtain; and

(b) According to the estimate so made by him, the Director shall:

1. Assess the taxes, fees, penalties, cost of collection and interest due the State from the taxpayer;

2. Give notice of the assessment to the taxpayer;

3. Make demand upon the taxpayer for payment.

Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added "cost of collection".

Statutory References

See N.J.S.A. 54:49–5 as to right to make an independent assessment of tax liability for taxpayer who fails to report under the Act.

Case Notes

Estimation of corporate business tax procedures applied to examination and audit of filed returns. Peoples Exp. Co., Inc. v. Director, Div. of Taxation, 10 N.J.Tax 417 (1989).

18:7–14.4 Arbitrary assessment where taxpayer intends absconding; concealment, immediate payment demanded

(a) If the Director finds that a taxpayer plans to depart this State or to remove its property or any property subject to the lien of the Corporation Business Tax, from this State or to conceal its property, or such other property, or to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffectual proceeding to assess or collect the tax for which it is liable under the Act, and thus it becomes important that such proceedings be brought without delay, the Director may immediately make an arbitrary assessment as provided in N.J.S.A. 54:49–5 whether or not any report is then due by law.

(b) The Director may proceed under such arbitrary assessment to collect the tax, or compel security for the same, and thereafter shall cause notice of such finding to be given to such taxpayer, together with a demand for an immediate return and immediate payment of the tax.

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. 54:49–7 as to right of Director to make an arbitrary assessment should the taxpayer conceal himself or his property, or abscond.

18:7–14.5 Forfeiture of charter; conditions warranting

(a) If a corporation created under any law of this State shall for two consecutive years fail to pay the State a tax which has been or shall be assessed against it under the Corporation Business Tax Act, the charter of such corporation shall be declared void.

(b) The Secretary of State may for good cause shown to him, give further time for the payment of such tax in which case a certificate shall be filed by the Secretary of State in the office of the Director, stating the reasons for granting an extension.

Statutory References

See N.J.S.A. 54:11–1 as to voiding charter of corporation for delinquent taxes.

18:7–14.6 Forfeiture of charter; procedure

(a) On or before the first Monday in January of each year the Director is required to report to the Secretary of State a list of all corporations which for two years next preceding the report have failed to pay the taxes assessed against them under the Corporation Business Tax Act.

(b) The Secretary of State shall then issue a proclamation declaring that the charters of these corporations are repealed, and all powers previously conferred by law upon them are inoperative and void.

Statutory References

See N.J.S.A. 54:11–2 as to duty of Director to report all corporations who have been for two years delinquent to the Secretary of State for forfeiture of charter.

18:7–14.7 (Reserved)

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.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substituted "crime of the fourth degree" for "misdemeanor".
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 "Acting under voided charter a crime of the fourth degree".

18:7–14.8 Reinstatement of voided domestic corporation; conditions warranting

(a) If the charter of a corporation organized under any law of this State becomes inoperative or void by proclamation of the Governor or the Secretary of State or by operation of law for nonpayment of taxes, the Secretary of State may, with the advice of the Attorney General, upon payment by the corporation to the Secretary of State of whatever sum in lieu of taxes and penalties as to them may seem reasonable, but in no case less than the fees required upon the filing of the original certificate of incorporation, permit the corporation to be reinstated and entitled to all its franchise and privileges.

(b) Upon payment the Secretary of State shall issue his certificate entitling the corporation to continue its business and franchises.

Statutory References

See N.J.S.A. 54:11–5 as to right of Secretary of State to reinstate corporate charter upon payment of delinquent taxes, should he see fit.

18:7–14.9 Reinstatement of voided domestic corporation; procedure

(a) The administrative procedure for reinstatement requires that a voided corporation must file returns without remittance with the Division of Taxation covering the period or periods which have elapsed since the period covered by the last return filed by it.

(b) At the same time, an application for reinstatement is filed with the Attorney General's office. Upon audit of the returns, the Division of Taxation advises the Attorney General's office of the amount due.

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. 54:11–5 as to minimum payments taxpayer shall be required to make in order to have charter reinstated.

