

**CHAPTER 7
CORPORATION BUSINESS TAX ACT**

Authority

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

Source and Effective Date

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

Chapter Expiration Date

Chapter 7, Corporation Business Tax Act, expires on September 1, 2009.

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Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979.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Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994.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

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

- 18:7-1.1 Corporation business tax; general provisions
- 18:7-1.2 Total tax self-assessed
- 18:7-1.3 Definition of taxpayer
- 18:7-1.4 Definition of corporation
- 18:7-1.5 Limited partnership associations subject to the Act
- 18:7-1.6 Subjectivity to tax; how created
- 18:7-1.7 Domestic corporations subject to tax
- 18:7-1.8 Foreign corporations subject to tax
- 18:7-1.9 Doing business in New Jersey; definition and rules of construction
- 18:7-1.10 Foreign corporations engaged in interstate commerce
- 18:7-1.11 Foreign corporations stocking goods in New Jersey
- 18:7-1.12 Exempt corporations

- 18:7-1.13 Regulated investment company; definition
- 18:7-1.14 Subjectivity of foreign banks and foreign national banks
- 18:7-1.15 Investment company; definition
- 18:7-1.16 Financial business corporation; definition
- 18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return
- 18:7-1.18 Definition of S corporation
- 18:7-1.19 Definition of New Jersey S corporation
- 18:7-1.20 Definition of public utility
- 18:7-1.21 Definition of qualified investment partnership
- 18:7-1.22 Definition of savings institution
- 18:7-1.23 Definition of partnership

SUBCHAPTER 2. NATURE OF TAX

- 18:7-2.1 Nature of tax; in general
- 18:7-2.2 Calendar and fiscal years; definitions
- 18:7-2.3 Federal calendar or fiscal year for reporting
- 18:7-2.4 Proof of Federal accounting period
- 18:7-2.5 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
- 18:7-2.7 Effect of failure by a corporation to establish accounting period
- 18:7-2.8 Effect of failure by a corporation to submit proof of an established fiscal year accounting period
- 18:7-2.9 Effect of proof of established fiscal year accounting period submitted late
- 18:7-2.10 Period of application of tax
- 18:7-2.11 Component factors of tax base
- 18:7-2.12 Application of State franchise tax to corporations
- 18:7-2.13 Conditions destroying franchise and franchise tax
- 18:7-2.14 Allocation of payments received with CAR-100

SUBCHAPTER 3. COMPUTATION OF TAX

- 18:7-3.1 General bases for computation of tax
- 18:7-3.2 (Reserved)
- 18:7-3.3 (Reserved)
- 18:7-3.4 Minimum tax
- 18:7-3.5 (Reserved)
- 18:7-3.6 Tax rates—corporations, S corporations and surtax
- 18:7-3.7 (Reserved)
- 18:7-3.8 Investment company; tax self-assessed and payable
- 18:7-3.9 (Reserved)
- 18:7-3.10 Regulated investment company; tax payable
- 18:7-3.11 (Reserved)
- 18:7-3.12 Method of accounting
- 18:7-3.13 Estimated tax
- 18:7-3.14 Estimated payment for fourth quarter 2002
- 18:7-3.15 Interest on underpayment of installment payments
- 18:7-3.16 Banking corporations and financial business corporations
- 18:7-3.17 Coordination of tax credits
- 18:7-3.18 Recycling tax credit
- 18:7-3.19 Smart moves for business program (formerly employer trip reduction program) tax credit
- 18:7-3.20 Enterprise zone employees tax credits
- 18:7-3.21 Manufacturing equipment and employment investment tax credit
- 18:7-3.22 New jobs investment tax credit
- 18:7-3.23 Research credit
- 18:7-3.24 Effluent equipment tax credit
- 18:7-3.25 Economic recovery tax credit
- 18:7-3.26 HMO assistance fund tax credit
- 18:7-3.27 Neighborhood revitalization State tax credit
- 18:7-3.28 Redevelopment authority project tax credit

SUBCHAPTER 4. ENTIRE NET WORTH

- 18:7-4.1 through 18:7-4.4 (Reserved)
- 18:7-4.5 Indebtedness owing directly or indirectly
- 18:7-4.6 Receivables offset against indebtedness owing directly or indirectly

- 18:7-4.7 Governmental obligations and securities
- 18:7-4.8 through 18:7-4.10 (Reserved)
- 18:7-4.11 Subsidiary corporations; definition
- 18:7-4.12 through 18:7-4.18 (Reserved)

