

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. *Hoegaens Corp. v. Director, Div. of Taxation*, 145 N.J.Super. 352, 367 A.2d 1182 (App.Div.1976) and dissenting opinion.

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.

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," 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

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.

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

(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. The ownership of a membership interest in a limited liability company does not satisfy the subjectivity requirement of N.J.S.A. 54:10A-2 unless the foreign corporate member (that is, partner) is manager of a limited liability company, takes part in the control of a limited liability company business, the business of the limited liability company and the corporate member are part of a single unitary business, or the foreign corporate member meets the criteria of N.J.A.C. 18:7-1.9.

(b) Subsection (a) above shall not 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, except as provided in (c) below.

(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; or
3. The foreign corporate limited partner meets the criteria set forth in N.J.A.C. 18:7-1.9.

(d) The exercise of one or more enumerated limited partner rights or powers as set forth in N.J.S.A. 42:2A-27(b) shall not provide a basis for a finding of subjectivity. However, a limited partner shall be considered to be taking part in the business only if that limited partner has liabilities to third parties, pursuant to N.J.S.A. 42:2A-27(b).

(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. See (a) above regarding treatment of membership interests in limited liability companies.

(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.

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					<u>\$1,000</u>
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					<u>\$313</u>
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.

	<u>9DEF Corp.</u>	<u>Fraction in NJ</u>	<u>General Partnership</u>	<u>Fraction in NJ</u>	
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	<u>0.000000</u>	1,000	<u>.750000</u>	
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					<u>\$1,000</u>
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					<u>\$625</u>
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.

	<u>XYZ Corp.</u>	<u>50 Percent Partnership Interest</u>	<u>Combined</u>	<u>Fraction in NJ</u>	
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	<u>.613636</u>	
Total				2.366666	
Allocation Factor (Total divided by 4)				.591667	
Net Income of Corporation					\$5,000
Corporation's Distributive Share of Partnership Income					<u>\$1,000</u>
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.

	<u>GHI Corp.</u>	<u>10 Percent General Partnership Interest</u>	<u>Combined</u>	<u>Fraction in NJ</u>	
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					<u>\$1,000</u>
Total Net Income					\$6,000
Combined Allocation Factor					.200758
Allocated Entire Net Income					<u>\$1,205</u>

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).

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.

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.

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	<u>+150,000</u>	\$150,000
Total income	650,000	
Deductions	<u>-447,778</u>	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments—N.J. Corporation Business Tax Deducted—add back	<u>+20,000</u>	
Entire net income	<u>\$222,222</u>	
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%		x .08
Tax paid to State Y		<u>\$ 12,000</u>
Reduction	<u>-12,000</u>	
Paid with return	<u>\$8,00</u>	

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	<u>12,000</u>	3,000
Add ACRS	15,000	
Less State Z Depreciation	<u>15,000</u>	-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)
Dividend Exclusion—State Z	-0-	-0-
Entire Net Income	<u>\$275,000</u>	
Portion of ENI duplicated		\$241,300
Apportionment (computed below)		<u>.250000</u>
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		<u>\$ 6,33</u>
Reduction—at 9% of Apportioned duplicated ENI (\$60,325)	<u>\$ 5,429</u>	
New Jersey tax after credit	<u>\$ 19,321</u>	

†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	<u>15,000</u>	3,000
Add ACRS	15,000	
Less State Z Depreciation	<u>15,000</u>	-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)
Dividend Exclusion—State Z	-0-	-0-
Entire Net Income	<u>\$275,000</u>	
Portion of ENI duplicated		\$241,300
Apportionment (computed below)		<u>.245000</u>
Apportioned duplicated ENI		\$59,118
Tax at 9% on New Jersey Income Base	\$24,750	

	<u>New Jersey Tax</u> <u>Income Base</u>	<u>Duplicated in</u> <u>State Z</u>
Tax at State Z rate (10 ¹ / ₂ %) on Apportioned duplicated ENI		<u>\$6,20</u>
Reduction—at 9% of Apportioned duplicated ENI (\$59,118)	<u>\$5,321</u>	<u> </u>
New Jersey tax after credit	\$19,429	

Corporation B computed the apportionment on its State Z return as follows:

	<u>State Z</u>	<u>Every-</u> <u>where</u>	<u>Portion in State</u> <u>Z</u>
Property Fraction			
Owned (Valued under State Z law and regulation)	\$140,000	\$ 500,000	
Leased (at 8 times annual rentals)	<u>\$ 40,000</u>	<u>\$ 100,000</u>	
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)	<u>\$ 40,000</u>	<u>\$ 100,000</u>	
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)	<u>\$ 40,000</u>	<u>\$ 100,000</u>	
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).

Statutory References

See N.J.S.A. 54:10A-8 as to right of Director to independently adjust a taxpayer's allocation factor.

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

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.