18:7–14.10 Revocation of authority of foreign corporation to do business in New Jersey

(a) In the event of failure or neglect of any taxpayer which is a foreign corporation to pay the tax imposed by the Corporation Business Tax Act on or before the first day of December in each year.

1. Immediate notice thereof may be given by the Director to the Secretary of State;

2. The Secretary shall revoke the certificate of authority of said corporation to do business in the State of New Jersey.

3. Notice of revocation shall be given by the Secretary of State to the corporation affected;

4. Thereafter that corporation, so far as the further transaction of business in the State of New Jersey is concerned, shall be in the same condition as if no certificate of authority had ever been issued to it by the Secretary of State.

(b) Remedies provided by the Act for the collection of the tax and interest and penalties shall remain unimpaired.

Statutory References

See N.J.S.A. 54:10A–21 as to revocation of certificate of authority to do business of a foreign corporation to pay tax under the Act.

18:7–14.11 New certificate of authority for a foreign corporation

(a) After the revocation of a certificate of authority of a foreign corporation for nonpayment of tax, no new certificate shall be issued by the Secretary of State to the defaulting corporation until all assessments imposed under the Act and remaining unpaid, together with penalties, interest and any costs that may have been accrued have been paid.

(b) It is important to note that the certificate of the Director, evidencing payment of all taxes, interest and penalties, is a prerequisite to obtaining a new certificate of authority.

Statutory References

See N.J.S.A. 54:10A–21 as to authority of Secretary of State to issue new certificate upon payment of delinquent taxes by foreign corporation.

18:7–14.12 Personal liability of officers or directors for unpaid taxes

(a) Any officer or director of any corporation who shall be instrumental in the following corporate violations shall be personally liable for payment of that corporation's unpaid taxes, fees, penalties and interest:

1. Violating N.J.S.A. 54:50–13 (which provides for the payment of all State taxes including the Corporation Business Tax, as well as fees, interest and penalties prior to merger, consolidation, dissolution or partial or complete liquidation), or

2. Filing any certification under N.J.S.A. 54:50–15c.(2) (which represents that the corporation making certain undertakings has a net worth ten times the amount of certain taxes paid by another corporation) which is materially false.

(b) The amount of such personal liability shall be recoverable by the State in any court of competent jurisdiction and the Director shall have such additional remedies for the enforcement and collection of such personal liability as may be available under any law of this State.

Amended by R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
(a)1 and (a)2 added.
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. 54:50–18 as to conditions creating personal liability of corporation officials for unpaid taxes.

18:7–14.13 through 18:7–14.16 (Reserved)

Repealed by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Sections repealed 14.13 Criminal penalties for failure to file; filing of false or fraudulent return; 14.14 False swearing; 14.15 Certain offenses deemed occurring in Director's office; Prima Facie evidence; and 14.16 False or fraudulent books, records or accounts.

18:7–14.17 Tax Clearance Certificate

(a) This section describes certain actions and certain transactions by corporations which require the prior issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interest and fees have been paid or provided for in order to avoid a transferee liability to certain officers and directors.

(b) The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise:

"Authorized foreign corporation" means a corporation holding a general Certificate of Authority to do business in New Jersey issued by the Secretary of State to the exclusion of any other authority, license or right derived from any other source.

"Business entity" means a corporation, partnership or limited liability company, whether organized under the laws of this State or under the laws of any other state of foreign jurisdiction, which is subject to taxation under any State tax law.

"Certification" means a writing on behalf of a corporation making an undertaking executed under oath of its president, vice president or treasurer which represents that the corporation making the undertaking has a net worth not less than ten times the amount of all taxes paid by a corporation applying for a Tax Clearance Certificate during the last complete year in which it filed tax returns with the State of New Jersey. Net worth, for this purpose, is net worth defined in the conventional accounting sense determined consistent with generally accepted accounting principles and not as defined at Section 4(d) of the Corporation Business Tax Act nor at N.J.A.C. 18:7–4.1.

"Director" means the Director of the Division of Taxation.

"Domestic corporation" means a corporation which received its charter under any law of the State of New Jersey.

"Foreign corporation" means any corporation other than a domestic corporation which is subject to taxes. The term includes entities which are taxable as such, as well as any entity obligated to withhold personal income taxes or to collect sales and use tax.