SUBCHAPTER 5. ENTIRE NET INCOME; DEFINITION, COMPONENTS AND RULES FOR COMPUTING

- 18:7-5.1 Entire net income; definition
- 18:7-5.2 Entire net income; how computed
- 18:7-5.3 Tax paid to foreign country or United States possession; when deductible from net income
- 18:7-5.4 Factors not adjustable to Federal taxable income
- 18:7-5.5 Entire net income; determining stock ownership
- 18:7-5.6 Adjustment of entire net income to period covered by return; how computed
- 18:7-5.7 Right of Director to independently determine net income
- 18:7-5.8 Calculation of gain in certain instances
- 18:7-5.9 (Reserved)
- 18:7-5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations
- 18:7-5.11 Right of Director to require consolidated filing, and certain disclosures
- 18:7-5.12 Net operating loss deduction
- 18:7-5.13 New Jersey net operating loss carryover
- 18:7-5.14 Limitations to the right of a net operating loss carryover
- 18:7-5.15 Net operating loss
- 18:7-5.16 Effect of audit adjustments
- 18:7-5.17 Suspension of net operating loss carryover
- 18:7-5.18 Related party transactions

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. ALLOCATION

- 18:7-7.1 General instructions regarding allocation of net income
- 18:7-7.2 Regular place of business; definition
- 18:7-7.3 "Allocating" and "non-allocating" companies; definition
- 18:7-7.4 Allocation factor; definition
- 18:7-7.5 Allocation factor; application
- 18:7-7.6 Corporate partners and partnerships
- 18:7-7.7 (Reserved)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

- 18:7-8.1 Business allocation factor; computation
- 18:7-8.2 Method of arithmetic computation required
- 18:7-8.3 Right of Director to independently compute allocation factor
- 18:7-8.4 Property fraction; "tangible personal property"; definition and scope; special situations
- 18:7-8.5 Business allocation factor; property fraction derived from average values
- 18:7-8.6 Average value; computation period
- 18:7-8.7 Business allocation factor; determination or receipts fraction
- 18:7-8.8 Scope of allocable receipts
- 18:7-8.9 Receipts from sales of capital assets; when includible
- 18:7-8.10 Receipts; compensation for services; allocation for certain special industries
- 18:7-8.11 Receipts; rents and royalties
- 18:7-8.12 Other business receipts
- 18:7-8.13 Business allocation factor; payroll fraction
- 18:7-8.14 Definition of officers and employees
- 18:7-8.15 Compensation of officers and employees within New Jersey
- 18:7-8.16 Allocation: International Banking Facilities
- 18:7-8.17 Non-operational income
- 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
- 18:7-10.2 through 18:7-10.3 (Reserved)

SUBCHAPTER 11. RETURNS

- 18:7-11.1 Returns; corporations required to file
- 18:7-11.2 Returns where Federal net income is changed
- 18:7-11.3 Effect of deficiency notice
- 18:7-11.4 Amended return
- 18:7-11.5 Change of accounting period
- 18:7-11.6 Forms of returns
- 18:7-11.7 Time for filing returns
- 18:7-11.8 Time to report change or correction in Federal net income
- 18:7-11.9 Time for filing returns for unauthorized foreign corporations doing business in New Jersey
- 18:7-11.10 Failure to file return or make payment when due
- 18:7-11.11 Returns required to be filed by corporation ceasing to be subject to tax
- 18:7-11.12 Extension of time to file return; interest and penalty
- 18:7-11.13 Place for filing returns and payment of tax
- 18:7-11.14 Secrecy of returns
- 18:7-11.15 Consolidated returns
- 18:7-11.16 Return to be filed by an S Corporation
- 18:7-11.17 Copies of tax returns or other information required
- 18:7-11.18 Reproduction of forms
- 18:7-11.19 through 18:7-11.21 (Reserved)

SUBCHAPTER 12. SHORT PERIOD RETURN

- 18:7-12.1 Short period returns; when required
- 18:7-12.2 Short period returns; proration procedures
- 18:7-12.3 Short period returns; allocation
- 18:7-12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

- 18:7-13.1 Assessment and reassessment
- 18:7-13.2 Hearing; protest
- 18:7-13.3 Appeal
- 18:7-13.4 Service of notice on taxpayers
- 18:7-13.5 Closing agreements
- 18:7-13.6 Time for payment of tax
- 18:7-13.7 Additional tax; change in Federal tax; interest to be charged
- 18:7-13.8 Claims for refund; when allowed
- 18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments
- 18:7-13.10 Refund for erroneous payments
- 18:7-13.11 Lien of tax
- 18:7-13.12 Release of property from lien
- 18:7-13.13 Certificate as to lien for unpaid corporation franchise taxes
- 18:7-13.14 (Reserved)