"Liquidation" means any distribution by a corporation to its shareholders with respect to its capital stock except dividend distributions out of retained earnings.

"Taxes" means all taxes, fees, penalties and interest owing under any tax law of the State of New Jersey which are payable to or collectible by the Director.

"Undertaking" means a writing by a domestic corporation or by an authorized foreign corporation executed under another on its behalf by its president, vice president or treasurer which undertakes, as surety and not as guarantor, to pay all taxes of a corporation applying for a Tax Clearance Certificate on or before the date such taxes are payable. Where more than one corporation undertakes to pay such taxes, it must be jointly and severally undertaken.

(c) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

(d) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation; or merge or consolidate, under the laws of any jurisdiction, into a foreign corporation which is not an authorized foreign corporation; and no domestic corporation may dissolve, and no authorized foreign corporation may withdraw as an authorized corporation. (except only where that withdrawal is affected by its merger or consolidation under the laws of another state into a domestic corporation or into another foreign corporation which, itself, is an authorized corporation), unless it shall have applied for and received a Tax Clearance Certificate from the Director of the Division of Taxation which is dated not earlier than 45 days prior to the effective date of the corporate action or transaction described.

(e) No business entity may merge or consolidate into any other business entity other than a domestic business entity or a foreign business entity authorized to transact business in this State, unless the business entity files or causes to be filed by the Division of Taxation with the Division of Revenue a certificate issued by the Director of the Division of Taxation dated not earlier than 45 days prior to the effective date of the business entity action evidencing that the business entity's taxes have been paid or provided for.

(f) The Tax Clearance Certificate is issued by the Director of the Division of Taxation upon application on the appropriate form to the Division of Revenue, which is accompanied by a statutory fee of $120.00 ($25.00 application fee and $95.00 dissolution withdrawal fee). All fees related to the application and final dissolution/withdrawal must be paid with the initial application for tax clearance in the form of a check or money order payable to "Treasurer, State of New Jersey." Failure to complete the tax clearance procedure will result in the forfeiture of the $120.00 fee. The Certificate is dated and it voids and becomes a nullity 46 days after that date. The Certificate is evidence that the corporation business taxes have been paid or provided for only during the 45–day period succeeding its issue.

(g) The corporation's tax liability will be deemed ended as of the date the application is accepted by the Division of Revenue, as long as the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax liability will end before the issuance of the Tax Clearance Certificate, any prior tax obligation will remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax liability will be reactivated as if there was no lapse in subjectivity.

(h) An LLC or other business entity that has elected to be taxed as a corporation that is withdrawing from the State is required to obtain a Tax Clearance Certificate.

(i) A Tax Clearance Certificate may be issued under any one of three conditions:

1. Where an amount is deposited or paid on account which, in the judgement of the Director, is adequate to cover estimated taxes up to the date of the relevant corporation action. The amount which is deemed to be adequate is described in the instruction sheet accompanying the estimated summary tax return to be filed with the application; or

2. Where the application is accompanied by a written undertaking and a certification; or

3. Solely in the case where:

i. A domestic corporation intends to dissolve or where any corporation proposes to distribute any of its assets in dissolution or in partial or complete liquidation, and

ii. The application is accompanied by a written undertaking by the corporation or corporations which either own 50 percent or more of all classes of the applicant corporation's capital stock, or are a party together with the applicant corporation in the type of reorganization described at Section 368(a)(1)(C) of the Federal Internal Revenue Code, and the application is accompanied by a legal opinion signed by an attorney at law of the State of New Jersey who states that he or she is familiar with the facts of the transaction to the effect that all of the above requirements are met.

(j) The Director may require as a condition of issuing any Tax Clearance Certificate evidence by affidavit, or by any means that seems to him or her appropriate, that any foreign corporation which is not an authorized foreign corporation and which is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes which it owes.

Example: A foreign corporation which is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or to remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

(k) The Director may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

Example: A foreign corporation sold a piece of property located in this State at a substantial gain that it has elected to report on the installment method of accounting for Federal income tax purposes. Before it has recognized all of the gain on this sale, it withdraws from the State and cancels its certificate of authority to do business.

(*l*) In order properly to reflect the entire net income of the taxpayer, the Director may include all the unrecognized gain on the taxpayer's final return, notwithstanding any inconsistency in the timing of income for Federal and State tax purposes.

(m) See N.J.A.C. 18:7–14.21 for the streamlined dissolution or withdrawal procedure.

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Statutory fee raised from "$10.00" to "$25.00".
Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).
Revised (g); added (h) and (i).
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.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Rewrote the section.

18:7–14.18 Actions not requiring the prior issuance of a Tax Clearance Certificate

(a) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

(b) A corporate dissolution before commencing business may be made without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12–2(3).

(c) A dissolution of a corporation without assets may be made without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12–4.1(3).

(d) See N.J.A.C. 18:7–14.21 for the streamlined dissolution or withdrawal procedure.

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
Added (b), corporate dissolution before commencing business and (c), dissolution of a corporation without assets.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Added (d).

18:7–14.19 Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors

(a) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or consolidate with another corporation to form a new corporation or merge into a foreign corporation which is an unauthorized foreign corporation, and no domestic corporation may dissolve (except as may be provided by law), and no authorized foreign corporation may withdraw its authority to do business in New Jersey, unless it shall have applied for and received a Tax Clearance Certificate from the Director of the Division of Taxation.

(b) See N.J.A.C. 18:7–14.21 for the streamlined dissolution or withdrawal procedure.

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
Added "(except as may be provided by law)".
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Designated paragraph as (a), inserted "of the Division of Taxation" following "from the Director"; added (b).

18:7–14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) The forms for the closure of operations in New Jersey may be:

1. Downloaded from the Division of Revenue website www.state.nj.us/treasury/revenue/dissolvewithdraw.htm;

2. Requested by calling Business Services at (609) 292–9292;

3. Obtained by writing to the New Jersey Division of Revenue, Business Liquidations, PO Box 308, Trenton, NJ 08625; or

4. Obtained over the counter at the New Jersey Division of Revenue, Business Liquidations, 225 West State Street, 3rd Floor, Trenton, NJ 08608.

(b) The consequences of failing to obtain the Tax Clearance Certificate pursuant to this section are described at N.J.A.C. 18:7–14.12.

(c) See N.J.A.C. 18:7–14.21 for the streamlined dissolution or withdrawal procedure.

New Rule, R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Changed the address.
Amended by R.1989 d.437, effective July 21, 1989.
See: 21 N.J.R. 2526(b).
Address changed.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Rewrote (a); added (c).

18:7–14.21 Streamlined dissolution or withdrawal procedure

(a) Notwithstanding any rule or regulation to the contrary, the streamlined dissolution or withdrawal process begins when a corporation submits all required forms with proper remittance to:

The New Jersey Division of Revenue
Business Liquidations
PO Box 308
Trenton, NJ 08625

(b) Remittance shall be in the form of a single check or money order payable to "Treasurer, State of New Jersey" in the amount of $120.00. This amount represents the formerly separate $25.00 fee to the New Jersey Division of Taxation and the $95.00 dissolution fee to the Division of Revenue. The full payment shall be forfeited if the applicant does not complete the tax clearance procedure.

(c) The applicant's tax eligibility will be deemed ended with the Division of Taxation on the date the application for dissolution or withdrawal is accepted by the Division of Revenue, provided that the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax eligibilities end before the issuance of the Tax Clearance Certificate, all prior tax obligations remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax eligibilities of the taxpayer will be reactivated as if there had been no lapse in subjectivity.

(d) The application procedures to merge or consolidate corporations or reauthorize a foreign corporation remain unchanged.

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

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. INTERNATIONAL BANKING FACILITIES

18:7-16.1 Definitions

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

"Agreement Corporation" is defined under USCA Title 12, section 601, et seq. as a national banking association which, under regulation of the Federal Reserve Board of Governors, is authorized to establish foreign branches, or branches in United States dependencies or insular possessions, for the furtherance of United States foreign commerce, or to invest not over 10 percent of its capital in United States domestic corporations which are principally engaged, directly or through controlled institutions, in international or foreign banking or banking in United States dependencies or insular possessions; or to hold stock in banks organized under foreign laws, or United States dependencies or insular possessions laws, which banks are not engaged in United States activity, except incidentally; and to extend credit to such foreign or United States dependencies banks. Agreement Corporations shall operate under an agreement with the Federal Reserve Board of Governors, and shall furnish information concerning their condition to the Comptroller of the Currency as well as to the Federal Reserve Board of Governors.