SUBCHAPTER 14. PENALTIES, MISCELLANEOUS

- 18:7-14.1 Penalties
- 18:7-14.2 Extension of time; failure to file or pay on time
- 18:7-14.3 Arbitrary assessment where taxpayer withholds return
- 18:7-14.4 Arbitrary assessment where taxpayer intends absconding; concealment, immediate payment demanded
- 18:7-14.5 Forfeiture of charter; conditions warranting
- 18:7-14.6 Forfeiture of charter; procedure
- 18:7-14.7 (Reserved)
- 18:7-14.8 Reinstatement of voided domestic corporation; conditions warranting
- 18:7-14.9 Reinstatement of voided domestic corporation; procedure
- 18:7-14.10 Revocation of authority of foreign corporation to do business in New Jersey
- 18:7-14.11 New certificate of authority for a foreign corporation
- 18:7-14.12 Personal liability of officers or directors for unpaid taxes
- 18:7-14.13 through 18:7-14.16 (Reserved)
- 18:7-14.17 Tax Clearance Certificate
- 18:7-14.18 Actions not requiring the prior issuance of a Tax Clearance Certificate
- 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

- 18:7-14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate
 18:7-14.21 Streamlined dissolution or withdrawal procedure

SUBCHAPTER 15. URBAN ENTERPRISE ZONES ACT

- 18:7-15.1 General
 18:7-15.2 Definitions
 18:7-15.3 (Reserved)
 18:7-15.4 Credits against total tax for new employees and investments in urban enterprise zones
 18:7-15.5 Qualification for benefits

SUBCHAPTER 16. INTERNATIONAL BANKING FACILITIES

- 18:7-16.1 Definitions
 18:7-16.2 (Reserved)
 18:7-16.3 International Banking Facilities: computation of entire net income
 18:7-16.4 International Banking Facilities: business allocation factor
 18:7-16.5 (Reserved)

SUBCHAPTER 17. PARTNERSHIPS

- 18:7-17.1 Definitions
 18:7-17.2 Subjectivity
 18:7-17.3 Due date for return
 18:7-17.4 Extension of time to file returns
 18:7-17.5 Calculation of tax
 18:7-17.6 Credit or refund
 18:7-17.7 Estimated return
 18:7-17.8 Certain corporate partners; exemption form
 18:7-17.9 Allocation of tax for partners that are corporations
 18:7-17.10 Electronic filing

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

- 18:7-18.1 Definitions
 18:7-18.2 Alternative minimum assessment
 18:7-18.3 Taxpayers not subject to the alternative minimum assessment
 18:7-18.4 Calculation of the Alternative Minimum Assessment
 18:7-18.5 Alternative Minimum Assessment credits
 18:7-18.6 Gross receipts calculation; agency businesses

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

- 18:7-19.1 Definitions
 18:7-19.2 Payment of filing fee
 18:7-19.3 Installment payment
 18:7-19.4 Penalty and interest

SUBCHAPTER 20. TREATMENT OF S CORPORATIONS

- 18:7-20.1 S corporations
 18:7-20.2 Qualified Subchapter S Subsidiaries (QSSS)

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).

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).

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. 18:7-15 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).

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.

(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 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.

(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. URBAN ENTERPRISE ZONES ACT

Authority

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

18:7-15.1 General

(a) The New Jersey Urban Enterprise 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. 12A:120 and 12A: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. 18:7-15.2.

Amended by R.1994 d.419, effective August 15, 1994.
See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

18:7-15.2 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;

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

Authority

P.L. 2002, c.40, § 25, N.J.S.A. 54:10A-27, 54A:9-17(a) and 54:50-1.

Source and Effective Date

R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Subchapter Expiration Date

Subchapter 19, Filing Fee Payments by Professional Corporations, expires on March 12, 2004.

Subchapter Historical Note

Subchapter 19, Filing Fee Payments by Professional Corporations, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a).

The concurrent proposal of Subchapter 19, Filing Fee Payments by Professional Corporations, was adopted by R.2003 d.370, effective August 22, 2003. See: Source and Effective Date. See, also, section annotations.

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, chiropractists, 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:

$$3 \times \$150.00 = \$450.00$$

97 nonresident professionals without physical nexus

$$97 \times \$150.00 = \$14,550$$

$$14,550 \times 0.05 = \$727.50$$

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

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

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

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

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

18:7-19.3 Installment payment

(a) Each professional corporation required to make a payment of the professional corporation filing fee, shall on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the present fiscal year.

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

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

18:7-19.4 Penalty and interest

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

SUBCHAPTER 20. TREATMENT OF S CORPORATIONS

Authority

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

Source and Effective Date

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

18:7-20.1 S corporations

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

1. "Federal S corporation" means a corporation making a valid election under Federal law (section 1361 of the Internal Revenue Code of 1986, 26 U.S.C. § 1361), to be an S corporation. For a definition of "S corporation" as used in this section, see N.J.A.C. 18:7-1.18.

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

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

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

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

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

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

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

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

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

consent statement to be attached to the CBT-2553. If the stock is acquired after the S corporation election is made, the beneficiary's election is made on a separate statement;

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

(1) Adult shareholders who are not under disability;

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

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

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

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

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

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

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

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 3½ 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.

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, files a separate CBT-100S and pays the minimum tax.

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.