"Edge Corporation" is defined under USCA Title 12, section 611, et seq. as a corporation organized to engage in international or foreign banking or other financial operations, or to engage in such operations in United States dependencies or insular possessions, either directly or through local institutions. An Edge Corporation is operated under Federal supervision with sufficiently broad powers to be able to compete effectively with similar foreign-owned institutions, in the United States or abroad. The Federal Reserve Board of Governors shall issue regulations to assist an Edge Corporation in providing banking and financial services to foster international trade.

"International Banking Facility" means a separate, segregated set of asset and liability accounts, set apart on the books of a bank, a banking corporation or other depository institution, including a United States bank or agency or foreign bank; or an Edge or Agreement Corporation as defined below. The separate accounts may include only international banking facility time deposits, or international banking facility extensions of credit, as defined below.

If the United States enacts a law, or the Governors of the Federal Reserve System adopt a regulation changing the definitions of international banking facility, international banking facility time deposits or international banking facility extensions of credit set forth in this rule, the New Jersey Commissioner of Banking shall promptly adopt regulations conforming these definitions to the revised United States law or Federal Reserve regulations, and the Banking Commissioner's regulations shall then, under P.L. 1983, c.422, provide the applicable definitions.

"International Banking Facility Extension of Credit" is a loan or deposit by an international banking facility to a deposit account, represented by a promissory note or other credit arrangement, extended only to a foreign office of another United States depository, or an Edge or Agreement Corporation or foreign office of a foreign bank, or another office of the international banking facility, another international banking facility, or an institution exempt from Federal interest rate limitations, or a foreign resident, or a foreign branch or affiliate controlled by a domestic corporation. The funds must be used only to finance the foreign operations of the borrower, or its foreign affiliates.

"International Banking Facility Time Deposit" is defined, in (United States Federal) 12 CFR 204.8(a)(2). It is a deposit or Federal obligation represented by a promissory note or other obligation or instrument, not in negotiable or bearer form. The deposit must remain in the depository at least over night, and be issued to either an office outside of the United States of another depository, or an office of an Edge or Agreement Corporation, or a foreign office of a foreign bank, or any office anywhere of the establishing international banking facility, or of another international banking facility, or an institution exempt from Federal interest rate limitations. The obligation must be payable no sooner than two business days later, and must represent funds deposited to the credit of a

foreign resident, or a foreign branch or affiliate of a domestic corporation. The funds must be used for foreign operations of the depositor or its foreign affiliate, and deposits or withdrawals must be at least $100,000.00, except when closing an account.

18:7-16.2 (Reserved)

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 "International Banking Facilities: computation of entire net worth".

18:7-16.3 International Banking Facilities: computation of entire net income

For computation of entire net income, see N.J.A.C. 18:7-5.2(a)2vii.

Administrative correction.
See: 32 N.J.R. 717(a).

18:7-16.4 International Banking Facilities: business allocation factor

Regarding the business allocation factor, see N.J.A.C. 18:7-8.16.

Administrative correction.
See: 32 N.J.R. 717(a).

18:7-16.5 (Reserved)

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 "Phasing in International Banking Facility tax changes".

SUBCHAPTER 17. PARTNERSHIPS

18:7-17.1 Definitions

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

"Nonresident corporate partner" means a partner that is not an individual, estate or trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Nonresident corporate partners include:

1. Entities that are classified as partnerships for Federal income tax purposes;

2. Entities that are classified as corporations for Federal income tax purposes that:

i. Are not corporations exempt from tax pursuant to N.J.S.A. 54:10A-3; or

ii. Do not maintain a regular place of business, as defined in N.J.A.C. 18:7-7.2, in New Jersey.

"Nonresident noncorporate partner" means an individual, an estate, or a trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that Act.

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

18:7-17.2 Subjectivity

(a) For privilege periods beginning on or after January 1, 2002, a partnership, including any entity that is classified as a partnership for Federal income tax purposes, and regulations of any election under IRC 761, except a qualified investment partnership as defined herein (see N.J.A.C. 18:7-1.21) and except a partnership listed on a United States national stock exchange, shall file a return on a form prescribed by the director and remit tax under these rules.

(b) Entities that meet the requirements of N.J.S.A. 54A:5-8(c) are commonly referred to as "hedge funds." Income received by a nonresident individual, estate or trust from a "hedge fund" is exempt from tax under the New Jersey gross income tax because it is not deemed to be carrying on from a trade or business.

1. In those situations in which partnerships do not meet the definition of qualified investment partnerships in N.J.S.A. 54:10A-4(r) (which would automatically exempt them from partnership payments under N.J.S.A. 54:10A-15.11a), and if all of the income derived from the hedge fund partnership by the partners is not subject to New Jersey gross income tax, the partnership is not required to remit a payment of tax on behalf of its nonresident, noncorporate partners, since the income to the nonresidents is not considered subject to tax in New Jersey.

(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 "non-resident 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) 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, provided that the return is not prepared by a paid tax preparer. Payments of partnership liabilities and fees along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), by a partnership subject to the provisions of the corporation business tax with more than 10 partners shall be made electronically.

(b) A paid tax preparer who prepares returns for partnerships subject to the provisions of the corporation business tax shall file all of the partnership returns prepared by that preparer during the tax year as instructed by the partners of the partnership, by electronic means. Payments of the partnership liabilities and fees along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), either by the partners or by a paid tax practitioner as instructed by the partners of the partnership shall be made electronically.

Amended by R.2011 d.171, effective June 20, 2011.
See: 43 N.J.R. 385(a), 43 N.J.R. 1431(a).
Inserted designation (a); rewrote (a); and added (b).
Amended by R.2012 d.177, effective October 15, 2012.
See: 44 N.J.R. 1875(a), 44 N.J.R. 2379(b).
In (a) and (b), inserted "and fees"; and in (a), inserted "subject to the provisions of the corporation business tax".

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

18:7-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the following 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. For privilege periods commencing after June 30, 2006, key corporations are not permitted for reporting any other tax purposes in New Jersey.

"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 tangible 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.
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In the introductory paragraph, inserted "following" preceding "meanings"; in definition "Key corporation", inserted the last sentence; and in paragraph 2 of definition "New Jersey gross receipts", substituted "tangible" for "intangible".

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

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

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. 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

viii. 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).
Amended by R.2009 d.235, effective July 20, 2009.
See: 41 N.J.R. 1715(a), 41 N.J.R. 2800(a).
Deleted former (c)1vii; and recodified former (c)1viii and (c)1ix as (c)1vii and (c)1viii.

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:

1. An S corporation parent of a QSSS must register as a New Jersey S corporation, or make a valid election and consent to jurisdiction pursuant to N.J.S.A. 54:10A-5.22, N.J.S.A. 54:10A-5.23 and these rules;

2. The parent shareholder must consent to New Jersey taxation of its QSSS's income allocation by filing a CBT-100S that includes the assets, liabilities, income, and expenses of the QSSS. The property, receipts, and payroll of the QSSS must be included in the parent's allocation factor. Failure of the parent either to consent or to file a CBT-100S for any period will result in the denial of NJ-QSSS status, and the subsidiary will be subjected to taxation in New Jersey as a C corporation;

3. The New Jersey S corporation electing to be recognized as a QSSS must file a completed and properly executed form CBT-2553 by which its parent New Jersey S corporation consents to taxation of the QSSS's income and calculation of allocation fractions and factor by New Jersey. Form CBT-2553 must be executed by a qualified corporate officer of the New Jersey S corporation and by an authorized officer of the parent New Jersey S corporation. Form CBT-2553 must be filed before the 16th day of the fourth month of the first tax year that the NJ-QSSS election is to take effect; and

4. Any Federal S corporation that is treated Federally as a QSSS may be recognized in New Jersey as a NJ-QSSS provided the conditions of N.J.A.C. 18:7-20.2(c) have been met.

(d) Regardless of any provision in this section, every qualified NJ-QSSS must file a CBT-100S and pay the applicable minimum tax. Unless the NJ-QSSS formally dissolves through the Division of Revenue, it is required to file annually a Corporation Business Tax return, remit the required tax, and make an annual report to the New Jersey Division of Revenue. A failure to file a New Jersey Form CBT-2553 containing the corporate parent's consent to taxation by New Jersey will result in the denial of New Jersey QSSS status and will subject the entity to taxation in New Jersey as a C corporation.

(e) A Federal QSSS that elects to be treated as a NJ-QSSS for New Jersey tax purposes and that has previously filed the necessary election form (CBT-2553) may request to have the estimated corporation business tax payments transferred to its parent corporation's account for the year in which the New Jersey QSSS election was made. The NJ-QSSS must submit a written request, signed by an officer of the NJ-QSSS, together with a copy of the New Jersey S corporation election form (CBT-2553) to the New Jersey Division of Taxation. The Division will transfer to the parent all of the NJ-QSSS's estimated payments except for a designated amount that will be used to satisfy the NJ-QSSS's current year minimum tax liability and the 50 percent estimated tax payment for the subsequent year.

(f) The following examples are provided for illustration.

Example 1:

Taxpayer is an S corporation for Federal and New Jersey purposes and is headquartered in Illinois with branches in New Jersey and other states. It recently set up a North Carolina QSSS, which has made the appropriate election to be treated as a disregarded entity for Federal purposes. Other than being a subsidiary of the parent, the QSSS has no operations in New Jersey.

The taxpayer intends to include income of the North Carolina QSSS in its allocation factor in order to allocate the parent's income among the various states in which it does business, including New Jersey. This treatment is permitted in New Jersey provided that the North Carolina QSSS registers with New Jersey or has filed a CBT-2553-Cert, files a separate CBT-100S, and pays the minimum tax. If the foreign QSSS does not register or file a completed CBT-2553-Cert, the income does not flow up to the parent's return.

Example 2:

A holding company was set up in November 2002 with a calendar year end. An S election for Federal and New Jersey purposes was made for the new holding company effective from its inception. After the new company was set up, it acquired all the shares of two existing Federal S corporations having a calendar-year accounting period, from the same owner. Federal and New Jersey QSSS elections are made effective in November 2002. One of the acquired corporations is a New Jersey S corporation, the other is a New Jersey C corporation.

The new holding company can make a timely New Jersey S corporation election since it was set up in November. The two acquired corporations, which change shareholders during their accounting year, cannot make New Jersey elections because their taxable years began in January. For them the time limit to make valid New Jersey S corporation elections had already passed for that year.

Amended by R.2007 d.204, effective July 2, 2007.
See: 39 N.J.R. 763(a), 39 N.J.R. 2544(a).
In the second paragraph of Example 1 of (f), inserted "or has filed a CBT-2553-Cert", inserted a comma following "CBT-100S", and added the last sentence.

18:7-20.3 Retroactive New Jersey S corporation elections

(a) A taxpayer that is authorized to do business in New Jersey and that is registered with the Division of Taxation and that has filed NJ-CBT-100S tax returns with New Jersey but has failed to file a timely New Jersey S corporation election may file a retroactive election to be recognized as a New Jersey S corporation.

(b) An administrative user fee of $100.00 shall be included with a taxpayer's filing of its retroactive New Jersey S corporation election Form NJ-2553R, for each tax year that will be affected by the late filing.

(c) A retroactive New Jersey S corporation or Qualified Subchapter S Subsidiary election will not be granted if:

1. All appropriate corporation business tax returns have not been timely filed and taxes timely paid as if the New Jersey S corporation election request had been previously approved;

2. A New Jersey S corporation request is not received before an assessment becomes final;

3. The Division has issued a notice denying a previous late filed New Jersey S election request, and the taxpayer has not protested the denial within 90 days; or

4. All shareholders have not filed appropriate tax returns and paid tax in full when due as if the New Jersey S corporation election request had been previously approved, and the taxpayers have not reported the appropriate S corporation income on those returns.

New Rule, R.2008 d.11, effective January 7, 2008.
See: 39 N.J.R. 3730(a), 40 N.J.R. 192(b).